

DRAFT
LOCAL BANKRUPTCY RULES FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

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PART I

1007-1 Lists, Schedules & Statements

- (a) In addition to all lists, schedules, statements, and other documents required by the Bankruptcy Code and by the Federal Rules of Bankruptcy Procedures:
- (1) A debtor must file with the voluntary petition a mailing matrix in an approved format.
 - (2) A corporate debtor (including a limited liability company) must file:
 - (i) A corporate resolution which authorized to the filing of the bankruptcy or a statement that the filing is authorized by the operating agreement, or in the absence of either, written authorization to file bankruptcy.
 - (ii) A Corporate Ownership Statement, that substantially complies with the Court's local form.
 - (3) A partnership debtor must file a statement reflecting that the filing is authorized by the partnership or operating agreement; or, a statement reflecting the consent of all general partners to the bankruptcy filing. In addition, a partnership must file a separate statement that identifies the partnership as a general partnership, limited partnership or joint venture; and provides the names of all general and limited partners.
 - (4) An individual, who was self-employed, unemployed or did not receive pay advices or other evidence of payment within sixty (60) days of filing the petition, must file with the petition the Court's local form "*Statement Under Penalty of Perjury Concerning Payment Advices Due Pursuant to 11 U.S.C. Section 521(a)(1)(B)(iv)*".
- (b) Extensions of time –

A motion and the proposed order granting an extension of time to file a document required by Fed. R. Bankr. P. 1007(b) must require that all schedules and statements be filed no later than seven (7) days before the scheduled § 341 meeting.

Note: The initial pleadings should consist of the documents listed in national bankruptcy Form 200 (*United States Bankruptcy Court Required Lists, Schedules, Statements, and Fees*). The documents should be filed with the Court in the order in which they are listed on Form 200.

Reference: 11 U.S.C. § 342; and § 521; FBR 1007; FBR 9001(5)

See Also: SDLR 1007-2 (Mailing – List or Matrix); SDLR 9011-2 (Pro Se Parties); Local forms - *Statement Under Penalty of Perjury Concerning Payment Advices Due Pursuant to 11 U.S.C. Section 521(a)(1)(B)(iv) and Corporate Ownership Statement*

Compare: NDLR 1002-3; NDLR 1007-1

Mailing – List or Matrix

- (a) A mailing matrix is required to include the full names and addresses of all creditors and interested parties. A Verification of Matrix must verify that the matrix is accurate and complete to the best of the filer's knowledge, information and belief. If a case is filed electronically, the filer must upload the names and addresses on the mailing matrix to the database, and then must separately file the mailing matrix. If a case is filed on paper, the filer must submit the mailing matrix on paper in the approved format.
- (b) A debtor must include on the mailing matrix the name and address of any domestic support creditor even if all payments to that domestic support creditor are current as of the date of the filing of the bankruptcy petition. The names of minor children and confidential information should not be disclosed.
- (c) A matrix must include the taxing authority for each county where the debtor holds an interest in real estate. In a partnership case, a matrix is required to include the names and addresses of all general and/or limited partners. In a Chapter 11 case, the matrix must include the names and addresses of all equity security holders.
- (d) A debtor must promptly correct errors that are discovered on a mailing matrix.
- (e) When an amendment or a change is made to the mailing matrix which adds a creditor or entity, or changes an address to the mailing matrix, the debtor is required to serve the added creditor or entity with the debtor's Statement of Social Security Number(s); *Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines*; schedule(s) listing the creditor or entity; and any other document affecting the rights of the creditor or entity.
- (f) When an amendment to a schedule adds a creditor or changes an address, the amendment to the mailing matrix must only reflect the additions or changes.
- (g) In the event of a conversion of a case from one chapter to another, the debtor must file an amendment to the mailing matrix which lists only the names and addresses of additional creditors or parties.

Note: Information for the approved mailing matrix format may be obtained from the Clerk's Office or by clicking on the hyperlink.

The following need not be included on a mailing matrix:

- (1) Debtor(s);
- (2) Debtor's counsel
- (3) Trustee (if applicable)
- (4) United States Trustee, Region 4
- (5) United States Attorney's Office for the Southern District of West Virginia
- (6) Chief, Special Procedures Staff – Internal Revenue Service

(Chapter 11 cases only)
(At the address shown on the Register of Addresses of Governmental Units)
(7) West Virginia State Department of Tax and Revenue

Reference: FBR 1007; 11 U.S.C. § 342

See Also: SDLR 1009-1 (Amendments to Lists & Schedules)

Compare: NDLR 1007-2

1007-5 **Statement of SSN (Privacy)**

If an error involves a debtor's social security number, the debtor is required to file on the appropriate Official Form, an amended verified statement with the full correct social security number. The debtor also must provide notice of the correct number to all creditors, the United States Trustee, and the trustee and must file the notice and a certificate of service. When the error involves the last four digits that appear on the petition, the debtor also must file an amended petition.

Reference: FBR 1005; FBR 1007; FBR 1009; Official Form 21

Compare: NDLR 1007-3

1009-1 **Amendments to Lists & Schedules**

An amendment must be filed with a certificate of service which reflects service of the amendment upon the creditor, trustee, and any other named or affected entity. Each amendment of schedules or lists must be by separate document and must not be combined with a plan modification or other document.

When an amendment adds a creditor or an entity, the certificate of service must reflect that the creditor or affected entity was also served with:

- (a) The amendment;
- (b) The *Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines*;
- (c) The order granting discharge (if entered); and,
- (d) Any other document affecting the rights of the creditor or entity.

Reference: FBR 1009

See Also: SDLR 1007-2 (Mailing - List or Matrix)

Compare: NDLR 1009-1

1014-2 **Venue - Change of Venue**

Failure to timely file a motion or an objection challenging venue constitutes a waiver and bars a party from later raising the issue.

Note: Divisional venue of a bankruptcy case will be in the division where the debtor maintains his/her residence or place of business. A motion filed with the petition requesting a change of divisional venue may be granted without entry of a written order. If the motion is filed after issuance of a *Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines*, it may be granted without notice and hearing by entry of a written order. If a written objection is filed, a hearing will be scheduled.

A listing of divisional assignments by county may be obtained from the Clerk’s Office and will be available on the Court’s website (www.wvsv.uscourts.gov).

For the purposes of determining the location of meetings of creditors, hearings, trials and other bankruptcy proceedings, a case’s bankruptcy divisional venue ordinarily will be determined by the county where the debtor maintains his/her residence or place of business. Adversary proceedings will be assigned case numbers and venue according to the division assigned to the related main bankruptcy case. In a case where the venue properly may be in another district, the Clerk issues a Notice of Filing Out of District setting a time limit for objections challenging venue to be filed. A case filed by or against an out-of-district debtor will be permitted to proceed in this district, unless an order is entered granting a timely filed motion or objection challenging venue.

Reference: 28 U.S.C. § 1408 and § 1409
See also: SDLR 1071-1 (Divisions – Bankruptcy Court); SDLR 1071-2 (Places of Holding Court)
Compare: NDLR 1014-1

1015-1 Joint Administration/Consolidation

- (a) A request to procedurally or substantively consolidate bankruptcy cases must be made by written motion.

- (b) Joint Administration –
 - (1) A joint petition filed by spouses will be jointly administered unless the trustee or other interested party files a motion to bifurcate or an objection to joint administration.

 - (2) A motion for joint administration must be filed with an affidavit or verification, which establishes that the joint administration of the respective debtors’ estates is warranted and will ease the administrative burden for the Court and the parties. A party in interest may file a motion to reconsider an order of joint administration at any time.

 - (3) Within fourteen (14) days of the entry of the Order of Joint Administration, the designated party must file, without duplication, a consolidated mailing matrix comprising all creditors and parties in interest in all the jointly administered cases.

 - (4) When a proof of claim is filed in any member case after the entry of an Order of Joint Administration, if the creditor is not already listed, the designated party must file an amendment to the consolidated mailing matrix that adds the new creditor and address.

- (c) Substantive consolidation –

At the time of substantive consolidation, when the Court designates the lead case, the Clerk is authorized to close the remaining cases. All subsequent filings, including proofs of claim, must be filed only in the lead case. All subsequent filings also must contain the style of all the consolidated cases, stating in parentheses below the style, (*Substantively consolidated*).

Note: With the exception of a joint petition, joint administration of cases is for administrative (procedural) purposes only and does not cause a consolidation of the respective debtors’ estates. Separate claims registers will be maintained in each case. When substantive consolidation occurs, the claims registers and mailing matrices of all the cases will be combined and thereafter maintained in the lead case only.

The Court may order a joint administration of cases, without notice or hearing.

An Order of Joint Administration will:

- (a) Designate one of the cases to be the lead case for purposes of docketing and filing.
- (b) With the exception of proofs of claim, direct that thereafter the docket of the jointly-administered cases will be maintained only in the lead case. Other than proofs of claim, all filings must be made in the case designated by the Court as the lead case, and must reflect both the style of the applicable case(s), and also the consolidation by stating, in parentheses below the style of the case(s), "(Procedurally consolidated with Case No.(s) _____)".
- (c) Require that a proof of claim must be filed in the case in which the claim is applicable.
- (d) Designate the party responsible for filing a consolidated matrix and updating the mailing matrix.

An Order of Joint Administration also should be entered on the dockets of all cases covered by the order.

Reference: FBR 1015; 11 U.S.C. § 302
Compare: NDLR 1015-1

1017-2 **Dismissal or Suspension – Case or Proceedings**

(a) Administrative Dismissal of Case

A debtor must timely respond to a notice of deficiency or to an order to correct a deficiency or the case may be dismissed without further notice.

(b) Automatic Dismissal of Case Under 11 U.S.C. § 521

A party raising an issue whether a case should be or was automatically dismissed due to a debtor's alleged failure to file all information required under §521(a)(1) or §521(e)(2), must file a Motion to Dismiss within seventy-five (75) days of the date the case is filed. Failure to timely file the motion bars a party from raising the issue later.

Note: A deficiency notice will be issued for a case that is filed without all required documents, that does not conform to bankruptcy rules or administrative procedures, or that includes documents not filed on official forms.

An order may be entered notifying the debtor or debtor's counsel of material deficiencies which impair the performance of the Clerk's duties and responsibilities, or of unpaid fees (unless the petition is accompanied by the debtor(s)'s Application to Pay Filing Fee in Installments, or in the case of an individual debtor Chapter 7 case, an (IFP) Application Requesting a Waiver). The order will specify the time limit for the debtor to correct the deficiency. Material deficiencies that may result in dismissal of a case include, but are not limited to: failure to provide the debtor's full name and address; failure to submit the debtor's Statement of Social Security Number (Form B 21); and failure to file a mailing matrix.

Reference: 11 U.S.C. § 521; FBR 1017; FBR 7041; Official Form B 21

See Also: SDLR 7055-1 (Default – Failure to Prosecute)

Compare: NDLR 1017-1; NDLR 1017-2

1019-1.1 Conversion or Dismissal – Chapter 13 Disposition of Undistributed Funds

- (a) A conversion of a case to another chapter does not terminate a pending motion. On conversion, the movant must make every reasonable effort to inform the case trustee of the status of a pending motion.

- (b) When a case is either dismissed or converted, the Chapter 13 Trustee will dispose of undistributed monies, received prior to conversion or dismissal, in the Trustee’s custody as follows:
 - (1) Confirmed Plan - Funds will be distributed to creditors in accordance with the confirmed plan.

 - (2) Unconfirmed Plan - Unless a written objection is filed within twenty-one (21) days of the notice of conversion or dismissal, the Trustee will distribute funds in accordance with § 1326 and any order of the Court.

- (c) After checks have cleared the Trustee’s account, the Chapter 13 Trustee will file a final report accounting for the monies distributed.

Reference: 11 U.S.C. § 1302, § 1307, and § 1326; FBR 1017; FBR 1019
See Also: SDLR 3015-1.2 (Plan Payments to the Trustee)
Compare: NDLR 1019-1

1071-1 **Divisions – Bankruptcy Court**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

For purposes of assigning case numbers and statistical reporting, as well as matters before the District Court, the Bankruptcy Court will observe the divisions established by the United States District Court for the Southern District of West Virginia.

Reference: 28 U.S.C. § 152

Compare: NDLR 1071-1

1072-1 **Places of Holding Court**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

The Court will conduct hearings and other proceedings at each of the divisional locations, unless the Court determines hearings should be held elsewhere for the convenience of the parties in interest, or to accomplish compliance with the Bankruptcy Rules.

Reference: 28 U.S.C. § 152

Compare: NDLR 1072-1

1073-1 **Assignment of Cases**

In March 1983, the Judicial Conference of the United States authorized concurrent State-wide jurisdiction for bankruptcy judges in the Northern and Southern Districts of West Virginia. By agreement between the Bankruptcy Judges of the Northern and Southern Districts of West Virginia, each judge may assign cases filed within his 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.

Reference: 28 U.S.C. § 152(d); Judicial Conference Report, March 1983

Compare: NDLR 1073-1 (This rule is identical in both districts)

PART II

2002-1.1 Notice - Preferred Creditor Address

- (a) An entity wishing to submit a notice of address pursuant to 11 U.S.C. § 342(f) should submit the filing to the National Creditor Registration Service (NCRS). The filing will constitute the filing of the notice with the Court.
- (b) The Clerk is authorized to remove from the mailing matrix any address to which notice was sent and returned to the Clerk as undeliverable.

Note: The Bankruptcy Noticing Center is the current agency handling the noticing services for the Bankruptcy Court.

Instructions on what a creditor must do to file a *Notice of Preferred Creditor Address* are available on the Court's website (www.wvsb.uscourts.gov). The website address for the National Creditor Registration Service (NCRS) is <http://ncrs.uscourts.gov>.

A *Notice of Exception to Preferred Creditor Address*, to be used in a specific case pursuant to 11 U.S.C. § 342(e), must be filed with the Clerk in that particular case, and substantially comply with the Court's local form.

Reference: 11 U.S.C. § 342(f); FBR 2002
See also: Local form – *Notice of Exception to Preferred Creditor Address*
Compare: NDLR 2002-1

2002-1.2 Notice to Debtor's Employer

In a bankruptcy case of an individual, to obtain an *Order And Notice Of Instruction To Employer(s) Regarding Wages*, a debtor must file a written request that provides the name and address/fax number of the debtor's employer.

Note: Upon the filing of a written request that provides the necessary information, an *Order And Notice Of Instruction To Employer(s) Regarding Wages*, will be entered and mailed by the Clerk to the debtor, debtor's counsel, and the debtor's employer.

2003-1

Meeting of Creditors & Equity Security Holders

(a) Scheduling -

The United States Trustee is responsible for scheduling the date, time and place of the 11 U.S.C. § 341 meeting of creditors.

(b) Duty to Appear -

A debtor who is an individual must appear in person at the §341 meeting of creditors. If the debtor is not an individual, a designated representative of the entity must attend the § 341 meeting. When spouses file jointly, both debtors are required to be present at the § 341 meeting.

(c) Continuances -

(1) Continuances will be granted only under exceptional circumstances. A request for a continuance should be directed first to the trustee or, in a chapter 11 case to the United States Trustee. A motion for continuance filed with the Court will be denied unless the motion asserts that the request was unfairly denied by the trustee or United States Trustee.

(2) If a trustee continues the meeting for non-appearance of the debtor or debtor's counsel, the trustee may announce the continued date and time to all parties present at the initial meeting, and the debtor's attorney must give notice to all parties on the mailing matrix of the continued meeting. Debtor's counsel is required to file with the Court the notice and a certificate of service within seven (7) days of service. If the debtor appears at a meeting of creditors that is continued, the new date and time will be announced on the record only, without further written notice.

(3) If the debtor fails to appear at a meeting of creditors, the trustee may continue the meeting to the next docket or may move to dismiss the case. If the debtor does not appear at a continued or rescheduled meeting, upon motion and notice by the trustee or United States Trustee, the case may be dismissed.

(d) Appearance for Meeting of Creditors -

(1) A debtor's duty to appear may not be waived.

(2) In rare cases, when extenuating circumstances prevent a debtor from appearing in person, the trustee or the United States Trustee may approve an alternative appearance for the debtor. Extenuating circumstances may include military service, serious medical condition, or incarceration. In those instances, a debtor's

appearance at a § 341 meeting may be secured by alternative means, such as telephonically or by interrogatories. If the meeting is conducted by alternative appearance, the debtor must comply with all other rules regarding meetings of creditors.

- (3) In the event the debtor is unable to reach an agreement with the United States Trustee, at least seven (7) days prior to the scheduled meeting, the debtor may file a written motion supported with sufficient documentation, requesting an extension of the date for the debtor's appearance or a waiver of the debtor's appearance. The motion must include a statement that the debtor has attempted to resolve the issue with the United States Trustee under subsection (b).
 - (4) Debtor's counsel should notify the trustee and United States Trustee not less than seven (7) days in advance of the scheduled § 341 meeting of any disability, such as hearing impairment or limited English proficiency, so that reasonable accommodation can be made.
 - (5) Without prior approval of the United States Trustee, a third party may not appear for the debtor pursuant to a power of attorney. If a debtor is unable to appear in person, the debtor should request an appearance by alternative means. A third party may appear for the debtor if authorized to act for the debtor by a court order of competent jurisdiction to enter such order.
- (e) Individual Debtor's Duty to Provide Documentation -

(1) Personal Identification -

Every individual debtor must bring to the § 341 meeting of creditors:

- (i) A picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.
 - (ii) Evidence of social security number(s) or a written statement that the documentation does not exist. Acceptable forms of proof of social security number include, but are not limited to: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.
- (2) Financial Information -

Every individual debtor must bring to the meeting of creditors the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

- (i) Evidence of current income, such as the most recent payment advice, retirement and/or social security statement, disability statement, unemployment statement, etc.;
- (ii) Statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, non-retirement accounts, mutual funds, brokerage accounts and educational trust accounts for the time period that includes the date of the filing of the petition; and
- (iii) Documentation of monthly expenses claimed by the debtor when required by § 707(b)(2)(A) or (B).

(3) Tax Return -

At least seven (7) days before the first date set for the § 341 meeting of creditors, the debtor is required to file with the Clerk and also provide to the trustee a copy of the debtor's Federal income tax return, including attachments, for the most recent tax year ending immediately before the commencement of the case and for which a return was filed. In lieu of the tax return, the debtor may file and provide a transcript of the tax return or a written statement that the tax return does not exist.

(4) Petition and Schedules -

If the petition and schedules have been filed electronically, the debtor must bring to the meeting and present to the trustee the petition and schedules bearing the actual signatures of the debtor.

(5) Other Documents -

Prior to a § 341(a) meeting, the trustee can ask a debtor to provide documents to corroborate the information contained in the petition, statements, and schedules. The documents may include, but are not limited to: financial statements, loan documents, trust deeds, titles and insurance policies.

Reference: 11 U.S.C. § 341, § 343 and § 707; FBR 2003; FBR 9001(5)
Compare: NDLR 2003-1 (This rule is identical in both districts)

2004-1 Depositions & Examinations

Rule 2004 Examinations –

- (a) Prior to filing a motion for a Rule 2004 examination, a party is required to try to arrange a mutually agreeable time, place and date for the examination. If an agreement is reached, a party is not required to file a motion, but instead may file and serve notice of the Rule 2004 exam. If an agreement is reached, and if a motion is filed, the motion and proposed order must state the agreed time, place and date of the examination. In the event the parties cannot agree on the terms of the examination, the motion must state that no agreement could be reached.

- (b) A subpoena to appear at a Rule 2004 examination may be issued by the Clerk's office or by counsel only after entry of an order granting a motion for Rule 2004 examination. A request for the Clerk to issue a subpoena must be included in a motion for Rule 2004 examination and in the proposed order.

Note: Motions for a Rule 2004 examination may be granted ex parte. On objection, the Court may modify any order. The use of a Rule 2004 examination in connection with an adversary proceeding is discouraged. If an adversary proceeding is filed, counsel should notice a deposition under FBR 7030. (The note comes from NDLR 2004-1(a).)

Reference: FBR 2004; FBR 7030; FBR 9016

Compare: NDLR 2004-1

2010-1.1 Examiner Bonds/Surety

When requested by the United States Trustee, examiners selected by the United States Trustee must post a bond conditioned on the faithful performance of the examiner's official duties and payable in favor of the United States. The United States Trustee will determine the amount of the bond and monitor its sufficiency. The bond must be filed with the Court.

Reference: 11 U.S.C. § 322, § 1104 and § 1106; FBR 2007.1

2014-1 Employment of Professionals

Continuing Duty to Disclose Material Information -

When a professional learns of additional material information relating to the professional's employment (such as potential or actual conflicts of interest), the professional must file a supplemental affidavit disclosing the information.

Note: An application for employment will be treated the same as a motion (under FBR 9013). Unless the Court orders otherwise, normally when an application for employment is granted, the retention and employment are effective as of the date the motion was filed.

Reference: 11 U.S.C. § 327, § 328, § 330 and § 1103; FBR 2014, FBR 2016; FBR 6003

See Also: SDLR 2016-1 (Compensation of Professionals); SDLR 6005-1.1 (Appraisers, Auctioneers, Brokers & Realtors)

Compare: NDLR 2014-1

2015-5 Trustees – Chapter 13

The Chapter 13 trustee is permitted to charge the percentage fee authorized for trustee compensation and expenses on any unconfirmed case where the trustee is authorized to make disbursements before confirmation. In addition, in a Chapter 13 case that is dismissed before confirmation, or converted to another chapter before confirmation, the Chapter 13 Trustee is authorized to charge an administrative fee of seventy-five dollars (\$75.00). On a case by case basis and upon an appropriate application showing extraordinary circumstances, pursuant to 11 U.S.C. § 503, the Court may order additional compensation.

Note: In accordance with 11 U.S.C. § 1326, the Chapter 13 Trustee receives from plan payments, those expenses and compensation provided by the Executive Office of the U.S. Trustee.

Reference: 11 U.S.C. § 503, § 521, § 1302 and § 1326; FBR 2015

Compare: NDLR 2015-1

2016-1 Compensation of Professionals

- (a) Unless otherwise ordered by the Court, a professional (including, but not limited to an attorney, accountant, examiner, investment banker, financial advisor, and real estate advisor), seeking compensation and/or reimbursement for expenses, pursuant to 11 U.S.C. §§ 327, 328, 330, and/or 331, must file an application that substantially complies with the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330.

- (b) In all chapters, an application for attorneys' fees and expenses incurred up to the date of conversion, dismissal or the effective date of a plan, must be filed with the Court within twenty-one (21) days after notice of conversion or dismissal or an order approving a plan of reorganization.

Reference: FBR 1019, 2014, 2016 and 6005; 11 U.S.C. § 327, § 328, § 330, § 331 and § 1322
See also: SDLR 6005-1.1 (Appraisers, Auctioneers, Brokers & Realtors); SDWV Model
 Chapter 13 Plan
Compare: NDLR 2016-1

2070-1.1 Governmental Request for Allowance of Administrative Expenses

A governmental unit's request for allowance of an administrative expense which does not request the payment of the expense may be filed and served with a twenty-one (21) day negative notice.

Note: When payment is requested, a governmental unit's request for allowance of an administrative expense will be scheduled for hearing.

Reference: 11 U.S.C. § 503; FBR 2002

See also: SDLR 9013-1 (Motion Practice)

2072-1 **Notice to Other Courts**

- (a) A debtor or party filing a bankruptcy case must promptly send notice of the bankruptcy filing to the following:
- (1) The clerk of a court where the debtor is a party to a civil action;
 - (2) The judge assigned to a civil action in which the debtor is a party;
 - (3) The arbitrator or arbitration panel, as applicable, if the debtor is a party to an arbitration proceeding.
 - (4) All parties and counsel involved in the action.

Note: The requirements of this local rule apply regardless of whether the civil action or proceeding was pending at the time the bankruptcy petition was filed or is subsequently commenced. If an action against the debtor is commenced subsequent to the entry of the order for relief and before closing of the bankruptcy case, the debtor must give notice of the bankruptcy case to those entities listed in this rule.

For cases and actions pending at the time a petition is filed, the notice required by this rule may be satisfied by listing the relevant parties and court/tribunal on the mailing matrix for the bankruptcy case.

Reference: 11 U.S.C. § 521; FBR 2002 and 4002
Compare: NDLR 2072-1

2083-1.1 **Chapter 13 – Procedure for Purchase of Asset**

(a) Low Cost Titled Asset Purchased Without Incurring Debt -

As long as debt is not incurred, and a stipulation signed by the Chapter 13 Trustee and Debtor or Debtor’s counsel is filed, a Chapter 13 Debtor may purchase an asset without entry of an order by Court. The stipulation must provide adequate information describing the asset, the purchase price, the source of funds to be used, and the status of the Chapter 13 Plan payments. Within fourteen (14) days of purchase, even if paid for by a non-household member, the Debtor must amend Schedule B (and Schedule C, if an exemption is claimed) to reflect the purchase.

(b) Any Asset Acquired by Incurring Debt -

A Chapter 13 Debtor may finance the purchase of an asset only with the permission of the Court. The Debtor must file a motion which provides sufficient details as to the reasonableness and necessity of the acquisition and must state any impact on the Chapter 13 plan. The motion must be served on the Chapter 13 trustee and all parties in interest.

Note: Initially this rule was drafted to help provide a cost efficient procedure for a Debtor to obtain a low cost vehicle and to avoid loss of employment or other problems which may adversely impact the Debtor’s ability to perform under the Debtor’s Chapter 13 Plan. The Court’s approval of the financing of an asset does not change the plan payment. To change plan payments a debtor must file an amended plan or motion to modify a confirmed plan.

Reference: 11 U.S.C. § 1306; FBR 1007(h)

See Also: Local form - *Motion to Incur Post-Petition Indebtedness*

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

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.

Reference: Official Form B 203 (Disclosure of Compensation of Attorney for Debtor)
See Also: SDLR 2014-1 (Employment of Professionals); SDLR 9011-1 (Attorneys – Duties)
Compare: NDLR 2090-1

2090-2 Attorneys – Discipline & Disbarment

After notice and a hearing, an attorney admitted to practice before this Court, for good cause shown, may be suspended from practice before the Court for an indefinite period.

Note: In all pending cases in which a suspended attorney has made an appearance, the Clerk will issue notice of the suspension to any affected party.

See Also: SDLR 9011-1 (Attorneys – Duties)

Compare: NDLR 2090-2

2091-1 Attorneys – Withdrawal/Substitution

(a) An attorney must fulfill all of the attorney’s duties and responsibilities until the Court enters an order permitting withdrawal or substitution, or until a proper Notice of Substitution has been filed.

(b) Termination of Representation –

An attorney who has entered an appearance in any civil action may not withdraw the appearance or have it stricken from the record, except by order.

(c) Withdrawal –

An attorney desiring to withdraw from representation of a party must file a written motion to withdraw. The motion must comply with the West Virginia Rules of Professional Conduct and be served on all parties in interest. Approval rests in the sound discretion of the Court, but will not be granted until the attorney seeking to withdraw has made reasonable effort to give actual notice to the client that:

- (1) The attorney wishes to withdraw;
- (2) The court retains jurisdiction;
- (3) The client has the burden of keeping the court informed where notice, pleadings, or other papers may be served;
- (4) The client has the obligation of preparing for trial or hire other counsel to prepare for trial when the trial date has been set;
- (5) If the client fails or refuses to meet these burdens, the client may suffer possible default;
- (6) The dates of any proceedings, including trial, and the holding of any proceedings will not be affected by the withdrawal of any counsel;
- (7) Service of process may be made upon the client at the client's last known address; and
- (8) The client has the right to object immediately to attorney's intent to

withdraw.

A motion to withdraw must attach the attorney's written certification. The certification must state that the notification requirements have been met and provide the manner by which the notification was given to the client. A motion must provide the client's last known address and telephone number. Before withdrawal is permitted, counsel must notify the client of the effective date of the withdrawal. Following the effective date of withdrawal, until new counsel enters an appearance, all pleadings, notices, or other papers may be served on the party directly by mail at the party's last known address.

(d) Substitution – By Notice -

- (1) Whenever the status of a lead attorney changes in a case, before the change occurs, the lead attorney of record is responsible for the filing of a notice of substitution of counsel. A notice of substitution must be signed by both attorneys and, unless otherwise ordered by the Court, must include the signature of the attorney's client. The notice must contain a statement that the substituting attorney has reviewed the Court's electronic docket and is aware of all pending deadlines, scheduling orders, and trial or hearing dates.
- (2) An attorney who substitutes as counsel for a debtor must file a Statement of Compensation within seven (7) days of the filing of the Notice of Substitution; the first filing or first appearance made by counsel on behalf of the debtor; or entry of an order substituting counsel, whichever should occur first. This requirement applies to an attorney who represents a debtor but changes law firms.

Note: The Court's records will not be updated unless and until the notice of substitution is filed or an order substituting counsel has been entered. If counsel is withdrawing in more than one case, a Notice of Substitution or order allowing withdrawal must be filed in each separate case. A change in the lead attorney of record includes (1) one attorney replacing another in the same law firm as the lead attorney; (2) a lead attorney transferring to a new law firm; and, (3) an attorney in a different law firm becoming the lead attorney.

If a motion to withdraw reflects that the attorney has informed the client of all of the matters required in subsection (c), and if the motion is signed by both counsel

and the client, the Court may enter the proposed order ex parte without further notice or hearing.

Reference: FBR 2017; 11 U.S.C. § 329; Rule 1.16 of the W. Va. Supreme Court of Appeals Rules of Professional Conduct; Official Form B 203 (Disclosure of Compensation of Attorney for Debtor)
See also: SDLR 9011 – 1 (Attorneys – Duties)
Compare: NDLR 2091-1

PART III

3001-1 Claims and Equity Security Interests – General

(a) Filing Proof of Claim or Interest -

- (1) A proof of claim filed before the conversion of any case is deemed filed in the converted case. A claimant, who did not file a proof of claim in a Chapter 9 or Chapter 11 case because the claim was correctly scheduled, must file a proof of claim in the converted case. Unless a claim is filed as unliquidated, a proof of claim must attach any documentation that supports the calculation of the claim.
- (2) In a Chapter 7 case, a deadline will not be set for filing proofs of claim unless the trustee requests that the court issue a notice to creditors to file claims.
- (3) In a Chapter 11 case, unless otherwise ordered by the court, the deadline for an entity (other than a governmental unit) to file a proof of claim (if required to be filed) is ninety (90) days after the date first set for the § 341(a) meeting of creditors. Unless otherwise ordered by the court, the deadline for a governmental unit to file a proof of claim is one hundred and eighty (180) days after the date of the order for relief.

(b) Copies –

- (1) If a claim is filed on paper, the signed original proof of claim must be filed.
- (2) A party requesting a time stamped copy of the proof of claim, must include an additional copy of the proof of claim and a self-addressed, postage pre-paid envelope.

(c) Address of the Claimant –

A claimant who provides a mailing address must notify the Clerk in writing of a change in the address.

Reference: 11 U.S.C. § 501; FBR 1019; FBR 3001; FBR 3002; FBR 3003; FBR 3004; FBR 3005

Compare: NDLR 3001-1; NDLR 3002-1; NDLR 3003-1

3007-1 **Claims – Objections**

An objection to a claim must state grounds for the objection and specify the relief sought.

Note: The Court may *sua sponte* deny an objection to a proof of claim when the objection fails to state grounds for disallowance.

Reference: 11 U.S.C. § 502; FBR 3007

Compare: NDLR 3007-1

3010-1 Dividends – Small

(a) Chapter 7 Cases

In a chapter 7 case, the Chapter 7 Trustee is authorized, in the Trustee's sole discretion, to distribute dividends in amounts less than five dollars (\$5.00).

(b) Chapter 13 Cases

In a chapter 13 case, the Chapter 13 Trustee is authorized, in the Trustee's sole discretion, to distribute payments in amounts less than fifteen dollars (\$15.00).

Reference: FBR 3010

Compare: NDLR 3010-1 (This rule is identical in both districts)

3011-1

Unclaimed Funds

(a) Request for Unclaimed Funds, In General -

A request for payment of unclaimed funds must be made by written motion. The motion must be filed with a notice that substantially complies with Official Form 20A; with a signed certificate of mailing reflecting service of the motion on the debtor, debtor's counsel, and United States Attorney for the Southern District of West Virginia; and with a proposed order. The notice must allow twenty-one (21) days for written responses and objections to be filed. The motion must state:

- (1) The name, address, telephone number and a brief history of the creditor/claimant from the date of filing of the claim to present (to reflect possible reasons for the funds not being deliverable at the time of original distribution);
- (2) Whether the claim has been assigned to the creditor (If so, copies of all documents evidencing the assignment must be appended to the motion.);
- (3) Whether or not the creditor/claimant believes that any other party may assert entitlement to the funds.

(b) Additional requirements for the representative of the estate of a deceased claimant -

Certified copies of all probate documents substantiating the right to act on behalf of the decedent's estate must be filed with the motion.

(c) Additional requirements for any other entity representing the interest of a creditor/claimant:

- (1) A corporation must be represented by counsel. In addition, as proof of entitlement to a claim a creditor/claimant that is a successor corporation, must provide documentation that establishes the chain of succession to the original corporate claimant.
- (2) A motion for return of unclaimed funds made on behalf of a debtor, by an attorney, representative or agent, including by use of a power of attorney, must provide the details of contractual agreements between the debtor and attorney, representative or agent, and the amount of compensation to be paid/received by the attorney, representative or agent. Copies of the documents must be attached. When representation of a creditor/claimant is based on a power of attorney, an original of the power of attorney must be filed with the motion.

The motion must contain a certificate of a notary public, with the notary's seal, and a statement that the notary has examined the documents presented which established the creditor/claimant as the party identified in the motion.

Note: The current practice followed by the Court is that all unclaimed funds collected by the Court are to be immediately deposited into the United States Treasury and not into the registry of the Court. The Unclaimed Funds Registry is available to the public by contacting the Bankruptcy Court Clerk's Office.

If a hearing is not scheduled and if no objections are filed within twenty-one (21) days after all required documentation is filed, the Clerk will prepare an appropriate order for the Court.

Any payment made to a claimant represented by counsel will be issued jointly to the claimant and attorney and will be mailed to the claimant's counsel.

The United States Trustee is served via the Court's electronic filing system.

Reference: 11 U.S.C. § 347; FBR 3011; Official Form 20A
See Also: SDLR 9011-2 (Pro Se Parties)
Compare: NDLR 3011-1

3012-1 Valuation of Collateral

(a) In General -

A motion to value a secured claim pursuant to §506 must state the collateral's estimated value. A motion filed without a statement of the collateral's estimated value may be denied for failing to state a claim upon which relief can be granted. In addition, the party also must file with the motion:

- (1) A notice which substantially complies with the Court's local form Notice of Motion or Official Form 20A;
- (2) A certificate of service that reflects service of the motion and notice upon the debtor, debtor's counsel, secured creditor, trustee and any other entity affected by the motion.

(b) Motor Vehicles –

Subject to rebuttal, the presumptive replacement value for a motor vehicle is the average between the N.A.D.A. trade-in and retail value for the particular year, make, and model.

Note: Pursuant to the Court's local Model Chapter 13 Plan, Chapter 13 debtors have the option to seek a valuation of secured collateral in the Chapter 13 Plan. If an objection is timely filed, the motion will be scheduled and noticed for a hearing; otherwise, the proposed order may be entered without further action.

Reference: 11 U.S.C. § 506; FBR 3012

See also: Local bankruptcy form – *Notice of Motion*; SD Model Chapter 13 Plan

Compare: NDLR 3012-1

3015-1 **Chapter 13 – Plan**

- (a) A Chapter 13 plan, including an amended plan, must substantially conform to the Court's model plan.

- (b) Pre-Confirmation Payments –

Upon the filing of the plan and commencement of plan payments, the Chapter 13 Trustee is authorized to make payments to secured creditors and lessors scheduled to receive payments. Subject to funds being available, each disbursement will be in the amount specified by the plan and will continue until the time that the plan is confirmed, the payment is otherwise amended and/or the value of collateral securing the claim is determined. In calculating the trustee's fees, the Chapter 13 Trustee may include payments to secured creditors and lessors made pursuant to this rule. The Trustee is not obligated to make a pre-confirmation payment unless a creditor files a proof of claim. The filing of an amended plan does not require the Chapter 13 Trustee to recoup any payments made under a prior plan.

Reference: 11 U.S.C. § 1322 and § 1325; FBR 3015
See also: SDWV Chapter 13 Model Plan
Compare: NDLR 3015-1

3015-1.1 Chapter 13 - Objections to Plan and/or Valuation of Secured Property

- (a) Except for objections filed by the Chapter 13 Trustee, an objection to confirmation of a plan and/or to valuation of secured property must be in writing and filed by the date set forth in a notice issued by the Court. An objection or a response to an objection must specifically state the grounds upon which it is based and must be served on all interested parties, including the Debtor, Debtor’s Counsel and Chapter 13 Trustee.
- (b) If an agreement, resolving an objection of the Chapter 13 Trustee or a secured creditor, is reached by the filing of an amended plan, a stipulation or agreed order must be filed.
- (c) Failure of an objecting creditor to appear at a regularly scheduled confirmation hearing is deemed to be an abandonment of that the objection.

Note: After seven (7) days, the Court may sustain a Trustee’s objection without hearing; but all other objections will be considered at the confirmation hearing.

SDLR 3015-2 (a) states: “When a debtor files an amended plan, all previously filed unconfirmed plans are automatically withdrawn. Objections of the Chapter 13 Trustee and secured creditors to any prior plan or to the valuation of secured property are preserved. Objections of other parties to a previously filed plan or the valuation of secured property are deemed moot.”

See also: SDLR 3012-1 (Valuation of Collateral); SDLR 3015-1 (Chapter 13 – Plan); SDLR 3015-2 (Chapter 13 – Amendments to Plans).

Compare: NDLR 3012-1; NDLR 3015-1; NDLR 3015-2

3015-1.2 **Chapter 13 – Plan Payments to Trustee**

(a) Debtor’s Responsibility –

A debtor is required to make plan payments directly to the Trustee until the debtor’s employer commences wage withholding. If a debtor’s personal check is returned for insufficient funds, the Trustee may, absent adequate assurance of payment, require the debtor to make all future payments by cashier's check or money order.

(b) Wage Withholding –

Unless otherwise specified, in a joint case, the wage withholding order will be directed to the employer of the debtor with the higher net pay. A debtor who has specific wage withholding needs or requirements must specify those in the Plan, Amended Plan or *Request for Entry of Amended Wage Order*.

If an amended wage withholding order is needed, the debtor, debtor’s counsel or Chapter 13 Trustee must file a *Request for Entry of Amended Wage Order* which substantially complies with the Court’s local form.

(c) Direct Payments -

A Debtor requesting an alternative to wage withholding must do so by written motion that states why direct payment is in the best interests of the debtor, the creditors or the Trustee.

(d) Moratorium on Plan Payments –

A motion for moratorium of plan payments must state the length of time payments would be suspended, the reasons the moratorium is needed and the identity of all affected secured creditors. If a moratorium is granted and if the debtor is subject to a wage withholding order, the debtor is responsible to cause the employer to stop the wage withholding at the beginning of the moratorium period and to recommence withholding on time at the end of the moratorium. Notwithstanding a court ordered moratorium on payments, the Chapter 13 Trustee may disburse funds that have been remitted.

(e) Conversion or Dismissal –

When a case is either dismissed or converted, the Debtor must submit a request for entry of an order to cease wage withholding. The request must include the name and address of the employer or servicing company handling the payment of the debtor’s wages.

Note: When a Chapter 13 Plan or Amended Plan is filed and the debtor is employed, based on the information set forth in the Plan or Amended Plan, a *Request for Entry of Amended Wage Order* need not be filed and the Court will enter an order directing the debtor's employer to withhold from the debtor's wages an amount equal to the proposed payments under the debtor's Plan or Amended Plan. On all other occasions a *Request for Entry of Amended Wage Order* must be filed and the Clerk's office will prepare the amended wage withholding order. As the Clerk's office prepares the wage withholding or direct payment order, a proposed order need not be filed.

If the debtor's income is not derived from an employer (e.g., social security, pension/retirement, unemployment or self-employment) an order requiring the debtor to make plan payments directly to the Trustee may be entered without the filing of a motion.

An order granting the suspension of plan payments does not eliminate those payments; rather, it adds the payments onto the end of the plan. Interest continues to accrue on secured debt during the moratorium period. The Court may order the suspension of plan payments without the need for a debtor to file an amended plan, or to file motion to modify a plan after confirmation.

Reference: 11 U.S.C. § 1326

See Also: SDLR 3015-2 (Chapter 13 – Amendments to Plans); SDLR 1019-1.1 (Conversion or Dismissal – Chapter 13 Disposition of Undistributed Funds); Local Form - *Request for Entry of Amended Wage Order*. The local model *Chapter 13 Plan* refers to the motion that must be filed when a debtor seeks permission to make direct payments to the Chapter 13 trustee.

3015-1.3 **Chapter 13 - Notice of Change in Mortgage Payment**

(a) Notice of Change –

To make any change in a mortgage payment, a mortgage lender/servicer must file a notice of change in the mortgage payment. The notice must clearly identify the components of the monthly payment, including, but not limited to, principal, interest, escrow and PMI components, and any other information required by the underlying agreement or applicable nonbankruptcy law. The notice of change must be served on the debtors, debtor’s counsel, the Chapter 13 Trustee and any other affected party. A change will be effective thirty (30) days after service of the notice of the change.

(b) Objection –

An objection to a notice of change or to the accompanying documentation must be filed within thirty (30) days of service of the notice of change. If a late-filed objection is sustained, the Chapter 13 Trustee is not required to seek return of any funds paid pursuant to the noticed change, which the Trustee paid prior to the entry of the order sustaining the objection.

Note: When mortgage payments are being made through a plan, upon the debtor’s completion of plan payments, the current practice of the Chapter 13 Trustee is to file a motion requesting the Court to confirm that the mortgage is current.

Chapter 13 – Amendments to Plans

- (a) When a debtor files an amended plan, all previously filed unconfirmed plans are automatically withdrawn. Objections of the Chapter 13 Trustee and secured creditors to any prior plan or to the valuation of secured property are preserved. Objections of other parties to a previously filed plan or the valuation of secured property are deemed moot.
- (b) Amendment of unconfirmed plans –
 - (1) Amendments to unconfirmed plans must substantially conform to the Court’s Model Chapter 13 Plan.
 - (2) An amended plan must address all previously entered orders that affect the treatment of secured creditors. If an amended plan proposes treatment of a secured creditor that differs from treatment provided in a previously entered order, the Trustee will accrue funds pending further order of the Court.
 - (3) Until an amended plan is filed, a debtor must continue to make plan payments as provided in the most recent prior plan.
- (c) Modification of Confirmed Plans/Motion to modify confirmed plans –
 - (1) Modification of a confirmed plan must be by a written motion which includes the following:
 - (i) The date that the original plan was confirmed, and the date of any subsequent modification.
 - (ii) The reasons why a plan modification is sought, including all substantial and unanticipated changes in circumstances that occurred since entry of the confirmation order.
 - (iii) The provisions of the confirmed plan that are being modified, and the approximate number of months needed to complete the plan as modified.
 - (iv) The extent to which the proposed modification affects the rights of creditors or other parties in interest.
 - (v) Amended Schedules I & J, if the motion to modify proposes to change the amount of plan payments.
 - (vi) A statement explaining why the proposed modification is in the best interest of creditors.

- (2) Payments under the confirmed plan must continue until a ruling is made on the motion to modify. If the motion is granted and wage withholding order is in effect, debtor's counsel must submit a *Request for Entry of Amended Wage Order*.

(d) Cure of Defaults Pre-Confirmation or Post-Confirmation -

- (1) Post-petition, Pre-confirmation Defaults –

A debtor is not required to file an amended plan if a creditor agrees to allow the debtor to cure a post-petition, pre-confirmation arrearage through the Chapter 13 trustee. An agreed order resolving a delinquency must include the exact amount of the post-petition, pre-confirmation arrearage, and the exact amount of the on-going payment, as well as the address where the payments are to be sent, and must be endorsed by the Chapter 13 Trustee. The Chapter 13 Trustee will include the agreement and the increased payment amount in the confirmation order. An amended proof of claim does not need to be filed.

- (2) Post-Confirmation Defaults –

A debtor is not required to file a motion to modify a confirmed plan if a creditor agrees to allow the debtor to cure a post-confirmation arrearage through the Chapter 13 trustee and the distribution to unsecured creditors is not reduced. An agreed order resolving a delinquency must include the exact amount of the post-confirmation arrearage, the exact amount of the on-going payment, as well as the address where the payments are to be sent and must be endorsed by the Chapter 13 Trustee. An amended proof of claim need not be filed.

Note: The Clerk will send a copy of the amended plan and notice of the confirmation hearing to all creditors and parties in interest.

Motions to modify will be scheduled for hearing on notice to all creditors. Relief may be granted without hearing if the Chapter 13 Trustee and any affected secured creditor(s) have endorsed a proposed order granting a Motion to Modify a Confirmed Plan and the motion does not affect payout to unsecured creditors.

Reference: 11 U.S.C. § 1323 and § 1326; FBR 2002(a)(6); FBR 3015
See Also: SDLR 3015-1.1 (Objections to Plan and/or Valuation of Secured Property)
Compare: NDLR 3015-2; NDLR 3015-4

3015-3 **Chapter 13 – Confirmation**

(a) Trustee’s Recommendation on Confirmation and Valuation of Secured Property –

The Trustee’s recommendation on confirmation of the plan and valuation of secured property must be filed and served on the debtor and debtor’s counsel prior to the confirmation hearing.

(b) Confirmation Hearing –

(1) If no objection to confirmation is pending, but the trustee is not in a position to recommend or oppose confirmation (e.g., due to uncertainty of the cash flow of the plan resulting from pending claims bar dates), at least one (1) week in advance of the scheduled confirmation hearing, the trustee or debtor may file a motion to continue the confirmation hearing to a date after the bar date for non-governmental claims.

(2) In advance of the scheduled final confirmation hearing, the Trustee may recommend the waiver of the final confirmation hearing and submit a proposed confirmation order, if

(i) Plan payments to the trustee are current;

(ii) The debtor has filed and served on any affected parties a *Certification by Debtor(s) of Compliance with Requirements of 11 U.S.C. Sections 1322 and 1325*, which reflects that the requirements have been met; and,

(iii) There are no unresolved confirmation issues.

(c) Continuing the Confirmation Hearing on the Filing of an Amended Plan –

Unless the Clerk issues a Notice of Amended Plan that reschedules a confirmation hearing, parties must appear at the previously scheduled hearing.

Note: If no objection to the waiver is filed, the Court may waive a confirmation hearing and enter a proposed confirmation order. In the event that an objection to confirmation or another issue, such as the status of domestic support obligations, remains unresolved the Court will conduct the final confirmation hearing.

If an amended plan is filed, the Clerk may continue a previously set confirmation hearing date to allow proper notice to parties in interest.

Reference: 11 U.S.C. § 1323, § 1324 and § 1325; FBR 2002; FBR 3012; FBR 3015

See also: SDWV Model Chapter 13 Plan; Local Form – *Certification by Debtor(s) of Compliance with Requirements of 11 U.S.C. Sections 1322 and 1325*
Compare: NDLR 3015-3

3016-2 Disclosure Statement – General

Note: Currently the Bankruptcy Court does not have a local rule under this number and title.

A Chapter 11 operating order will include the requirements that must be met and the information that must be provided in the disclosure statement.

3018-1 **Ballots – Voting On Plans**

- (a) A Chapter 11 Plan proponent must:
- (1) At least three (3) days before the confirmation hearing, file a Certification of Acceptance and Rejection of Chapter 11 Plan. The certification must include:
 - (i) A ballot summary, signed by the plan proponent that certifies the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan.
 - (ii) A ballot tally that identifies each class and states whether or not the class is impaired. For each impaired class, the tally must state the number of ballots received, and the number of ballots voting to accept and their aggregate dollar amount. The ballot tally must include a representation that, except for ballots appended to the report, all ballots filed were counted.
 - (iii) A summary stating whether or not the plan has received sufficient acceptance to be confirmed.
 - (2) Make all original ballots available at the confirmation hearing for inspection and review by the Court and any interested party.
- (b) The original ballots must be maintained by the plan proponent for at least one (1) year after the closing of the case. Upon Order of the Court, the plan proponent must make the original ballots available for inspection.

Note: Upon motion at the confirmation hearing, the court may extend the time for balloting and may permit the modification or withdrawal of ballots.

In connection with the confirmation of a plan, the court may refuse to recognize a timely filed ballot which is not signed, which does not clearly indicate acceptance or rejection of the plan, or which does not clearly indicate its inclusion in a specific class of claims or an interest under the plan.

Reference: 11 U.S.C. § 1126; FBR 3018

Compare: NDLR 3018-1

3020-1 **Chapter 11 – Confirmation**

- (a) Unless otherwise directed by the court, the debtor must prepare the confirmation order.
- (b) After entry of the confirmation order, the reorganized debtor or trustee must file quarterly reports, in a format approved by the Office of the U.S. Trustee. The report must include an estimate of the time frame until a final report and/or a motion for a final decree will be filed.

Reference: 11 U.S.C. § 1106, § 1120 and § 1142; FBR 3020
See Also: SDLR 3022-1 (Final Report/Decree (Ch. 11))
Compare: NDLR 3020-1 (This rule is identical in both districts)

3022-1 Final Report/Decree (Ch. 11)

Motion for Final Decree or to Close Case –

A motion for a final decree or to close a case, must be served on the United States Trustee, the trustee or examiner (if any), as well as all creditors and parties in interest. The motion must be accompanied by a closing report that substantially complies with a format prescribed by the United States Trustee. The motion must address whether the estate has been fully administered, including whether:

- (1) The order confirming the plan has become final;
- (2) Deposits required by the plan have been distributed;
- (3) The property proposed by the plan to be transferred has been transferred;
- (4) The debtor or the successor debtor under the plan has assumed the business or the management of the property dealt with by the plan;
- (5) Payments under the plan have commenced, the status of payments due to each class under the confirmed plan, and the percentage (%) dividend paid or to be paid to unsecured creditors;
- (6) All motions, contested matters, and adversary proceedings have been resolved;
- (7) All fees and charges owed to the Clerk have been paid;
- (8) All quarterly fees owed to the United States Trustee have been paid;
- (9) The debtor is an individual, and the case is to be closed prior to discharge, subject to reopening for the entry of a discharge upon the completion of plan payments.

Note: Upon the filing of a motion for a final decree or to close a case, the Court may close a case. If the case of an individual Chapter 11 debtor was closed without a discharge being granted, the case must be reopened before a discharge may be granted.

To obtain a discharge an individual Chapter 11 debtor must follow the procedures set forth in SDLR 4004-1 (Discharge Hearings).

Reference: 11 U.S.C. § 350; FBR 3022
See Also: SDLR 4004-1 (Discharge Hearings)
Compare: NDLR 3022-1 (This rule is identical in both districts)

PART IV

4001-1 Automatic Stay – Relief From

(a) In General –

- (1) A motion must state the amount owed on the obligation, the amount of arrearage and the estimated value of the property. The motion must include the following:
 - (i) Specific details in a clear and understandable format of the payment history of the loan in question showing how payments have been applied. The payment history must begin from the date of the default (upon which the motion is based) and continue through the present date. The payment history must include a clear and understandable itemization of all charges of any kind or nature; and the date of and changes to the interest rate during the payment history.
 - (ii) A copy of the security perfection instrument, and if recorded the book and page numbers.
 - (iii) The most current information available to the movant as to the value of its collateral and the methodology used to determine the value.
- (2) If an order directs a movant correct a deficiency in a stay relief motion, the movant must file and serve the information upon all parties who were served with the original motion. All time periods under 11 U.S.C. § 362(e) will be tolled or stayed until a deficiency is corrected.
- (3) In the event the Court directs negotiations between the parties, counsel for the movant must verify that s/he has access to the name, office, position and telephone number of a knowledgeable individual or officer of the lender who has authority to resolve and settle the motion for stay relief and/or cure of the default.

(b) Contents of Response –

In addition to specifically stating other defenses, if a debtor plans to make an offer of adequate protection, the terms of the offer must be set forth in the response to the motion for relief from the automatic stay.

(c) Preliminary Hearing –

Counsel for the movant and any party with an objection or response to the motion must appear prepared to make their representations and legal arguments. Parties are not required

to produce fact or expert evidence or testimony at the preliminary hearing unless the Court directs otherwise. In advance of the preliminary hearing, counsel must confer to discuss whether a consensual order may be entered and/or stipulation of relevant facts, such as the value of the property and the extent and validity of the security interest.

(d) Final Hearing –

If a final hearing is necessary, the movant will prepare and submit an order scheduling the final hearing. Three (3) days before a final hearing, the parties are required to file any stipulations and file and exchange witness and exhibit lists.

(e) Chapter 7 Cases Involving Residential Real Property:

(1) Motions involving the debtor's residence will be scheduled for preliminary hearing, unless the debtor's Statement of Intention indicates that property is to be surrendered. When a debtor that the residence will be surrendered, a motion for stay relief need only assert the debtor's intention to surrender, the value of the collateral, and the total unpaid claim; and the motion may be filed in accordance with the Local Rule 9013-1 for default practice.

(2) If a Statement of Intention is not filed or does not list the residential property, the debtor must appear in person and by counsel at the hearing, to state the debtor's intent with regard to the property. In the event the debtor and counsel fail to appear, the motion may be granted by default.

(f) Chapter 13 Trustee Authorization – Plan Payments –

Upon entry of an order granting relief from the automatic stay, the Chapter 13 Trustee will distribute pursuant to the plan adequate protection payments that the creditor was entitled to receive prior to entry of the order; otherwise, the Chapter 13 Trustee is authorized to cease making further payments on the secured claim.

(g) Duty - Action Following Default –

(1) When an order allows a creditor to serve notice of default with a right to elect to foreclose or repossess if the default is not cured, the creditor also must file the notice of default. Additionally, at the end of the cure period, if the default was not cured, the creditor must file a notice stating what election the creditor made.

The creditor must serve the notice of default and any subsequent notice of election on the debtor, debtor's counsel, the trustee and any other affected party. Both must clearly identify the basis of the default and the action the creditor intends to take as

a result (e.g. election to foreclose or repossess), and any other information required by the underlying agreement or applicable nonbankruptcy law.

- (2) After a notice of election is filed, the trustee has no duty to pay an obligation that was being paid through the plan to the creditor and will disburse funds previously received as provided by orders of the Court or by the plan. If the debtor and creditor want the trustee to resume payments to the creditor, the trustee is required to resume payments only after entry of an order allowing the resumption of those payments.
- (3) Unless ordered otherwise, an objection to a notice of default or a notice of election must be filed within thirty (30) days of service of the notice. When an objection is filed, the automatic stay remains in effect, until the Court rules upon the objection.
- (4) An agreement resolving an objection to a notice of default or a notice of election must be filed and is subject to the Court's review.

(h) Duty – Following Foreclosure

After foreclosing and selling property, the creditor must file and provide a copy of the Report of Sale to the debtor, debtor's counsel, the Trustee, and any other affected party.

(i) Automatic Stay - Relief from Stay Not Needed to Provide Periodic Statements of Account

Upon a written motion, without notice or hearing, the Court may enter an Order allowing a creditor to mail directly to the debtor the periodic statements of account without violating the provisions of 11 U.S.C. §362 or applicable nonbankruptcy law.

Note: In Chapter 11 and Chapter 13 cases, motions for Relief from the Automatic Stay filed will be scheduled for preliminary hearing, unless accompanied by an agreed order.

An agreed order resolving a motion for stay relief, filed with the motion, must be endorsed by the trustee.

A motion for relief from the automatic stay imposed by 11 U.S.C. § 362(a), must be served in accordance with Federal Rules of Bankruptcy Procedure 4001 and 9014 and Local Rule 9013 and must reflect service on the debtor, the debtor's attorney, the trustee, and any other party affected by the relief sought. If a motion for relief from the automatic stay, includes a request for relief, asking the Court to compel the Trustee to abandon the property, the movant must comply with all notice and service requirements concerning abandonment.

If a motion fails to provide the required information and documentation, an order may be entered denying the relief requested or directing the movant to correct the deficiency. If the deficiency is not corrected or an exception is not sought, the motion for stay relief may be denied without a hearing.

Motions filed with complete information may be scheduled for preliminary hearing. The Clerk's Office will issue a notice scheduling the preliminary hearing. The Court may enter an order granting the requested relief if the debtor or debtor's counsel fails to appear at the preliminary hearing.

An order scheduling a final hearing will be mailed only to affected parties and to those who appeared at the preliminary hearing.

In a Chapter 7 case a Motion for Relief from the Automatic Stay involving personal property and non-residential property may be filed in accordance with Local Rule 9013-1 for default practice.

A hearing on the agreement resolving an objection to a notice of default or a notice of election will only be held if requested by a party of interest or directed by the Court.

Reference: 11 U.S.C. §362; FBR 4001; FBR 9014
See Also: SDLR 6007 – 1 (Abandonment); SDLR 9013 (Motion Practice);
Compare: NDLR 4001-1.1, NDLR 4001-1.2, NDLR 4001-1.3, and NDLR 4001-1.4

4001-2 Cash Collateral and Financing Orders

A motion to use cash collateral or to obtain credit under 11 U.S.C. §§363 and 364 (“Financing Motion”) must provide full and fair disclosure of all material information necessary for the Court, creditors, and parties that would be affected by the motion to understand and evaluate the basis and merits of the motion.

Note: In meeting the requirement of full and fair disclosure, the amount of information that must be included and the manner that the information is presented are dependent on the circumstances of each case. A party, seeking guidance in preparing or evaluating a motion for use of cash collateral or to obtain credit, may wish to refer to the Court’s *Model and Guide for Use of Cash Collateral and Financing Motions*.

Interim Relief - When Financing Motions are filed with the Court on an expedited and/or emergency basis, the Court may grant interim relief pending review by interested parties of the proposed financing arrangements. Interim relief will only include what is necessary 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 provision identified in section (a) above.

Waivers, Consents or Amendments with Respect to the Loan Agreement - An order may permit the parties to enter into waivers or consents with respect to the loan agreement or amendments without the need for further court approval provided that: (1) the amended agreement is not materially different from that approved; (2) notices of all amendments are filed with the Court, and are provided to the trustee or debtor in possession, the United States Trustee, all appointed committees, the chair of any committee without counsel appointed under §1102 or §1114 of the Bankruptcy Code and any other party whose interest may be affected, and counsel for all parties.

Reference: 11 U.S.C. § 363 and § 364; FBR 2002; FBR 4001; FBR 7004; FBR 9014

See Also: SDLR 6004-1 (Sale of Estate Property)

Compare: NDLR 4001-2

4002-1 **Debtor – Duties**

(a) In General -

- (1) A debtor must grant a secured creditor's reasonable request to inspect collateral.
- (2) Until a case is closed, the debtor must notify the Clerk in writing of any change in the debtor's address.

(b) Debtors Without Attorneys (*Pro Se*) –

- (1) A debtor who is not represented by an attorney (referred to as a *pro se debtor*) has the same duty to comply with these rules as an attorney employed to represent a debtor.
- (2) Until a case is closed, a *pro se* debtor must notify the Clerk in writing of any change in the debtor's address and telephone number.
- (3) *Pro se* parties must sign originals of all documents filed.

(c) Chapter 13 Self-employed Debtor –

A Chapter 13 self-employed debtor is required to provide the Chapter 13 Trustee with a verified monthly business report by the fifteenth (15) day of each month. The monthly report must be completed in the manner approved by the Chapter 13 Trustee.

See also: SDLR 2003-1 (Meeting of Creditors & Equity Security Holders); SDLR 2015-2 (Debtor-In-Possession Duties); SDLR 2072-1 (Notice to Other Courts); SDLR 4070-1 (Insurance); and SDLR 9011-2 (Pro Se Parties); Standing Chapter 13 Trustee's monthly business report form.

Compare: NDLR 4002-1

4002-1.1 **Procedure for Processing Rental Payments**

- (a) When a debtor is required to submit rent payments to the Clerk for transmittal to a lessor, the debtor must complete the portion of the petition entitled, Certification by a Debtor Who Resides as a Tenant of Residential Property.

- (b) In addition, the debtor must file a Certificate of Intent to Cure Default in Rent Payments, which includes the landlord's name, address, telephone number and if known, the name and address of the landlord's counsel. The Certificate of Intent to Cure Default in Rent Payments must be filed contemporaneously with the bankruptcy petition, or in the event of a petition filed electronically, no more than seven (7) days after the petition is filed; and, must be filed with:
 - (1) A copy of the judgment for possession resulting from the eviction action; and

 - (2) Payment of the rent that would accrue during the thirty (30) day period after the petition is filed. The payment must be in the form of cash, certified check or money order made payable to the United States Bankruptcy Court.

- (c) A debtor who files a Certificate of Cure of Residential Judgment must include the amount paid to cure the entire monetary default. The debtor must serve the lessor with a copy of the Certificate of Cure of Residential Judgment and with a notice giving the lessor fourteen (14) days to file a written objection.

Note: Upon receipt, a rental payment will be deposited in the Clerk's Treasury Account. Notice of filing of Certificate of Intent to Cure Default in Rent Payments and receipt of the payment will be forwarded by the Clerk to the lessor named by the debtor in the Certificate, giving the lessor fourteen (14) days to file a written objection. Unless the lessor files a timely written objection, the Court will enter an Order directing payment of the funds to the lessor. If a lessor files a timely written objection to any certification, a hearing will be held within ten (10) days to consider the objection.

Reference: 11 U.S.C. § 362; FBR 4001

4003-2 Lien Avoidance

Note: Currently the Bankruptcy Court does not have a local rule under this title.

 See SDLR 9013-5 (Motion Practice) for information on lien avoidance motions.

4004-1 **Discharge Hearings**

(a) Chapter 7 –

Unless otherwise ordered, a Chapter 7 debtor is not required to attend a discharge hearing.

(b) Chapter 11 –

(1) Discharge Procedure for Individual Chapter 11 Debtor after Completion of Plan Payments

(i) Discharge procedure if case has not been closed –

Within twenty-eight (28) days after an individual Chapter 11 Debtor has completed all payments under the Chapter 11 Plan, the Debtor is required to file an *Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments* that conforms to the Court’s local form. The *Affidavit* must be served upon the United States Trustee, any former Trustee, and all creditors and parties in interest.

(ii) Discharge procedure if case has been closed

A motion to reopen an individual case for entry of a discharge must be filed and must be accompanied by both a detailed accounting demonstrating that the debtor has made all payments called for under the confirmed plan and an *Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments* that conforms to the Court’s local form. The motion, detailed accounting, and *Affidavit* must be served upon the United States Trustee, any former Trustee, and all creditors and parties in interest.

(2) Discharge Procedure for Individual Chapter 11 Debtor Prior to Completion of Plan Payments (Hardship Discharge) –

A debtor who seeks a Chapter 11 discharge prior to completion of all Chapter 11 Plan payments is required to file a written Motion for Entry of a Discharge Prior to Completion of Plan Payments (“hardship discharge”) and an *Affidavit Requesting Entry of Discharge Order Prior to Completion of Plan Payments*, which conforms to the Court’s local form.

(c) Chapter 13 –

(1) Discharge Procedure After Completion of Plan Payments –

Within twenty-eight (28) days after the Chapter 13 Trustee files a report of the plan's completion and a request for a discharge hearing, the debtor is required to file an *Affidavit Requesting Entry of Discharge Order after Completion of Plan Payments* that conforms to the Court's local form for that chapter. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review. A debtor who fails to timely file an affidavit must appear, in person and by counsel at the discharge hearing, prepared to address all discharge issues.

(2) Discharge Procedure Prior to Completion of Plan Payments (Hardship Discharge) –

A debtor seeking a Chapter 13 discharge prior to completion of the Plan, must file a written motion for entry of a discharge prior to completion of plan payments ("hardship discharge) and an *Affidavit Requesting Entry of Hardship Discharge Order*, which conforms to the Court's local form. The Affidavit will appear on the Court Docket Sheet, but absent a written request and Court order granting the request, the Affidavit will not be subject to public inspection, copy or review.

Note: This rule applies to cases filed after October 16, 2005. In Chapter 11 and Chapter 13 cases, upon the filing of the appropriate *Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments*, the Clerk will send to all creditors and parties in interest in the case, a copy of the affidavit and a notice of the deadline to file written objections to the affidavit and of the date, time and location of the discharge hearing. If no objection to the *Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments* is filed, the debtor and counsel need not appear at the discharge hearing.

In a case where a "hardship discharge" is sought, upon filing of the motion and affidavit, the Clerk will send to all creditors and parties of interest in the case, a copy of the Motion and Affidavit, and a notice of the date, time and location of the hearing on the motion.

See Also: SCLR 3022-1 (Final Report/Decree (Ch 11)); Local forms – *Chapter 11 Affidavit for Entry of Discharge Order Prior to Completion of Plan Payments*; *Chapter 11 Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments*; *Chapter 13 Affidavit Requesting Entry of Discharge Order After Completion of Plan Payments*; *Chapter 13 Affidavit Requesting Entry of Hardship Discharge Order*.

Compare: NDLR 4004-1

4008-1 Reaffirmation

A debtor and debtor's counsel both must appear at all hearings involving a reaffirmation agreement.

Note: When the debtor was not represented by an attorney during negotiation of the reaffirmation agreement, the matter will be set for a hearing. Reaffirmation agreements also may be scheduled for hearing if any of the following apply: (a) the agreement is not signed by both the debtor and creditor; (b) the agreement does not contain the affidavit and signature of counsel for debtor; (c) the agreement does not meet all of the requirements of 11 U.S.C. Section 524; or (d) the agreement indicates that insufficient income is available to maintain monthly payments reaffirmed or creates an undue hardship, unless the creditor is a credit union as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

Compare: NDLR 4008-1

4070-1 **Insurance**

- (a) If a debtor is obligated to keep secured property insured, upon the written request of a secured creditor, the debtor must provide proof of insurance coverage within seventy-two (72) hours of the request.

- (b) Personal property, including motor vehicles, that is to be covered by insurance, must not be used unless insurance coverage is in effect.

See Also: SDLR 4001-1 (Debtor Duties)

Compare: NDLR 4070-1 (This rule is identical in both districts); NDLR 4001-1.4; NDLR 4002-1

PART V

5001-2 Clerk – Office Locations/Hours

Note: Currently the Bankruptcy Court does not have a local rule under this title.

The Bankruptcy Clerk's main office is located in Charleston, West Virginia. Divisional offices are located in Beckley, Huntington, and Parkersburg, West Virginia. Changes in regular business hours may occur and will be posted as soon as possible upon the Court's website. Contact information for the main and divisional offices, days of operation and regular business hours may be obtained by contacting the Bankruptcy Clerk's main office or on the Bankruptcy Court's website www.wvsb.uscourts.gov.

5003-1 **Clerk – General/Authority**

As directed by the Court, the Clerk is authorized to prepare and enter form orders.

The Clerk is authorized to direct a party to provide notice when notice is required to be given under the Federal Bankruptcy Code, Federal Bankruptcy Rules or these local rules. The Clerk is authorized to direct a party to serve a pleading, motion, notice or other document when service of the pleading, motion, notice or other document is required under the Federal Bankruptcy Code, Federal Bankruptcy Rules, or these local rules.

Note: When a party is directed to provide notice or to provide service of a pleading, motion or other document, the party must file a certificate of service with the Court.

See Also: SDLR 9013-1 (Motion Practice); SDLR 9013-3 Certificate of Service – Motions, Applications, or Other Paper or Document Filed

Compare: NDLR 5003-1

5003-2 **Court Papers – Removal of**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Original documents on file in the office of the Clerk of the Bankruptcy Court will not be produced pursuant to a state court subpoena unless a United States District Judge, a United States Magistrate, or a Bankruptcy Judge for the Southern District of West Virginia, orders the Clerk to produce the documents. Certified copies of documents may be produced for evidentiary purposes in a state court action upon payment to the Clerk of the proper fee.

5005-1 Filing Papers and Magnetic Media – Requirements

(a) Place of Filing –

All petitions, pleadings, other papers not filed electronically, must be mailed or delivered in person to the Clerk. Filings made in person may be made during regular business hours at the main office in Charleston or at a divisional office. Filings made by mail must be mailed to the main office in Charleston.

(b) Filing by Facsimile –

Pleadings or other papers are not permitted to be filed via a facsimile machine, unless authorized by the Court or the Clerk. Within seven (7) days of sending the facsimile, the signed original of faxed document must be filed with the Clerk.

(c) Documents Filed on Paper or Magnetic Media (Conventional Filing) –

(1) A filing on paper or on magnetic media is an exception to electronic filing and must comply with the requirements for exceptions set forth in the Court’s Administrative Procedures for Electronic Case Filing.

(2) A party who desires the return of the paper or magnetic media must file a written request to retrieve within sixty (60) days from the date of the filing. Absent a timely request to retrieve, and provided that disposal is not prohibited, the Clerk is authorized to dispose of the paper or magnetic media.

(3) A filing party who requests a time stamped copy of a document must provide an additional copy of the document and a self-addressed, stamped envelope large enough to hold the requested document.

Note: When a document is filed on paper or on magnetic media, it will be converted to an electronic (PDF) format by the Court, and the electronic document will be treated as and become the original. A filing that cannot be converted to an electronic (PDF) format may be stricken by the Court. The paper or magnetic media will be retained by the Court for a period of at least sixty (60) days. Any filing or submission that has not been uploaded in its entirety into the CM/ECF system, or for which disposal is prohibited, will be maintained by the Clerk.

The following may not be filed electronically unless specifically authorized by the Court: (a) Sealed Documents – The motion to file documents(s) under seal may be filed electronically. Upon entry of an Order granting a motion to seal, the movant must file the actual sealed document in paper form with the Clerk and with a copy of the Order granting the motion. (b) Trial/contested matter exhibits – Trial and

contested matter exhibits must be submitted and exchanged outside the CM/ECF system. Lists of exhibits and/or witnesses may be filed electronically.

Reference: FBR 5005
Compare: NDLR 5005-1; NDLR 9004-1

5005-4 Electronic Filing

- (a) Electronic filing of documents is permitted utilizing the Case Management/Electronic Case Files System (hereafter CM/ECF System). The Clerk of Court is authorized to establish, promulgate, and modify as necessary Administrative Procedures for Electronic Case Filing (“Administrative Procedures”), including the procedure for electronic and conventional filing; for registration of attorneys and other authorized users, and the issuance and control of passwords permitting electronic filing and notice. A filer is required to adhere to those administrative procedures.

- (b) An electronic filer must retain the original of a signed document for a period of no less than seven (7) years after the closing of the case. Documents include, but are not limited to, the bankruptcy petition, lists, schedules, statements, amendments, pleadings, and affidavits, as well as, any other document which contains an original signature, requires verification or includes an unsworn declaration. Original documents must be made available for inspection or production upon request by the Court, the United States Trustee’s Office, the case trustee and/or their designees.

Note: The Court’s *Administrative Procedures for Electronic Case Filing* are available on the Court’s website (www.wvsb.uscourts.gov) and at the Clerk’s offices. Pursuant to those procedures, a document that is filed electronically must: (1) contain a scanned image of the original signature of the person signing the document, or (2) an electronic signature consisting of the typed name of the person signing the document, preceded by an /s/ (e.g., /s/ Jane Doe). The electronic signature of the person on a document electronically filed constitutes the signature of that person for purposes of Fed. R. Bankr. P. 9011.

Reference: FBR 5005

Compare: NDLR 5005-2; NDLR 5005-3; NDLR 5005-4; NDLR 5005-5; NDLR 5005-6;
 NDLR 5005-7; NDLR 5005-8

5005-4.1 Electronic Entry of Orders

Any order or other Court issued document signed electronically by the Judge or Clerk has the same force and effect as if the Judge or Clerk had signed an original of the order or document on paper.

Note: Procedural orders that do not require findings of fact or conclusions of law may also be issued as text only entries on the docket without an attached PDF of a document.

Reference: FBR 5005; FBR 9022; FBR 9036

5010-1 **Reopening Cases**

A motion to reopen a case must indicate whether a trustee should be appointed. Unless the motion requests a waiver, any required filing fee must be paid. A motion filed by the trustee may request deferment of the fee, pending discovery of additional assets. If additional assets are not discovered, the fee is waived.

Note: No fee is required to correct an administrative error, for actions related to the debtor's discharge, or for such other reasons as determined by the Court or Clerk.

See Also: SDLR 9013-3 (Motion Practice)

Compare: NDLR 5010-1

5011-1 Withdrawal of Reference

Other than *sua sponte* action by the Court, a request for withdrawal of the reference of a case or proceeding, in whole or in part, must be made by written motion and must be served upon all interested parties.

Note: The Bankruptcy Court Clerk transmits the motion and documents filed with it to the District Court Clerk as soon as reasonably possible. After the District Court Clerk has docketed the motion to withdraw reference, parties should file all other documents concerning the motion (e.g. designations of record, responses, replies, etc.) with the District Court Clerk.

All other filings that pertain to other matters or proceedings before the Bankruptcy Court should continue to be filed with the Bankruptcy Clerk.

Reference: 28 U.S.C. § 157; FBR 5011; W.Va. Southern District Court L R Civ P 83.13 (Referral of Cases to Bankruptcy Court) and L R Civ P 83.6 (d) (Admission of Visiting Attorneys)

Compare: NDLR 5011-1

5071-1 **Continuance**

- (a) Absent an emergency, a request for a continuance of a scheduled hearing or other proceeding (excluding meetings of creditors) must be made by a written motion that states the reason for the requested continuance, the approximate length of time requested for the continuance, and whether or not the relevant parties to the hearing consent to the continuance. The motion must be filed with a proposed order, which clearly identifies the matter(s) being continued. The motion must be filed as far in advance of the hearing as possible. Counsel must appear at the scheduled hearing, unless a request is made at least three (3) business days prior to the scheduled hearing. A request made less than three (3) days will be considered by the Court at the scheduled hearing.

- (b) To prevent unnecessary court appearances, the movant must notify all interested parties as soon as a continuance is granted.

Note: This rule does not apply to meeting of creditors. A debtor or party that wishes to reschedule a meeting of creditors needs to contact the United States Trustee's office (Chapter 11 case); Chapter 7 trustee (Chapter 7 case); or Chapter 13 trustee (Chapter 13 case).

See Also: SDLR 2003-1 (Meeting of Creditors & Equity Security Holders)

Compare: NDLR 5071-1

5073-1 Photography, Recording Devices & Broadcasting

The *Local Rules of Civil Procedure* for the District Court for the Southern District of West Virginia governing photographing and broadcasting of court proceedings apply to proceedings in the Bankruptcy Court.

Note: SDWV District Court local rules of civil procedure 83.10 and 83.11 govern
 photography and broadcasting of court proceedings.

Compare: NDLR 5073-1

Transcripts

(a) Recordings of Court Proceedings –

A request for a copy of a recording of a court proceeding must substantially conform with the Court's form (*Request For Media Recording of Hearing/Trial*) and must be accompanied by the applicable fee. An official transcript can only be prepared by a qualified transcriber using a recording obtained from the Clerk's office. A copy of a recording of a court proceeding obtained through PACER may not be used to prepare an official transcript.

(b) Procedure for Review and Redaction of Electronic Transcripts of Court Proceedings –

- (1) When a transcript is filed, the attorneys and pro se parties who attended the hearing are solely responsible for the redaction of private information. Each party is responsible for reviewing and indicating redactions in the testimony of the witnesses and in the party's own statements.
- (2) Parties have seven (7) calendar days from the date of filing of the transcript to file a "Notice of Intent to Request Redaction of Transcript".
- (3) Unless otherwise ordered by the Court, within twenty-one (21) calendar days of the filing of the transcript, a party who timely files a "Notice of Intent to Request Redaction of Transcript", must file and serve upon the transcriber a "Request for Redaction of Personal Data Identifiers" ("Request for Redaction") that indicates, by page and line number, the location of the personal data identifiers for which redaction is being requested. The "Request for Redaction" must not contain the unredacted personal data identifiers.
- (4) For this procedure, personal data identifiers only include: individual social security numbers, individual taxpayer identification numbers, dates of birth, financial account numbers, and names of minor children. A party seeking to redact additional information must file a motion for protective order and serve a copy on the transcriber and upon every affected entity.
- (5) If a "Request for Redaction" is timely filed, the transcriber must partially redact the personal data identifiers identified in the "Request for Redaction" as follows:
 - (i) Social security numbers and taxpayer-identification numbers, will use only the last four digits;
 - (ii) Financial account numbers, will use only the last four digits;

- (iii) Names of minor children, will use only their initials; and
 - (iv) Dates of birth, will use only the year.
- (6) Within thirty-one (31) calendar days from the filing of the transcript, the transcriber must file a redacted transcript with an amended certification indicating that the transcript was amended by the redaction of certain personal identifiers.
- (c) An entity that provides a transcript to another entity must alert the other of the Judicial Conference policy on privacy and public access to electronic case files.

Note: This rule applies to all transcripts of a court proceeding filed with the Court and made available to the public electronically.

Transcripts are available at the Clerk's Office for inspection only, and not for copying, for a period of ninety (90) days after delivery to the Court. During that period, a copy of the transcript must be obtained from the court reporter or transcriber. After the ninety (90) day period, a filed transcript will be available for inspection and copying in the Clerk's Office and from the Court's CM/ECF System via PACER. When a redacted transcript is filed, the unredacted transcript will not be available via PACER, but will be available for inspection and copying at the clerk's office.

A party who purchases a transcript from the transcriber during the ninety (90) day restriction period may obtain electronic access to the transcript through PACER, by filing a written request with the Clerk. A party who has obtained electronic access to an unredacted transcript may electronically access a later-filed redacted copy. A non-party, including news media, who purchase a transcript, will not be granted electronic access to a transcript during the ninety (90) day restriction period. When a transcript is accessed via PACER, PACER fees apply and the thirty (30) page cap does not apply to viewing or printing the transcript.

The names of qualified transcribers capable of transcribing from the electronic media can be obtained from the Clerk's Office or on the Court's website (www.wvsb.uscourts.gov). Fees charged by a court reporter or transcriber for transcripts are established by the Judicial Conference.

This rule does not create a private right of action. This rule does not affect the obligation of the Clerk to make the official transcript available for copying by the public without further compensation to the transcriber ninety (90) days after the transcript is filed; does not change any rules or policies with respect to sealing or redaction of court records for any other purpose; and does not prevent the production of a transcript on an expedited basis, subject to court rules or orders imposed to protect sealed materials.

Reference: 11 U.S.C. § 107 and § 112; FBR 5007; FBR 9037; FBR 9018
See Also: SDLR 9037-1.1 (Privacy Protection For Filings Made with the Court)
Compare: NDLR 5077-1

5080-1 Fees – General

- (a) Fees are due at the time of filing or at the time the service is provided.
- (b) A request to refund or return fees paid to the Clerk must be made in writing, and must provide the case name, case number, and the reason for the request.
- (c) Trustee Exemption from PACER Fees -

Chapter 7 Panel Trustees and the Chapter 13 Standing Trustee serving in this district are exempt from PACER fees. The trustee and trustee's employees may only use the PACER exemption in the administration of cases assigned to the trustee. The Clerk is authorized to examine and audit all Trustee accounts. In the event a Trustee account has been used for a private or unauthorized purpose, the Court may direct a trustee to pay for the unauthorized usage, and/or revoke the exemption.

Note: A case may be commenced without the required fee being paid at the time of filing if an IFP Application Requesting a Waiver; a Motion to Pay in Installments; or a Motion to Defer has been filed or unless the Court has previously ordered otherwise. Fees will be charged pursuant to the Bankruptcy Court Filing and Miscellaneous Fee Schedule, as prescribed by the Judicial Conference.

Compare: NDLR 1006-1

5081-1 Fees - Form of Payment

Payments from Chapter 7 debtors must be made in cash, or by cashier's check or money order.

Note: Subject to a payer's collection history, the Clerk will accept checks from counsel of record, Chapter 11 debtors, Chapter 12 debtors and Chapter 13 debtors.

Compare: NDLR 1006-1; NDLR 5081-1

PART VI

6004-1 Sale of Estate Property

A motion to sell property of the estate under 11 U.S.C. §363 must provide full and fair disclosure of all material information necessary for the Court, creditors, and parties that would be affected by the motion to understand and evaluate the basis and merits of the motion.

Note: In addition to local rule requirements, if out of the ordinary course, an interim agreement or an arrangement between the debtor and a proposed purchaser (such as an interim management arrangement), is subject to the notice and hearing requirements of § 363(b).

A party seeking guidance in preparing or evaluating a motion for the sale of estate property may wish to refer to the Court's *Model and Guide for Sale of Estate Property Motions*.

Reference: FBR 2002; FBR 4001; FBR 6004

See Also: SDLR 4001-2.1 (Cash Collateral and Financing Orders); SDLR 6005-1.1 (Appraisers, Auctioneers, Brokers & Realtors)

Compare: NDLR 6004-1; NDLR 6004-2

6005-1.1 Appraisers, Auctioneers, Brokers & Realtors

- (a) An application to employ an appraiser, auctioneer, broker, or realtor must include:
 - (1) All relevant identifying information, including name, address, telephone number, and license number of the person or entity to be employed;
 - (2) Full disclosure of all terms of compensation, including commission, commission rate, buyer's premium, and proposed expenses;
 - (3) An affidavit or verified statement of the appraiser, auctioneer, broker, or real estate agent:
 - (i) Stating that the professional is not an officer or employee of the Judicial Branch of the United States or the United States Department of Justice;
 - (ii) Stating that the professional will turn over gross proceeds of any sale conducted to the trustee or debtor in possession unless otherwise ordered by the Court; and
 - (iii) Acknowledging that the professional will not purchase or acquire any interest in any of the property being appraised by, brokered or sold by that professional.
- (b) Auctioneers –
 - (1) If specifically authorized by the Court, auctioneers may deduct their commissions and expenses from the sales proceeds and remit the net amount to the debtor or trustee.
 - (2) Auctioneers must be adequately bonded before taking possession of estate property. The amount of the bond will be established by the United States Trustee in an amount sufficient to cover all receipts of the sale. The bond should be in favor of the United States.
 - (3) Auctioneers must maintain insurance for lost or stolen property and provide the debtor or trustee with the policy information to enable claims to be made against the insurer.
- (c) Within twenty-one (21) days of an auction, the Debtor and/or Trustee must file the Report of Sale required under FBR 6004.

Note: The matters required to be included and disclosed by this rule are in addition to those required by the Code, federal bankruptcy rules and local rules, especially SDLR 2016-1, which references the United States Trustee Guidelines for

Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330. All terms of compensation, including commission, commission rate, buyer's premium, and proposed expenses are considered in determining the reasonableness of the compensation requested.

An order approving the employment of an appraiser, auctioneer, broker or realtor will fix the amount or rate of compensation.

Reference: FBR 2014, FBR 6004, FBR 6005; 11 U.S.C. § 327 and § 328

See Also: SDLR 2014-1 (Employment of Professionals); SDLR 2016-1 (Compensation of Professionals)

Compare: NDLR 6004-1

6006-1 **Executory Contracts**

Motion to Extend Time to Assume or Reject - When good cause is shown, an initial motion to extend the time within which to assume or reject an executory contract or unexpired lease may be granted by the Court without a hearing. With the motion, the movant must submit a proposed order that substantially conforms to the Court's local form order. The movant must serve the order on all parties to the contract or lease and any other interested parties.

Note: The provisions of 11 U.S.C. § 365(d) require the Court to act upon motions to extend the time to assume or reject an executory contract or an unexpired lease prior to the expiration of the deadline for assumption or rejection. Motions for extension must be filed far enough in advance of the deadline to permit the Court to act.

References: 11 U.S.C. § 365; FBR 6003; FBR 6004

See Also: Local Form - *Order and Notice to Extend Time to Assume or Reject*; SDLR 9013
(Motion Practice)

6007-1 **Abandonment**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

A secured creditor may expedite the abandonment of estate property by completing a "Trustee's Notice of Proposed Abandonment of Property" form, along with a copy of the properly recorded security interest, and forwarding it to the appropriate Trustee. Upon receipt of the Trustee's signature, the creditor must file and serve the completed form in accordance with FBRP 6007. A creditor is not required to pay a filing fee when obtaining abandonment by this procedure.

If a motion for relief from the automatic stay includes a request that the Court compel the Trustee to abandon the property, the movant must comply with all notice and service requirements concerning abandonment.

Reference: FBR 6007

See Also: SDLR 4001-1 (Automatic Stay – Relief From)

Compare: NDLR 6007-1

6008-1 Redemption

A motion to redeem tangible personal property must state the debtor's estimated value of the property and the amount to be paid.

Note: A motion to redeem that fails to assert the value of the property or the amount to be paid may be denied without a hearing.

6070-1 Tax Returns & Tax Refunds

Tax Returns or Transcripts of Tax Returns –

To obtain access to a debtor’s tax information; to request that returns be filed pursuant to 11 U.S.C. §521(f); or, to request that tax returns be provided to a creditor, a motion must be filed and served on the debtor and debtor’s counsel. The motion must include:

- (a) A description of the moving party’s status in the case;
- (b) A description of the specific tax information sought;
- (c) A statement indicating that the information cannot be obtained by the movant from any other sources;
- (d) A statement showing a demonstrated need for the tax information;
- (e) A statement that the movant understands and will comply with the confidentiality requirements of 26 U.S. Code § 6103 and Bankruptcy Rule 9037.

The proposed order must explicitly state that the information obtained is confidential and must only be used for the limited reasons specified in the motion. The proposed order must specify that sanctions, including criminal prosecution, may be imposed for the improper use, disclosure or dissemination of the information.

Note: To maintain required confidentiality, tax returns or tax transcripts filed with the Court will not be subject to public inspection, copy or review. Tax returns/transcripts will be shown as filed on the Court Docket Sheet, but will not be accessible online or in person at the Clerk’s office except by the United States Trustee, Trustee and Court staff.

See Also: SDLR 2003-1 (Meeting of Creditors & Equity Security Holders)

Compare: NDLR 6070-1

PART VII

7003-1 Cover Sheet

A complaint initiating an adversary proceeding filed on paper must be filed with a completed Adversary Proceeding Cover Sheet (Form B104). A complaint filed electronically is not required to include an Adversary Proceeding Cover Sheet.

7004-2 **Summons**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

When a complaint is filed electronically, the Clerk will issue and transmit the summons electronically to counsel for the plaintiff. When a complaint is filed on paper, the Clerk will issue and mail the summons to counsel for the plaintiff, or if unrepresented, to the plaintiff.

Compare: NDLR 7004-1

7007-1 **Motion Practice (in APs)**

(a) Time for Reply/Response –

Unless a statute, rule, court order or notice provides otherwise, a reply/response, if made, must be filed within twenty-one (21) days from the date the motion is filed, or if a hearing has been scheduled, at least three (3) days before the hearing date, whichever is earlier.

(b) Motion to Dismiss Adversary Proceeding –

A motion to dismiss an adversary proceeding must state the terms of any settlement or compromise if the settlement or compromise could affect creditors in the main case, the Trustee, or other parties in interest.

Note: All hearings will be scheduled by the Court. Motions in adversary proceedings may be considered and decided by the court on the pleadings, admissible evidence in the record, and motions and written replies/responses, papers and supporting memoranda, without hearing. The court, in its discretion, may grant or deny a non-dispositive motion before a response deadline has expired (for example, grant or deny a motion to continue). This rule should not be construed to require a reply/response if one is not warranted.

Compare: NDLR 7007-1; NDLR 7041-1; NDLR 7055-1; NDLR 9019-1

7007.1-1 Financial Disclosure by a Partnership

A partnership must file a separate statement that identifies the partnership as a general partnership, limited partnership or joint venture; and provides the names of all general partners and limited partners who hold ten percent (10%) or greater interest in the partnership. The statement must be filed by the party with its first appearance, pleading, motion, response or other request addressed to the Court. A party is required to supplement the disclosure upon a change in circumstance. The requirements of this rule do not apply to the debtor or to a governmental unit.

Note: In an adversary proceeding, corporate disclosure requirements are governed by FBR 7007.1.

See Also: SDLR 1007-1 (Lists, Schedules & Statements)

Compare: NDLR 7007.1-1

7016-1 **Pre-trial Procedures**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

A Time Frame Order (“Scheduling Order”) ordinarily will be issued by the Court when all responsive pleadings have been filed or the time for filing responsive pleadings has expired. The Time Frame Order may set dates for completing discovery, filing dispositive motions, filing witness and exhibit lists, the settlement conference, and trial. With the exception of the settlement conference and trial dates, if all parties agree, the Court may permit the parties to submit or amend a Time Frame Order setting deadlines.

The Court may post recommended time frame/scheduling order forms on its website, www.wvsb.uscourts.gov. Use of the Court’s forms is encouraged, but not required.

Compare: NDLR 7016-1, NDLR 7016-2

7023-1

Class Action

Note: Currently the Bankruptcy Court does not have a local rule under this title.

In class action proceedings, a case management conference may be scheduled by the Court when all responsive pleadings have been filed or the time for filing responsive pleadings has expired.

7026-1 Discovery – General

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Discovery deadlines and requirements are set in the Court's Time Frame (Scheduling) Order.

Compare: NDLR 7005-1, NDLR 7026-1, NDLR 7026-2

7040-1 **Assignment of Adversary Proceedings**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Adversary Proceedings will be assigned to the same division as the bankruptcy main case. Trials and other proceedings will be scheduled in the division assigned, unless otherwise agreed by the parties or ordered by the court, or to address matters that need expedited consideration.

Compare: NDLR 7040-1

7054-1 **Costs – Taxation/Payment**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Costs – Taxation/Payment may be found in LR 7069-1 (Judgment – Payment of).

7055-1 **Default – Failure to Prosecute**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

When it appears to the Court that the principal issues have become moot or the parties show a lack of interest to prosecute an adversary proceeding, the Court may direct the Clerk to issue a "Notice of Time to Object to Dismissal". The notice will be served on the parties and counsel of record and will state that the action may be dismissed unless a written response is timely filed showing good cause why the proceeding should not be dismissed.

Compare: NDLR 7055-1, NDLR 7055-2

7067-1 **Registry Fund**

(a) Receipt of Funds –

A motion to pay monies into the registry of the Court must contain:

- (1) The name, address, and telephone number of the person or entity paying the money into the registry of the court;
- (2) The name and addresses of each person or entity for whom the money is being held; and
- (3) The sum of money and date it is to be paid into the Court's registry.

(b) Order required –

Money paid to the Court or its officers for deposit into the Court's registry must be accompanied by a copy of the Court's order authorizing payment to the Court.

(c) Investment of Registry Funds –

Unless otherwise ordered by the Court, the Clerk is directed to invest all registry funds deposited with the Court through the Court Registry Investment System (CRIS).

(d) Registry Investment Fee –

The custodian is authorized and directed by this rule to deduct a registry fee for maintaining accounts in the registry fund as authorized by the Judicial Conference of the United States.

(e) Withdrawals –

- (1) Funds may only be disbursed from the Court's registry upon entry of an order authorizing the disbursement. An order directing disbursement must include:
 - (i) The name and address of each person or other entity to receive funds; and
 - (ii) The sum of money to be paid to each person or other entity, along with any interest accrued thereon, less the registry fee as authorized by the Judicial Conference of the United States.
- (2) A party receiving a disbursement must provide the Clerk with any other information requested to allow payment of the funds and issuance of tax forms.

Note: No deposit may be made without an order of the Court.

Unless otherwise ordered, the Clerk will deposit all money ordered to be paid into the Court's registry with the Treasurer of the United States in the name and to the credit of the Court. Under CRIS, monies deposited in each case will be "pooled" together with those on deposit with Treasury to the credit of other courts in CRIS and used to purchase Treasury Securities. An account for each case will be established in CRIS titled in the name of the case giving rise to the investment in the system. Earnings received from fund investments will be distributed to each case based on the ratio each account's principal and earnings have to the aggregate principal and income total in the fund each week. Weekly reports showing the interest earned and the principal amounts contributed in each case are prepared and distributed to each participating court. Upon written request to the Court, the weekly reports will be available to litigants and/or their counsel.

The proper registry fee will be determined on the basis of the rates published by the Director of the Administrative Office for the United States Courts, as approved by the Judicial Conference.

Compare: NDLR 7067-1

7069-1 Judgment – Payment of

(a) Costs – Taxation/Payment –

A judgment creditor may seek taxation of costs only if costs are awarded in the judgment order. To seek taxation of costs, the judgment creditor must file a Bill of Costs that substantially conforms to Form B 263. To include costs in an abstract of judgment or a writ of execution, a Bill of Costs must be filed prior to or with the praecipe.

(b) Interest on Judgment -

Note: Currently the Bankruptcy Court does not have a local rule under this subheading.

Unless the judgment order states otherwise, a judgment creditor is entitled to interest from the date of the entry of the judgment. If the judgment order does not specify the interest rate, interest will be calculated at the legal rate for post-judgment interest.

(c) Writ of Execution –

To obtain a writ of execution, the judgment creditor must file a praecipe, a completed Writ of Execution form, and a certified copy of the order. The praecipe should indicate the return date desired by the judgment creditor.

Upon issuance of the writ of execution, the Clerk will return the original and one (1) copy of the writ to the requesting party, along with a blank U.S. Marshal's Process Receipt and Return Form 285 (U.S. Marshal's Form 285). The judgment creditor must present the original and one (1) copy of the writ and the completed U.S. Marshal's Form 285, and the appropriate fee to the U.S. Marshal Service for processing.

Note: A writ of execution is a decree directing enforcement of a judgment by seizure and sale of personal property of the judgment debtor and the payment of the proceeds to the judgment creditor. Unless otherwise ordered by the Court, a writ of execution will not be issued until fourteen (14) days after the entry of the judgment order. A writ of execution will be made returnable not less than thirty (30) days or more than ninety (90) days after issuance. A writ of execution will not be issued if the judgment debtor has obtained a stay pending appeal and posted a supersedeas bond in the amount set by the Court. Bond is not required for an appeal taken by the United States or an agency thereof.

(d) Suggestion –

To obtain a suggestion, the judgment creditor must file a praecipe, a completed Suggestion and Summons form, and if the judgment debtor is an individual, a completed Notice of Possibility of Exemptions to Suggestion.

Note: A suggestion is a claim by a judgment creditor that a third party either holds property belonging to the judgment debtor or owes money (other than salary/wages) to the judgment debtor. A suggestion can be issued only after a writ of execution has been issued, although both may be requested at the same time. By certified mail, the Clerk will send to the requesting party the original suggestion with summons, a copy of the notice of possibility of exemptions if issued, and a blank U.S. Marshal's Form 285. The Clerk will also serve on the judgment debtor, via certified mail, a copy of the suggestion and, if issued, the original of the notice of possibility of exemptions.

(e) Suggestee Execution (Salary/Wages) –

To obtain a suggestee execution, the judgment creditor must file a praecipe, a completed Suggestee Execution form, an Affidavit for Suggestee Execution, and if the judgment is against an individual, a completed Notice of Possibility of Exemptions to Suggestee Execution.

Note: A suggestee execution is a decree directing an employer to withhold a portion of a judgment debtor's salary/wages for payment to the judgment creditor. A suggestee execution can be issued only after a writ of execution has been issued, although both may be requested at the same time. By certified mail, the Clerk will send to the requesting party the original suggestee execution, a copy of the notice of possibility of exemptions if issued, and a blank U.S. Marshal's Form 285. The Clerk will serve on the judgment debtor, via certified mail, a copy of the suggestee execution and, if issued, the original of the notice of possibility of exemptions. 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-year period for which it was originally issued.

(f) Abstract of Judgment –

To obtain an abstract of judgment, the judgment creditor must file a praecipe and a completed Abstract of Judgment form.

Note: The Clerk may issue an abstract of judgment any time after entry of the judgment order. Upon issuance, the Clerk will return the original abstract and three (3) copies, unless more are requested, to the judgment creditor.

(g) Abstract of Execution –

To obtain an abstract of execution, the judgment creditor must file a praecipe and a completed Abstract of Execution form.

Note: An abstract of execution can be issued only after a writ of execution has been issued. Upon issuance, the Clerk will return the original abstract and three (3) copies, unless more are requested, to the judgment creditor.

(h) Writ of Possession or Attachment –

Note: Currently the Bankruptcy Court does not have a local rule under this subheading.

The Clerk will issue a Writ of Possession or Attachment only upon order of the Court.

(i) Certification of Judgment for Registration in Another District –

To obtain a certification of judgment for registration in another district, the judgment creditor must file a praecipe, along with a completed Certification of Judgment for Registration in Another District form, and must pay the certification fee plus any applicable copy fees.

Note: The Clerk will issue the Certification and return it to the requesting party with a certified copy of the judgment order. It is the responsibility of the requesting party to forward the Certification and a certified copy of the judgment order to the Court or Clerk of the Court where the party desires to register the judgment.

(j) Registration in this District –

To register a judgment with the Bankruptcy Court, the judgment creditor must file a properly issued Certification of Judgment for Registration in Another District and pay the prescribed registration fee.

Note: When a judgment is registered, the Clerk will open a miscellaneous case and assign it a miscellaneous case number.

Note: Forms for post judgment remedies may be obtained from the Clerk's office and can be found on the Court's website (www.wvsb.uscourts.gov).

PART VIII

8005-1 Stay Pending Appeal

In order to cover the judgment, costs, interest, and any damages for delay, unless otherwise ordered, a supersedeas bond to stay execution of a judgment must be in the amount of 125% of the judgment.

Compare: NDLR 8005-1

8006-1 Designation of Record – Appeal

A designation of record must include the document's docket number and an abbreviated description of each item designated. If an image of a designated item is not available on the CM/ECF system, the filing party must provide the Clerk with a copy. If the party fails to provide the copy, the Clerk may prepare the copy at the party's expense.

Compare: NDLR 8006-1 (This rule is identical in both districts)

PART IX

9001-1 Definitions

- (a) “Amended Plan”, in the context of a Chapter 13 case, refers to a modified plan filed before confirmation.
- (b) “Bankruptcy Rules”, “Fed. R. Bankr. P.”, “FRBP”, and “FBR” all mean the Federal Rules of Bankruptcy Procedure.
- (c) “Court” refers to the United States Bankruptcy Court for the Southern District of West Virginia, unless otherwise indicated.
- (d) “Clerk” refers to the Clerk of the Bankruptcy Court for the Southern District of West Virginia, unless otherwise indicated.
- (e) “Code” means the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq.
- (f) “Debtor” includes any joint debtor in the case.
- (g) “District Court” refers to the United States District Court for the Southern District of West Virginia.
- (h) “Federal Rules” means the Federal Rules of Civil Procedure.
- (i) “File” (and all other tenses “filed”, “filing” etc.) means filing with or in the Bankruptcy Clerk’s office.
- (j) “Long term debt”, in the context of a Chapter 13 case, refers to debt that extends beyond the end of the Plan.

Compare: NDLR 9001-1

9004-2 Caption – Papers, General

The caption on a document must identify any other filed pleading or paper to which it relates.

Note: SDLR 9013-1(f) requires that a request to shorten time or for expedited consideration be clearly indicated in the caption.

9006-1 **Time Periods**

Unless otherwise prohibited by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, when an act is required or allowed to be done at or within a specified period, when a motion seeking relief or to extend time to take action is filed before the expiration of the specified period, the specified period is automatically extended until the court rules on the motion.

Reference: FBR 9006

Compare: NDLR 9006-1

9009-1 **Forms**

The Bankruptcy Clerk is authorized to prepare, revise, publish and/or withdraw local forms, without notice or comment.

Note: Local forms will be available through the Bankruptcy Clerk's office and on the Bankruptcy Court's website (www.wvsb.uscourts.gov).

Compare: NDLR 9009-1

9010-2 **Power of Attorney**

If a petition is signed on behalf of the debtor by a person pursuant to a power of attorney, the following is required:

- (a) The power of attorney must be:
 - (1) A general power of attorney specifically authorizing the attorney-in-fact to take any action which the debtor could take; or
 - (2) A special power of attorney specifically authorizing the attorney-in-fact to file bankruptcy;
- (b) The power of attorney must be valid under applicable non-bankruptcy law; and,
- (c) A copy of the power of attorney must be filed with the petition or other initial document.

Compare: NDLR 9010-2 (This rule is identical in both districts)

9011-1 **Attorneys – Duties**

(a) Lead and Responsible Attorney –

The attorney who first appears on behalf of a party at a hearing or signs the first pleading or other document filed with the Court is deemed to be the lead attorney responsible for the case. If more than one attorney is listed on the first pleading or other document filed, the attorney who is listed first is deemed to be the lead attorney responsible for the case and will be noted as the attorney of record.

(b) Duty to Represent –

(1) An attorney who represents a party remains the responsible attorney of record for all purposes, and must represent the party in all matters in the case, including appeals, until the case is closed, the attorney is substituted, or the attorney is relieved of representation by court order.

(2) An attorney of record is required to appear at hearings, receive correspondence, telephone calls and other communications in the case, and is subject to service of pleadings, notices and other documents, in electronic form and otherwise, until the Court enters an order permitting withdrawal or substitution or until a proper Notice of Substitution is filed.

See Also: SDLR 2090-1 (Attorneys – Admission to Practice); SDLR 2090-2 (Attorneys – Discipline & Disbarment); SDLR 2091-1 (Attorneys – Withdrawals)

Compare: NDLR 9011-1

9011-2 **Pro Se Parties**

A party or entity may sign and file proofs of claims and attend a §341 Meeting of Creditors without being represented by counsel. In all other situations, a non-individual party or entity must be represented by a member of the bar of the Court. Only an individual may appear, file pleadings or represent himself/herself without counsel (*Pro Se party*). A *Pro Se* party must advise the clerk promptly of any changes in name, address, and telephone number.

Note: Pursuant to FBR 9011, a document filed by a Pro Se party must include the signature of the party and his/her complete name, mailing address, and telephone number. Non-individual parties or entities include corporations and unincorporated associations.

9011-4 **Signatures**

Note: Currently the Bankruptcy Court does not have a local rule under this heading.

Pursuant to the Court's *Administrative Procedures for Electronic Case Filing*, a document that is filed electronically must: (1) contain a scanned image of the original signature of the person signing the document, or (2) an electronic signature consisting of the typed name of the person signing the document, preceded by an /s/ (e.g., /s/ Jane Doe). The electronic signature of the person on a document electronically filed constitutes the signature of that person for purposes of Fed. R. Bankr. P. 9011.

Reference: FBR 5005 and FBR 9011

See Also: SDLR 5005-4 (Electronic Filing)

9013-1 **Motion Practice**

- (a) Every motion must be filed with the following:
 - (1) A proposed order granting the relief sought by the motion;
 - (2) A “negative notice”, if filed in accordance with the Default Motion Practice set out below;
 - (3) A certificate of service which states the name and address of every party served and the method of service. If the entire creditor body is served, provided that a copy of the mailing matrix is attached, the certificate of service may recite service on "all creditors listed on the mailing matrix".

- (b) In addition to any requirement for service found in the Federal Rules of Bankruptcy Procedure, all motions must be served upon the debtor, and if represented, upon debtor’s counsel.

- (c) Default Motion Practice –
 - (1) A “negative notice” must:
 - (i) State with particularity the nature of the motion and the relief sought;
 - (ii) State that an order may be entered granting the relief requested unless a written objection is filed within a specific period of time from the date of the mailing of the notice;
 - (iii) State that a hearing will be scheduled if a written objection is timely filed; and
 - (iv) Be attached to the filed motion.

 - (2) Motions that may be filed using the default motion practice include, but are not limited to:
 - (i) Motion to Compromise – Requires a twenty-one (21) day negative notice and must be served in accordance with Bankruptcy Rule 2002(a). Terms of the compromise (settlement) must be included in the negative notice.

 - (ii) Motion for Use, Sale, or Lease of Property Pursuant to Bankruptcy Rule 6004(c) - Requires a twenty-one (21) day negative notice which contains

the terms as set forth in Bankruptcy Rule 2002(c) and must be served in accordance with Bankruptcy Rule 2002(a).

- (iii) Motion for Relief from Automatic Stay (in a Chapter 7 case involving personal property, non-residential real property or surrendered residential real property) - Requires a fourteen (14) day negative notice, and must be served on the debtor(s), counsel for the debtor(s), the Trustee and any other affected party.
- (iv) Motion for Redemption – Requires a twenty-one (21) day negative notice, and must be served on the affected creditor(s).
- (v) Motion to Avoid Lien – Requires a twenty-one (21) day negative notice, and must be served on the affected creditor(s), the trustee and the U.S. Trustee. The motion must substantially conform to the Court’s local form.
- (vi) Motion to Assume or Reject or Assign an Executory Contract or Unexpired Lease- Requires a twenty-one (21) day negative notice, and must be served on the debtor(s), counsel for the debtor(s), the Trustee, lessor, and any other affected party.

(d) Withdrawal of motion by notice –

When a motion filed with the Court has not been acted upon, the movant may withdraw the motion by filing a notice of withdrawal of motion. The notice of withdrawal of motion must be served upon all affected parties. If a hearing has been scheduled, the moving party also must notify the Clerk by telephone that the hearing may be cancelled.

(e) Construction –

A party is not deemed to be an "affected party" solely because the party is the holder of an unsecured claim against or equity interest in the debtor.

(f) Request to shorten time and/or for expedited consideration –

A request to shorten time and/or for expedited consideration must be made by written motion or be set forth as a separate prayer for relief in the underlying motion. The motion must state the basis of the request and must specify the requested timeframe for Court action. A request to shorten time or for expedited consideration must be clearly indicated in the caption of the document. A movant must contemporaneously serve both the motion to shorten time and/or for expedited consideration and the related underlying motion.

The Clerk may direct a movant to serve an order shortening time or granting expedited consideration and to file a certificate of service. Every reasonable effort must be made to

timely serve the motion(s) and related order, and if necessary, the motion(s) and order should be transmitted to all applicable parties by hand delivery, overnight delivery, facsimile, or other electronic transmission. In instances where service is not possible, the movant must telephonically provide notice to parties in interest.

(g) Objection to a Motion

An objection filed in response to a motion must specifically state all grounds upon which it is based.

Note: Hearings will be scheduled on all motions where the movant requests a hearing, an objection is filed or the proper default practice is not followed. If a hearing is scheduled, the Clerk may direct the movant to prepare a notice that states the nature of the motion and the relief sought.

The Court may grant by default the relief sought in a motion if the movant files a “negative notice” and certificate of service and if an objection is not timely filed. If the proper CM/ECF event is used when a motion to compromise an adversary proceeding is filed in the adversary proceeding, the system also will cause the motion to appear on the related main case docket.

A Motion for Relief from Automatic Stay (in a Chapter 7 case involving personal property, non-residential real property or surrendered residential real property) also must comply with SCLR 4001-1.

A Motion for Redemption also must comply with SCLR 6008-1.

A Motion to Avoid lien also must comply with SCLR 4003-2.

See Also: SCLR 9004-2 (Caption – Papers, General)

Compare: NDLR 9013-1

9013-3 **Certificate of Service – Motions, Applications, or Other Paper or Document Filed**

Unless the Court orders otherwise, or unless specifically limited or expanded by a Federal Bankruptcy Rule or Local Rule, every filing, application, motion or other paper or document filed, other than a proof of claim, must be served on any party directly affected by the relief sought, and upon any party who specifically requested notice.

Note: When service is required to be made on the entire creditor body, the certificate of service may recite that service was made on “all creditors listed on the mailing matrix on file in the Bankruptcy Clerk’s office as of (date)”.

See Also: SDLR 9013-1 (Motion Practice)

Compare: NDLR 9013-3 (This rule is identical in both districts)

9015-1 **Jury Trial**

- (a) Within the later of (1) the time required for the filing of a response to the pleading in which a jury demand is set forth, or (2) fourteen (14) days after the filing of a jury demand, any other party must file a statement consenting or objecting to a jury trial conducted by the bankruptcy judge.

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

To the extent applicable, the *Local Rules of Civil Procedure* for the United States District Court for the Southern District of West Virginia will govern matters pertaining to the conduct of a jury trial in bankruptcy court.

Compare: NDLR 9015-1

9019-1 Settlements and Agreed Orders

In adversary proceedings, a motion to compromise, when required, must be filed in the main bankruptcy case.

Note: SDLR 7007-1 (b) Motion to Dismiss Adversary Proceeding – states, “A motion to dismiss an adversary proceeding must state the terms of any settlement or compromise if the settlement or compromise could affect creditors in the main case, the Trustee, or other parties in interest.”

See also: SDLR 7007-1 (Motion Practice (in Aps)).

Compare: NDLR 9019-1 (This rule is identical in both districts.)

9019-2 Alternative Dispute Resolution (ADR)

Parties must participate in good faith when the Court permits or requires mediation of any issue or dispute.

Note: The terms and conditions of mediation will be governed by a mediation scheduling order.

Compare: NDLR 9019-2

9022-1 Judgments & Orders – Notice of

The Court or Clerk may direct the movant to prepare a separate notice that contains a concise summary of a voluminous order, to be mailed in place of the order.

Note: Orders approving a compromise, settling a controversy, or setting forth terms of a sale tend to be voluminous in nature and must be served on the creditor body. The authorization to the Clerk reduces costs and improves the ability of the creditor body to understand the substance of the motion.

9027-1 **Removal/Remand**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

A Notice of Removal of a civil action pending in a court within the Southern District of West Virginia must be filed with the Bankruptcy Clerk.

The removed action is treated as an adversary proceeding and requires payment of the fee charged for an adversary proceeding.

Reference: 28 U.S.C. §§ 157, 1334, and 1452; FBR 9027; Southern District Court LR Civ P. 83.13 (Referral of Cases to Bankruptcy Court)

See Also: SDLR 7003-1 (Cover Sheet)

Compare: NDLR 9027-1

9029-1 Local Rules – General

Unless otherwise ordered, on the effective date, these Local Rules will govern all proceedings in all pending and subsequently filed cases. As of the effective date, these Local Rules supersede all previously-adopted local bankruptcy rules. References to statutes, regulations, or rules will be interpreted to include revisions and amendments made subsequent to the adoption of these Local Rules.

The Court may waive or modify any provision of these Local Rules sua sponte, by administrative or general order, or upon the motion of any party in interest. Notwithstanding any variance with these Local Rules, an order pertaining to a procedure entered in a case or proceeding will govern that case or proceeding.

“Note”, “Reference”, “See Also”, and other instructional commentary, including hyperlinks that are in or following some of the local rules, are offered to provide information, assistance and reference. Without amendment to these local rules and without providing an opportunity for comment, these may be added, removed, or revised at anytime. Similarly, without amendment to these local rules and without providing an opportunity for comment, local model forms may be added, removed, or revised at anytime.

Note: The Supreme Court of the United States has, pursuant to 28 U.S.C. § 2075, prescribed rules of procedure in bankruptcy cases. FBR 9029 provides that courts may adopt local rules that are not inconsistent with the Federal Rules of Bankruptcy Procedure. By Order entered on _____, these Local Rules were adopted by the Judges of this District and became effective _____. The judges of the District Court may amend and supplement these Local Rules from time to time. These Local Rules of the United States Bankruptcy Court for the Southern District of West Virginia are prescribed and promulgated as Local Rules governing practice and procedure before the Court.

Compare: NDLR 9029-1

9029-2 Local Rules – General Orders

With the exception of General Orders regarding registry funds, internal office practices, unexpired PACER fee exemptions, administrative procedures and the Court’s Chapter 13 Model Plan, all General Orders entered prior to the effective date of these Local rules are rescinded.

Note: A copy of General Orders will be provided by the Clerk upon request and are available on the Court’s website (www.wvsb.uscourts.gov).

Compare: NDLR 9027-2

9029-3 Local Rules – District Court

The *Local Rules of Civil Procedure* for the United States District Court for the Southern District of West Virginia will apply to a bankruptcy case only when the District Court *Local Rules of Civil Procedure* or these Local Rules specify.

Compare: NDLR 9027-3

9037-1.1 Privacy Protection For Filings Made with the Court

Unless the Court orders otherwise, information subject to redaction includes all information subject to protection from unauthorized disclosure under nonbankruptcy state or federal law (for example, H.I.P.P.A., etc.). Information available at the Clerk's offices or posted on the system must not be reviewed, obtained, or downloaded for uses inconsistent with the privacy requirements of federal law.

Reference: FBR 9018 and 9037; 11 U.S.C. § 107

See Also: SDLR 5077-1 (Transcripts); SDLR 5005-1 (Filing Papers and Magnetic Media – Requirements)

Compare: NDLR 9037-1

9070-1 **Exhibits**

- (a) A party who wants the return of an exhibit introduced in a trial or at a hearing must file a written request to return the exhibit. The request must be filed:
 - (1) Within ninety (90) days after the expiration of the time for taking an appeal if no appeal has been taken; or
 - (2) Within ninety (90) days after the record on appeal has been returned to the Clerk if an appeal has been taken.
- (b) If a party fails to timely request return of an exhibit, the Clerk is authorized and may dispose of the exhibit.

See also: SDLR 5005-1 (Filing Papers and Magnetic Media – Requirements)

Compare: NDLR 9070-1

9070-1.1 Sealed Documents

A request to seal a document must be made by written motion and must state the following:

- (a) All grounds upon which the request is made.
- (b) Whether the request is to permanently or temporarily seal the document. If a motion does not indicate whether the request is for a permanent or temporary seal, it will be deemed a request to only temporarily seal the document.
- (c) Whether the filing party wants the original document returned after it has been released from seal and scanned into the CM/ECF system. If the motion does not request return of the original of a document, a sealed document will be destroyed after it has been released from seal and has been scanned into the CM/ECF system.

Note: Unless ordered otherwise by the Court, upon the closing of a case, documents sealed temporarily will be released from seal and will be available to the public through the CM/ECF system.

See also: SDLR 5005-1 (Filing Papers and Magnetic Media – Requirements); Administrative Procedures for Electronic Case Filing

Compare: NDLR 9018-1

9071-1 **Stipulations**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

As long as the terms of stipulations do not require the Court's approval, the Court will accept stipulations agreed to and entered into by parties. These matters would include, for example, a stipulation extending the time to answer a complaint, providing for the taking of a deposition, modifying discovery procedures or resolving a valuation issue.

9072-1 **Orders – Proposed**

- (a) All motions filed must be accompanied by a proposed order for entry by the Court. All proposed orders and any orders drafted at the direction of the Court must include a caption in capital letters, which adequately summarizes the substance of the order. Proposed orders must not be submitted on counsel’s letterhead or bear the engraved name of the firm. Orders should not contain language directing the Clerk to send certified copies.

- (b) Attorneys requested by the Court to submit an order reflecting a hearing must submit the proposed order within seven (7) days, unless otherwise directed. The order must include the date of the hearing, all appearances noted at the hearing, and the Court’s ruling.

Note: In the event a motion is not accompanied by a proposed order, the Clerk may issue a deficiency notice or schedule the motion for hearing.

See also: SDLR 9004-2 (Captions – Papers, General)

Compare: NDLR 9072-1

9073-1 **Hearings**

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Unless otherwise ordered by the Court, directed by the Clerk, or set forth in these local rules, the Clerk issues notices and sets hearing and trial dates.

See also: SDLR 1072-1 (Places of Holding Court)

Compare: NDLR 5070-1

9074-1 Telephone Conferences

Telephonic Court Hearings or Other Proceedings –

Subject to the Court's approval, parties who desire to appear by telephone or video conference at a previously scheduled hearing must file a written motion at least seven (7) days prior to the hearing.

9076-1 Electronic Service

Note: Currently the Bankruptcy Court does not have a local rule under this title.

Electronic service is addressed in detail in the Court's Administrative Procedures for Electronic Case Filing.