

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST
VIRGINIA
LOCAL RULES**

Hon. Patrick M. Flatley, Chief Bankruptcy Judge

Ryan W. Johnson, Clerk of Court

Effective Date: October 1, 2019.

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¹Local rule numbers conform to the Uniform Numbering Systems for Local Bankruptcy Court Rules (revised May 2003 and April 2015), as originally approved by the Judicial Conference of the United States at its March 1996 session. JCUS-MAR 96, pp. 34-35.

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1001-1 CITATION

Cite as “N.D.W. Va. LBR _____ - ____.” Example: “N.D.W. Va. LBR 1001-1.”

1004-1 PETITION – PARTNERSHIP

If the partnership is governed by a written partnership or operating agreement, the person filing the petition must file a certificate with the petition stating that the filing of the petition is authorized by the entity’s agreement.

1007-1 LISTS, SCHEDULES & STATEMENTS

An individual, who was self-employed, unemployed or did not receive pay advices or other evidence of payment within 60 days of filing the petition, must file with the petition a sworn statement regarding the non-existence of payment advices.

1007-2 MAILING – LIST OR MATRIX

- (a) The mailing list for every bankruptcy petition must be uploaded by electronic filers to CM/ECF. The Clerk or the Court may permit a party to file the mailing list in a different form. At the request of the Clerk, a party must verify a mailing list if the Clerk is required to transcribe the list to an electronic format.
- (b) In a case under Chapter 11, the debtor must include on the mailing list federal and state governmental representatives who are responsible for collecting taxes from the debtor and any regulatory agency with jurisdiction over the debtor.
- (c) When a case is converted from one chapter to another, the debtor must file an amendment to the mailing list listing showing only the names and addresses of any additional creditors or parties, if any.
- (d) A debtor must include on the mailing list 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. Names of minor children and confidential information must not be disclosed on the mailing list.
- (e) When the address of a party is protected or confidential, an alternative address must be provided by which that individual may receive Court orders and notices.

1007-5 STATEMENT OF SOCIAL SECURITY NUMBER

When an error is made regarding the debtor's social security number, the debtor must file an amended verified statement with the full, correct, and unredacted social security number. The debtor also must provide notice of the un-redacted, corrected number to all creditors, the United

States Trustee, and the case trustee, and file a certificate of service with the Court evidencing the notice to parties in interest. The certificate of service filed with the Court must not contain a copy of the debtor's full social security number. When the error involves the last four digits that appear on the petition, the debtor also must file an amended petition.

1009-1 AMENDMENTS TO LISTS & SCHEDULES

(a) Extension of Deadlines for Discharge Complaints in Chapter 7

When a debtor adds a creditor to the mailing list, or corrects an address on the mailing list within 30 days of the deadline to file an objection to the debtor's discharge under § 727(a), the objection to discharge deadline is automatically extended for such entity for 30 days from the date of service of the amended schedule or list on the affected entity without further notice or Court order.

(b) Amendments to Schedule C – Claim of Exemptions

An amendment to Schedule C shall include all the debtor's claimed exemptions. A previously filed objection to Schedule C is rendered moot by the newly amended Schedule C and the objecting party must file a new objection to Amended Schedule C within the deadline provided in Fed. R. Bankr. P. 4003(b)(1).

(c) Amendments to Schedule A/B and E/F to Add Creditors

An amendment to Schedule A/B or E/F must be filed with an attachment that lists only the newly added creditors.

1014-2 VENUE – CHANGE OF

An objection to venue, if any, must be filed within 21 days of the date first set for the meeting of creditors.

1015-1 JOINT ADMINISTRATION / CONSOLIDATION

- (a) Cases jointly administered or substantively consolidated will share a joint mailing list. The Clerk may require the party seeking joint administration or consolidation to create and file the joint mailing list within the deadline set by the Clerk.
- (b) In jointly administered or substantively consolidated cases, one case will be designated as the lead case. All pleadings, motions, orders, applications, and notices, but not proofs of claim, are to be docketed in the lead case.
- (c) A separate claims register in the lead and member cases must be maintained for the docketing and filing of all proofs of claim. The Clerk may delegate responsibility for updating the mailing list in the main case based on the filing of a proof of claim in the

member case.

- (d) The Court may, by administrative order, *sua sponte*, or upon a motion of a party, modify the rules and procedures applicable to joint administration or substantive consolidation.

1017-2 DISMISSAL OR SUSPENSION – CASE OR PROCEEDINGS

The Clerk is authorized to administratively dismiss any case where a debtor has failed to timely respond to a notice of deficiency.

1019-1 CONVERSION – PROCEDURE FOLLOWING

(a) General

In general, the conversion of a case to another Chapter does not terminate a pending matter or proceeding. On conversion, the moving party must inform the new Chapter trustee (as applicable) of the pending matter or proceeding and any associated deadlines.

(b) Pending Motions Mooted by Conversion

The Clerk's Office is authorized to terminate the administration of a pending matter or proceeding that is rendered moot by the conversion of the case to a new Chapter.

1070-1 JURISDICTION

In March 1983, the Judicial Conference of the United States authorized concurrent jurisdiction for bankruptcy judges in the Northern and Southern Districts of West Virginia.

1072-1 PLACES OF HOLDING COURT

- (a) The Clerk's Office is authorized to establish case assignments for places of holding Court based on the debtor's county of residence. Adversary proceedings are assigned to the same place of holding Court as the main case. A map of the county assignments for places of holding court is available in the Clerk's Office. At any time, the court may, on its own, or on *ex parte* consideration of a party's motion, hold a hearing or trial at any place of holding court in the District regardless of the debtor's county of residence.
- (b) Only the United States trustee may convene the meeting of creditors. A map of the county assignments for the places of holding the meeting of creditors is available from the Clerk's Office. A debtor may make a request to the Regional Office of the United States trustee at least three days before filing a bankruptcy case to hold the meeting of creditors at a different location. If the Regional Office of the United States trustee grants the request, the debtor should contact the Clerk's Office for case filing instructions. The failure to contact the Clerk's Office may result in the meeting of creditors being set in its default location.

1073-1 ASSIGNMENT OF CASES

By agreement between the bankruptcy judges of the Northern and Southern Districts of West Virginia, each judge is authorized to assign cases filed within the judge's district to a judge of the other district. Unless otherwise ordered by the Court, the Clerk's Office from the district of origin administers the case.

1074-1 CORPORATIONS

(a) Representation by an Attorney

Corporations must be represented by an attorney. A corporation or other business entity may file certain administrative documents without an attorney. These administrative documents, include, but are not limited to, a change of address, reaffirmation agreement, transfer of claim, proof of claim, or application to withdraw unclaimed funds.

(b) Authorization for Filing a Petition

A corporation must file a resolution by its board of directors authorizing the bankruptcy filing. A limited liability company must file a certificate with a bankruptcy petition stating that the filing is authorized by the company's operating agreement. In the absence of an operating agreement, a statement or resolution regarding the authority and authorization of the person signing the petition shall be filed with the petition.

2002-1 NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

(a) Giving Notice

- (1) The Clerk shall give notice unless otherwise required by a Federal Rule of Bankruptcy Procedure, local rule, Court order, or by a delegation of responsibility from the Clerk to a party in the case.
- (2) Unless otherwise ordered by the Court, in a Chapter 7 or a Chapter 13 case, the Clerk or a party that is required to give notice pursuant to Fed. R. Bankr. P. 2002(a), is permitted to limit notice as provided under Fed. R. Bankr. P. 2002(h).
- (3) Unless otherwise ordered by the Court, the Clerk or a party that is required to give notice pursuant to Fed. R. Bankr. P. 2002(a)(2), (3), and (6), is permitted to limit notice as provided under Fed. R. Bankr. P. 2002(i).

(b) Notice of Hearing

The Court or Clerk's Office sets all hearings. Parties are not permitted to set their own

hearing unless specifically directed by the Court or Clerk's Office.

(c) Notice of Electronic Filing Bounce-Backs (Undeliverable Email)

When notice or service to a party is effected by the Notice of Electronic Filing ("NEF") generated by the Clerk's Case Management / Electronic Case Filing ("CM/ECF) system, and the NEF is returned to the Clerk as a "bounce-back" or undeliverable email, the Clerk is authorized to delete the email address in the user's account that caused the bounce-back email.

2003-1 MEETING OF CREDITORS & EQUITY SECURITY INTEREST 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

- (1) 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.
- (2) 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 the event the debtor is unable to reach an agreement with the trustee or the United States Trustee for an alternative appearance, the debtor must file either a motion to: (a) approve an alternative appearance, (b) extend the date for the debtor's appearance, or (c) to waive the debtor's appearance. The motion must be made at least 7 days before the scheduled meeting and contain sufficient documentation to support the request. The motion must include a statement that the debtor has attempted to resolve the issue with the United States in advance of filing the motion.
- (3) The debtor or the debtor's counsel should notify the trustee and United States Trustee not less than fourteen (14) 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.
- (4) 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.

(c) Continuances

- (1) A party must first direct a request for a continuance to the chapter trustee, as applicable, and in a Chapter 11 case to the United State trustee, at least 7 days before the scheduled meeting. A party may only file a motion for a continuance with the Court if the party believes that the trustee, or the United States Trustee, has unfairly denied the party's request for a continuance.
- (2) The trustee may announce to any party present at the meeting of creditors that the trustee is continuing the meeting. If the trustee also announces the date and time of the continued meeting, no further notice is required to parties in interest of the continued meeting.
- (3) If a trustee continues the meeting of creditors in advance of the meeting, the party who made the request must obtain the continued date and time from the trustee, provide notice to all parties in interest of the continued date and time, and must file a certificate of notice with the Clerk.
- (4) If the trustee announces to any party in interest present at the meeting of creditors that the trustee is continuing the meeting, but the trustee does not give the date and time of the continued meeting, the trustee must subsequently provide notice to parties appearing at the meeting of the continued date and time, and must file a certificate of notice with the Clerk.

(d) Individual Debtor's Duty to Provide Documentation

- (1) Personal Identification – Every individual debtor must bring to the § 341 meeting of creditors:
 - (A) 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, or
 - Identity card issued by a national government authority.
 - (B) 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, or
- Social Security Administration (SSA) Statement.

- (2) Tax Return – At least seven (7) days before the date first set for the § 341 meeting of creditors, the debtor must 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 provide a transcript of the tax return or a written statement that the tax return does not exist.
- (3) 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.
- (4) Other Documents – Prior or subsequent 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.

2004-1 DEPOSITIONS AND EXAMINATIONS

(a) Scheduling & Notice

Parties must confer in good faith in an attempt to reach an agreeable time, place, and date for the examination. Motions for a Fed. R. Bankr. P. 2004 examination may be granted *ex parte*. On objection, the Court may modify any order.

(b) Disputes

- (1) Before contacting the Court concerning a dispute over the holding or scheduling of a Rule 2004 examination, the parties must confer, or make a reasonable effort to confer, and communicate in writing with opposing counsel in a sincere effort to resolve the dispute. If a reasonable attempt to resolve the dispute fails, the parties may request an informal discovery conference with the Court by calling the presiding judge’s Courtroom deputy.
- (2) An examination or production dispute as to one matter does not justify delay in

taking an examination or responding to other examination or production requests, unless otherwise ordered by the Court.

(c) Copying Expenses

A party in interest requesting copies of documents that were produced for inspection under Fed. R. Bankr. P. 2004 must pay the actual and/or reasonable costs of copying.

2014-1 EMPLOYMENT OF PROFESSIONALS

- (a) When the Court grants an application for employment, the retention is effective as of the date the moving party filed the application, unless the Court orders otherwise on the request of the moving party.
- (b) Promptly after a professional learns of additional material information relating to the professional's employment, the professional must file a supplemental affidavit that discloses the additional information.

2016-1 COMPENSATION OF PROFESSIONALS

(a) Application for Compensation

Unless otherwise ordered by the Court, an entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate 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) Chapter 11 Fee Applications

Unless otherwise ordered by the Court, a hold-back of 15% applies to any interim fees approved by the Court, which are to be held in trust until an application for final compensation is approved by the Court.

2090-1 ATTORNEYS – ADMISSION TO PRACTICE

The standards and requirements stated in the Local Rules of the District Court for the Northern District of West Virginia are adopted for attorney admission, discipline, and unauthorized practice in the Bankruptcy Court. An attorney admitted to practice before the District Court for the Northern District of West Virginia is also admitted to practice before the Bankruptcy Court for the Northern District of West Virginia.

2090-2 ATTORNEYS – DISCIPLINE & DISBARMENT

After notice and an opportunity for a hearing, the Court may take disciplinary action against any attorney practicing before it, including, but not limited to, suspension and disbarment from practice before this Court.

2091-1 ATTORNEYS – WITHDRAWALS

(a) Duty to Represent

An attorney who represents a party in a bankruptcy case shall remain the responsible attorney of record for all purposes in the case until the case is closed, the attorney is relieved of representation by Court order, by substitution, or until such time as the attorney's duty to represent a party ceases by operation of law.

(b) Withdrawal

- (1) An attorney who has entered an appearance in any bankruptcy case or adversary proceeding may not withdraw the appearance or have it stricken from the record, except by order on a motion.
- (2) An attorney seeking withdrawal must make reasonable effort to give the client actual notice that:
 - (a) The attorney wishes to withdraw and the effective date of the withdrawal;
 - (b) The Court retains jurisdiction;
 - (c) The client has the burden of keeping the Court informed where notice, pleadings, or other papers may be served;
 - (d) The client has the obligation of preparing for hearing or trial if one has been set;
 - (e) If the client fails or refuses to meet the burdens of self-representation, the client may suffer possible default;
 - (f) The dates of any known future hearings, trials, or other proceedings;
 - (g) Service of process may be made upon the client at the client's last known address; and
 - (h) The client has the right to object immediately to attorney's intent to withdraw.

**3001-1 CLAIMS AND EQUITY SECURITY INTERESTS – GENERAL;
ELECTRONIC FILINGS OF CLAIMS**

(a) Number of Copies

Only one obligation shall be denoted in each proof of claim. Creditors with more than one obligation owed in a case shall file a separate proof of claim for each obligation. However, a proof of claim may show that obligation as having components as secured, priority and/or unsecured

(b) Filing a Proof of Claim Through the Court’s Website

A proof of claim may be filed in paper, electronically through the Court’s website, or through the CM/ECF system. When a proof of claim is filed through the Court’s website, the filing party is responsible for maintaining the party’s original signature on the proof of claim until the earlier of when the case is closed or until the original signature is converted to an electronic format consistent with the party’s electronic record policy.

(c) Time-Stamped Copy

A claimant that files a proof of claim by mail and wishes to receive a time-stamped copy by mail must include a self-addressed, postage pre-paid envelope.

(d) Address of the Claimant

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

(e) Proofs of Claim Following Conversion

A proof of claim filed before the conversion of any case is deemed filed in the converted case.

(f) Motion to Set Claim’s Bar Date in Chapter 11 Cases

A Chapter 11 debtor’s request to set the claims’ bar date must be filed before the Clerk’s Office issues the notice of case filing and meeting of creditors.

3010-1 DIVIDENDS - SMALL

(a) Chapter 7 Cases

A Chapter 7 trustee is authorized to distribute dividends in amounts less \$5.00.

(b) Chapter 13 Cases

A Chapter 13 or Chapter 12 trustee is authorized to distribute payments in amounts less than \$15.00.

3011-1 UNCLAIMED FUNDS

(a) Deposit of Funds

- (1) The case trustee must make a diligent effort to distribute funds to the appropriate party before depositing those funds into the Court's unclaimed fund registry.
- (2) A transmittal of unclaimed funds to the Court's registry must include:
 - (a) The list of payees (with the last four digits of the taxpayer identification number, if available), the amount due to each payee, and why the distributions did not occur to the payees; and
 - (b) The name, address and telephone number of the person or entity depositing the unclaimed funds.
- (3) Chapter trustees must submit unclaimed funds electronically through the Clerk's CM/ECF system.

(c) Application Requesting Withdrawal of Unclaimed Funds

- (1) An application to withdraw unclaimed funds must substantially conform to the model application on the Court's website.
- (2) A debtor shall not seek to obtain an unclaimed fund held in the registry unless the debtor is the named beneficiary for that fund.

(d) Service

Any application for withdrawal of funds shall be served on, as applicable, the United States Trustee, the debtor, debtor's counsel, the case trustee, the original claimant and any assignee thereof, and on the United States Attorney for the Northern District of West Virginia.

(e) Disbursement Requirements

A party awarded unclaimed funds must comply with any request for information from the Clerk's Office and must submit any form required by the Clerk.

3012-1 VALUATION OF COLLATERAL

The presumptive replacement value for a motor vehicle is the average between the N.A.D.A. Average Trade-In and Clean Retail value for the particular year, make, model, and mileage.

3015-1 CHAPTER 13 - PLAN

(a) Model Plan

A Chapter 13 plan, including an amended plan, must conform to the Court's model plan. A previous version of the model plan will continue to be accepted by the Court for up to six months after the date of the most recent amendment.

(b) Adequate Protection Payments

- (1) Only debtors who are current, or substantially current, as of the petition filing date or conversion date on an obligation to a secured creditor and/or a creditor specified in 11 U.S.C. § 1326(a)(1) and who do not propose to pay the secured creditor through the Chapter 13 trustee, may make pre-confirmation adequate protection payments directly to the secured creditor.
- (2) If a secured creditor, and/or a creditor specified in 11 U.S.C. § 1326(a)(1)(B-C) is being paid through the trustee, then all payments to that creditor required by § 1326(a)(1) shall be made through the trustee, in the amount set forth in the proposed plan, unless, in the discretion of the trustee, the amount of the payment in the proposed plan is inconsistent with the creditor's proof of claim and with the debtor's proposed treatment of the creditor. The trustee is not obligated to make any pre-confirmation adequate protection payments to a secured creditor until that 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 the previously proposed plan.

(c) Payment of Secured Debts in Chapter 13

- (1) Unless otherwise ordered by the Court, if a debtor files a Chapter 13 petition and seeks to cure an arrearage on a secured debt, payments on the arrearage and post-petition payments on the secured debt shall be made by the Chapter 13 trustee.
- (2) Unless otherwise ordered by the Court, if a debtor and secured creditor agree to a cure of a direct pay obligation in resolving a motion for relief from the automatic stay, the debtor shall lose the right to be the disbursing agent on that claim and all future cure and underlying secured debt payments are to be made by the Chapter 13 trustee.

3015-2 CHAPTER 13 – AMENDMENTS TO PLANS

(a) Form

A debtor is authorized to amend a proposed plan as a matter of right at any time before entry of an order of confirmation. Except as provided in subsection (c) of this Local Rule, an amendment to unconfirmed plan must substantially conform to the Court's Model Plan and must not be brought by motion.

(b) Effect on Previously Filed Plans and Objections

If an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn as of the date of the amended plan. The filing of an amended plan does not remove any previously filed objection to confirmation; rather, the previously filed objection is deemed to be an objection to the amended plan, and removal of any previously filed objection must be done either by: (1) Court order, (2) having the objecting party withdraw the objection or execute a stipulation that resolves the objection, (3) having the Chapter 13 trustee recommend confirmation and stating in the recommendation that the objection is mooted by the amended plan, and/or (4) having the Clerk administratively terminate the objection based on other developments in the case such as a conversion of the case to another Chapter or entry of a confirmation order.

If the amended plan does not affect the treatment of a creditor under the original, proposed plan, and if the creditor failed to timely object to the original, proposed plan, then the creditor is deemed to have accepted the amended plan.

(c) Cure of Post-Petition, Pre-Confirmation Defaults Via the Order of Confirmation

If a debtor and creditor agree to allow the cure of a post-petition, pre-confirmation arrearage through the Chapter 13 trustee by increasing the amount of the plan payment, then the resulting increase may be reflected in the confirmation order without the need to file an amended plan. Any agreed order to resolve a delinquency that requires action by the Chapter 13 trustee must be sent to the Office of the Chapter 13 trustee for signature. The order must include the exact amount of the post-petition, pre-confirmation arrearage, the amount of the on-going payment, interest rate, if applicable, and the address to where payments can be sent by the trustee.

3015-3 CHAPTER 13 – CONFIRMATION

(a) Confirmation Without a Hearing

After the date first set for confirmation under 11 U.S.C. § 1324(a), in the absence of any timely filed objection to confirmation of the debtor's proposed plan, and on the

recommendation of the Chapter 13 trustee, the Court may confirm the debtor's chapter 13 plan in advance of any continued confirmation hearing without further notice to parties in interest.

(b) Confirmation Orders

The Chapter 13 trustee shall prepare the confirmation order unless otherwise ordered by the Court.

(c) Limiting Notice of a Continued Confirmation Hearing

After the time expires to file an objection to a proposed Chapter 13 plan, the Clerk is authorized to limit notice of any continued confirmation hearing to the debtor, the Chapter 13 trustee, and any party that filed a timely objection to confirmation.

3015-3.1 CHAPTER 13 – MODIFICATIONS

(a) Joint Stipulation to Modify Confirmed Chapter 13 Plan

A Chapter 13 debtor who seeks to modify the terms of a confirmed plan must first attempt to execute a joint stipulation with the Chapter 13 trustee. In the absence of an agreement with the Chapter 13 trustee, the debtor may file a motion for modification with the Clerk.

(b) Curing Post-Confirmation Defaults By Modification

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 other creditors under the confirmed plan is not reduced by the agreement. An agreed order or stipulation resolving a delinquency must include the exact amount of the post-confirmation arrearage, the exact amount of the on-going payment, interest rate, if applicable, the address where the payments are to be sent, and the order must be endorsed by the Chapter 13 trustee. An amended proof of claim is not required.

(c) Modification Without a Hearing

The terms of a joint stipulation authorizing a plan modification, when signed by the debtor and the Chapter 13 trustee, is immediately effective pending Court approval. After notice, when required, the Court may enter an order approving the joint stipulation without the necessity of setting a hearing.

(d) Suspension of Payments

(1) A represented debtor must submit an amended wage withholding order, as applicable, when the Court authorizes a suspension of plan payments and when the

Court authorized suspension of plan payments is ending. The debtor must ensure that plan payments recommence on time. Notwithstanding any Court ordered suspension, the Chapter 13 trustee is authorized to disburse any funds remitted to the trustee.

- (2) Unless otherwise specified by the Court, an order granting a suspension of plan payments is without prejudice to the rights of any creditor to seek appropriate relief.
- (3) Service and notice of a debtor's request to suspend plan payments may be limited to the Chapter 13 trustee

4001-1. AUTOMATIC STAY – RELIEF FROM

(a) Preliminary and Final Hearings

- (1) At a preliminary stay relief hearing, parties must be prepared to make their representations and legal arguments. Parties are not required to produce testimony or evidence at the preliminary hearing unless the Court directs otherwise.
- (2) The parties shall confer with respect to the issues raised by the motion in advance of any preliminary or final hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating relevant facts for the final hearing. Any agreed order resolving a motion for stay relief in a Chapter 7 case must be endorsed by the case trustee unless a no asset report has been filed.

(b) Chapter 13 Trustee's Authorization Following a Grant of Stay Relief

Upon entry of an order granting relief from the automatic stay, the Chapter 13 trustee is authorized to cease making further payments to the secured creditor. Any agreed order in that regard shall include language to that effect.

(c) Extension or Imposition of the Stay – 11 U.S.C. § 362(c)(3)

A motion to extend the automatic stay beyond the 30th day of a case under § 362(c)(3)(B), must be filed within 7 days of the petition date.

4001-2 CASH COLLATERAL AND FINANCING ORDERS

(a) Motion

Cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion.

(b) Provisions to be Highlighted

A motion for cash collateral or financing must: (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement, and (c) justify the inclusion of such provision:

- (1) Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditors (i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law);
- (2) Provisions or findings of fact that bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest at least seventy-five (75) days from the entry of the order and the creditors' committee, if formed, at least sixty (60) days from the date of its formation to investigate such matters;
- (3) Provisions that seek to waive, without notice, whatever rights the estate may have under 11 U.S.C. § 506(c);
- (4) Provisions that immediately grant to the prepetition secured creditor liens on the debtor's claims and causes of action arising under 11 U.S.C. §§ 544, 545, 547, 548 and 549;
- (5) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);
- (6) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out;
- (7) Provisions that prime any secured lien without the consent of that lienor; and
- (8) Provisions that seek to affect the Court's power to consider the equities of the case under 11 U.S.C. § 552(b)(1).

(c) Summary of Essential Terms

All motions shall also provide a summary of the essential terms of the proposed use of cash

collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).

4002-1 DEBTOR - DUTIES

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

4008-1 REAFFIRMATION

Unless excused by the Court, a debtor and debtor's counsel must appear at all hearings involving reaffirmation agreements.

4070-1 INSURANCE

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 72 hours of the request.

5003-1 CLERK – GENERAL / AUTHORITY

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

5005-1 FILING PAPERS – REQUIREMENTS

(a) Place of Filing

- (1) All petitions, pleadings, and other papers not filed electronically, must be mailed, or delivered in person, to the Office of the Clerk of the Bankruptcy Court for the Northern District of West Virginia.
- (2) Pleadings or other papers are not permitted to be filed via a facsimile machine or email, unless specifically authorized by the Court or the Clerk. If attempting to submit via facsimile or email, prior permission is required. If allowed, the filing party must subsequently submit original documents via U.S. mail, or CM/ECF, as applicable, to the Clerk.

(b) Return Copies

A party filing by U.S. mail who requests verification of the time-stamped filing of a document must provide a self-addressed envelope, postage pre-paid, large enough to hold the requested document.

(c) Filing Papers - Size of Papers.

- (1) All pages of a document, including attachments, must be of letter size (8 ½ " x 11").
- (2) Only one side of a page should have print.

(d) Identification of Attorney

Every pleading, order, or other paper filed by an attorney shall include the attorney's business mailing address, telephone number and state bar number under the signature line.

(e) Proposed Orders

- (1) A party submitting a proposed order to the Court for signature shall leave at least 2 inches of blank space on the top of the first page of the proposed order for placement of the Judge's electronic signature.
- (2) Proposed orders must be consistent with the relief requested in the underlying motion, and have the words "prepared by" followed by the attorney's name and address.
- (3) Proposed orders must not be submitted on counsel's letterhead.
- (4) Proposed orders must not contain instructions for the Clerk to mail certified copies.
- (5) Attorneys directed by the Court to submit an order reflecting the outcome of a hearing must submit the proposed order within 7 days unless otherwise directed.

(f) Clerk's Office Policy on Document Destruction and Electronic Records

After 60 days, the Clerk's Office is authorized to destroy original documents and the electronic upload of the document is deemed to be the original.

5005-4 ELECTRONIC FILING

(a) Represented Parties

A party to a bankruptcy proceeding represented by an attorney must file electronically with the Court, except as follows:

- (1) Attorneys who have established to the Court's satisfaction that requiring electronic filing would create a hardship or general denial of access to the Courts;

- (2) When the CM/ECF system is inaccessible or when the Filing User's computer system is inoperable, the Filing User may use other means to file a document with the Court when required to meet a deadline. No filing deadline shall be deemed to be extended due to technical problems except by Court order. Or,
- (3) The transaction or document is one that the Court has allowed to be submitted through its website.

(b) Pro Se Parties

A party to a bankruptcy proceeding that is not represented by an attorney may file electronically with the Court using the Clerk's Pro Se Party E-Filing Program. The Court or Clerk may require a pro se party to file electronically, except as provided in Local Rule 5005-4(a)(1-3).

(c) Electronic Entry of Orders

Any order or other Court issued document signed electronically by the Judge or Clerk has the same effect as if the Judge or Clerk had signed a paper copy of the order or document. The Court or Clerk may enter orders or other documents by a text only docket entry with no PDF document. The text only entry shall constitute the Court's or Clerk's order and/or signature on the matter, and will carry the same force and effect as if the Judge or Clerk had affixed his or her signature to a paper document.

(d) Electronic Docket Entries

A limited number of docket entries do not have documentary image; rather, the electronic docket entry serves as the document itself. These docket entries include, but are not limited to, no asset reports and 11 U.S.C. § 341 minute sheets.

(e) Maintenance of Electronic Filing Accounts

Registered electronic filing users must notify the Court or Clerk immediately of any address, telephone, or email changes. This may be accomplished by the e-filing party updating their user account information via the Court's CM/ECF system.

5005-5 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS

(a) Filing and Service

- (1) A party may use the Court's transmission facilities to make service under Fed. R. Civ. P. 5(b)(2)(E).
- (2) By registering, or by having registered, with the Clerk as an electronic filer in the

Clerk's CM/ECF system, the electronic filing user is deemed to have consented to receipt of notice and service by the Clerk, and by other parties in the case, via the Clerk's Notice of Electronic Filing ("NEF"). Service or notice by the Clerk is effective on transmission. Service or notice by a party in the case is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served. The Court and Clerk are not responsible for notifying a person who filed a paper with the Clerk's electronic-filing system that an attempted transmission by the Court's system failed. This Local Rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.

- (3) No certificate of service is required when a paper is served by filing it with the court's electronic filing system.

(b) Timely Filing

Unless otherwise ordered by the Court:

- (1) A document filed electronically through the Court's CM/ECF System is timely if filed before midnight on the day it is due;
- (2) A document that the Court or Clerk receives by facsimile or email is not filed unless the filing party obtains the prior consent of the Court or Clerk. The facsimile or email must be followed by the delivery of the original document. The receipt of the original document by the Clerk's Office shall relate back to the time that the facsimile or email was delivered to the Clerk's Office.

5005-6 ELECTRONIC SIGNATURES

(a) E-Filing Log-in and Password of Electronic Filers

The log-in and password of an electronic filer of the Clerk's CM/ECF system constitutes the registered user's original signature for purposes of Federal Rule Civil Procedure 11, Official Bankruptcy Rule 9011, the Local Rules of the Court, and for any other purpose for which a signature is required in connection with proceedings before the Court.

(b) Electronically Filed Documents Bearing a Signature of Another Party

- (1) Signature of a Debtor on Electronically Filed Petition and Schedules

An attorney electronically filing a case for a debtor must maintain the debtor's original "wet" signatures on the petition, schedules and statements for at least 7 years following the completion of meeting of creditors when using an electronic signature for the debtor. The attorney is authorized to use a declaration of electronic

filing whereby the debtor “wet” signs a declaration adopting all the typewritten signatures on the petition, schedules and statements as the debtor’s own signature. The “wet” signed declaration shall be maintained for 7 years following the completion of the meeting of creditors.

(2) **Type Written Signatures of Other Parties in the Case**

When an electronic filing user includes the type-written signature of another attorney or party to the case on a filed document, other than a proof of claim or exhibit, the filer must either:

- (A) Expressly represent above or next to the typewritten signature line of the other party that the filer is including the other party’s typewritten signature with the express consent of the party.
- (B) Attach a PDF of the consenting party’s scanned-in “wet” signature.
- (C) Identify on the document the party whose signature is required and have that party file with the Clerk a notice that the party has endorsed the document;
- (D) Utilize another method approved by the Court.

(c) **Electronic Signatures for Documents Not Filed via CM/ECF or via U.S. Mail**

When a document with electronic signatures is filed with the Court or Clerk by means other than CM/ECF or by U.S. mail, such as a proof of claim filed through the Court’s website, the filer of the document must maintain an original copy of the document that bears the handwritten signature of the filer, and any other party whose signature is on the document, until the case is closed. On request of the Court or a party to a proceeding, the filer of the document must produce the original copy for review. This Local Rule does not prohibit or supersede an internal policy on the destruction of original documents and their electronic preservation.

5005-7 AUDIO FILES OF COURT PROCEEDINGS

A party must notify the Court before or during the hearing of a desire to restrict the audio from the internet. Attorneys must avoid introducing personal data identifiers and other sensitive information into the record unless necessary to prove an element of the case.

5071-1 CONTINUANCE

(a) **Court Hearings**

- (1) A motion to continue a Court hearing must be submitted in writing, in advance of the scheduled hearing date. When insufficient time exists to file a written motion, the requesting party is authorized to make an oral request to the presiding Judge's courtroom deputy or law clerk.
- (2) If an order is entered granting a motion to continue, or an oral continuance is granted by the Judge, and less than 7 business days exist before the date of the hearing being continued, the moving party must ensure the relevant parties to the hearing are informed of the continuance to prevent an unnecessary Court appearance.

(b) Creditor's Meetings

N.D.W. Va. LBR 2003-1(c) governs a request to continue an 11 U.S.C. § 341(a) meeting of creditors.

5073-1 PHOTOGRAPHY, RECORDING DEVICES & BROADCASTING

The Local Rules governing proceedings in the District Court for the Northern District of West Virginia regarding photographing and broadcasting of Court proceedings apply to proceedings in the Bankruptcy Court. When visiting the Bankruptcy Court, attorneys are permitted to retain their cell phones, including those with camera features. Attorneys must not record a Court hearing and must not use a device in a manner that disrupts a Court proceeding.

5077-1 TRANSCRIPTS

- (a) An official transcript can only be prepared by a qualified transcriber using a recording obtained from the Clerk. Transcripts should be submitted to the Court in portable document (.pdf) format. For 90 days after the filing of a transcript or any extensions granted by the Court, the transcript is available at the Court's public terminal for inspection only. Remote electronic access is limited to attorneys who have purchased the transcript through the Court reporter/transcriber. Copies can only be obtained from the Court reporter/transcriber.
- (b) Any request for redaction must indicate the location in the transcript of the personal data identifiers to be redacted and are due within 21 calendar days of the filing of the transcript, or longer if the Court so orders. The transcript will not be made electronically available until disposition of any request for redaction. The Court reporter or transcriber must, within 31 calendar days of the delivery of the transcript, or longer if the Court so orders, file a redacted version of the transcript with the Clerk of Court.
- (c) Parties are responsible for obtaining their own qualified transcriptionist. The Clerk's Office does not independently pre-certify transcriptions and does not maintain a list of qualified transcriptionists.

5080-1 FEES – GENERAL

(a) Requests for Refunds

Clerk is authorized to refund fees upon an oral request when a party:

- (1) pays a fee for filing a duplicate document, bankruptcy petition, or adversary proceeding;
- (2) pays a fee for filing a document in the wrong case or proceeding;
- (3) is exempt; or
- (4) is eligible for a deferral of the filing fee.

Any other refund of fees requires a motion and a Court order.

5081-1 FEES – FORM OF PAYMENT

- (a) The Clerk is not authorized to accept any form of payment other than cash or a money order from a debtor who is filing his or her own bankruptcy case for a period of 15 days following the issuance of the notice of case filing to the debtor's mailing list. The Clerk is authorized to reverse any credit or debit transaction and require a different form of payment.
- (b) The Clerk is authorized to refuse to accept a check from a person or entity whom is known by the Clerk to have previously presented a check that was subsequently refused for nonpayment or otherwise dishonored.

6004-1 SALE OF ESTATE PROPERTY

Unless otherwise ordered by the Court, a report of sale required under Fed. R. Bankr. P. 6004(f)(1) is timely if filed within 45 days of the sale.

6070-1 TAX RETURNS AND REFUNDS

- (a) 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.
- (b) Except by the United States trustee, Chapter trustee, or Court staff, tax returns or tax transcripts filed with the Court must not be subject to public inspection, copy, or review unless otherwise ordered by the Court.

7004-2 SUMMONS

An electronic summons issued by the Clerk has the same force and effect as if the Clerk had issued a paper summons with a raised seal and wet signature.

7007-1 MOTION PRACTICE (in APs)

(a) General

All motions, unless made in open Court during a hearing, shall be in writing and filed with the Clerk. Any letter that is received by the Clerk may, but need not be, considered to be a motion. A motion will not be accepted by telephone, email, or facsimile without the prior consent of the Clerk or the Court and an original document must be subsequently mailed or e-filed through CM/ECF with the Clerk. Unless otherwise directed by the Court, Clerk, or these Local Rules, a proposed order should accompany all motions, which, if entered, would grant the relief sought in the motion. A motion to continue is governed by N.D.W. Va. LBR 5071-1.

(b) Supporting Documentation

(1) Legal Authorities

Copies of legal authorities cited in a motion or a supporting memorandum are not required unless specifically requested by the Court.

(2) Dispositive Motions

A dispositive motion is one that seeks a final determination as to a claim or issue raised in a previously filed pleading. Dispositive motions shall be accompanied by a supporting memorandum, or incorporate a memorandum of law within the motion, and by copies of depositions (or pertinent portions thereof), admissions, documents, affidavits, or other such material upon which the motion relies.

(3) Non-Dispositive Motions.

Non-dispositive motions do not seek a final determination as to a claim or issue raised in a previously filed pleading. No memorandum is required for non-dispositive motions; provided, however, that a motion for sanctions shall be accompanied by a supporting memorandum and exhibits.

(c) Time of Filing

Unless the pre-trial order contains an applicable deadline, a motion in an adversary proceeding may be filed at any time consistent with the Federal Rules of Bankruptcy Procedure.

(d) Response; Time for Response

A response may, but need not, be accompanied by affidavits and other supporting documents. A response, if any, to a motion shall be filed within 21 days from the date of the filing of the motion with the Clerk, or three days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided by these Local Rules, the Federal Rules of Bankruptcy Procedure, Court order, or in the notice issued by the Clerk. The Court, in its discretion, may grant or deny a non-dispositive motion before the response deadline has expired (such as the grant or denial of a motion to continue).

(e) Reply

A reply, if any, to a response to a motion shall be filed within 7 days from the date of the filing of the response with the Clerk, or three days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided by these Local Rules, the Federal Rules of Bankruptcy Procedure, Court order, or in the notice issued by the Clerk. If the application of this subparagraph would require the reply to be due the same day as the response, then the reply is due two days before the scheduled hearing. A sur-reply is not authorized without Court permission. A party may attach a sur-reply as an exhibit to the party's motion to allow the filing of a sur-reply.

(f) Hearing on Motion / Adjudication without a Hearing

- (1) Either the Court or the Clerk sets all hearing dates.
- (2) If no response is timely filed to a motion, unless otherwise provided by these Local Rules, the Federal Rules of Bankruptcy Procedure, or by order of this Court, motions shall be deemed submitted for adjudication. IN THE ABSENCE OF A TIMELY FILED WRITTEN RESPONSE TO A MOTION, THE COURT MAY DEEM THE FACTUAL ALLEGATIONS IN THE MOTION AS TRUE AND GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT THE NEED FOR A FURTHER HEARING.
- (3) The Court, in its discretion, may set any motion for hearing even in the absence of a filed response. Any party that intends to appear at such hearing to contest the relief sought should endeavor to file a written response with the Court at least three days before the scheduled hearing.
- (4) In the event that a timely response to a motion is filed pursuant to subsection (d), the motion is deemed ripe for adjudication on the day that the reply is filed, or when the time to file a reply has expired, whichever is earlier.

- (5) All motions in adversary proceedings may be considered and decided by the Court on the pleadings, admissible evidence in the record, and motions, papers and supporting memoranda, without hearing or oral argument, unless otherwise directed by the Court. Special considerations thought by counsel to be sufficient to warrant a hearing or oral argument may be brought to the Court's attention in the motion or response.

(g) Expedited Relief

When a movant requests that the response period set forth in this Local Rule be shortened, the movant shall follow the procedures outlined in Bankr. N.D.W. Va. R. 9013-1.

7007.1-1 FINANCIAL DISCL. BY CORP. PARTY

Fed. R. Bankr. P. 7007.1 applies to limited liability companies and partnerships as well as corporations.

7016-1 PRE-TRIAL PROCEDURES¹

Unless otherwise ordered by the Court, within 14 days of a defendant making an appearance or after the removal of a case, the Court will hold a case management conference.

7026-1 DISCOVERY - GENERAL

The Court expects all attorneys and parties to behave professionally and with courtesy. Whenever possible, attorneys are expected to communicate with each other in good faith throughout the discovery process to resolve disputes without Court intervention.

7067-1 REGISTRY FUND

(a) Scope

This Local Rule does not apply to unclaimed funds or funds held by the Clerk for the benefit of case trustees.

(b) Receipt of Funds

- (1) No money shall be sent to the Court or its officers without entry of a Court order. The Clerk is authorized to seek clarification of an order so that it specifically identifies:
- (A) The name, address, and telephone number of the person or entity paying the money into the registry of the Court;

¹ Rescinded by General Order 20-06

- (B) The name and addresses of each person or entity for whom the money is being held; and;
 - (C) The sum of money to be deposited.
- (2) Unless provided for elsewhere in the Court order, all monies ordered to be paid to the Court or received by its officers in any case or proceeding, or to be adjudicated, shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposits on its behalf.

(b) Investment of Registry Funds

- (1) Where, by order of the Court, funds on deposit with the Court are to be placed in some form of interest bearing account, the Court Registry Investment System “CRIS”) administered by the Administrative Office of the United States Court under 28 U.S.C. § 3045, shall be the only investment mechanism authorized.
- (2) The Director of the Administrative Office of the United States Courts is designated as the custodian for the CRIS. The Director, or the Director’s designee, shall perform the duties as custodian. Funds held in the CRIS remain subject to the control and jurisdiction of the Court.
- (3) Money from each case deposited in the CRIS shall be “pooled” together with those on deposit with the Treasury to the credit of other Courts in the CRIS and used to purchase Government Account Series securities through the Bureau of Public Debt, which will be held at Treasury, in an account in the name and to the credit of the Director of the Administrative Office of the United States Courts. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.
- (4) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the fund. Income generated from fund investments will be distributed in each case based on the ratio each account’s principal and earnings has to the aggregate principal and income total in the fund. Reports showing the interest earned and the principal amounts contributed in each case will be prepared and distributed to each Court participating in the CRIS and made available to litigants and/or their counsel.

(c) Deduction of Fees

- (1) The custodian is authorized and directed by this Local Rule to deduct the investment services fee from the management of investments in the CRIS and the

registry fee for maintaining accounts deposited with the Court.

- (2) The investment services fee is assessed from interest earnings to the pool according to the Court's Miscellaneous Fee Schedule and is to be assessed before a pro rata distribution of earnings to Court cases.
- (3) The registry fee is assessed by the custodian from each case's pro rata distribution of the earnings and is to be determined on the basis of the rates published by the Director of the Administrative Office of the United States Courts as approved by the Judicial Conference of the United States.

(d) Withdrawals

Funds may only be disbursed from the Court's Registry or the CRIS upon entry of an order authorizing the disbursement. The Clerk is authorized to reject any order, or seek an amendment from the parties, if

- (1) A party ordered to receive a disbursement fails to provide the Clerk with any information requested to allow payment of the funds and issuance of tax forms; and/or
- (2) The order does not include the following information:
 - (A) The name and address of each person or other entity to receive funds; and
 - (B) 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.

8001-1 APPEALS

Within 21 days of the filing of a notice of appeal, the bankruptcy judge whose order is the subject of the appeal may file a written opinion that supports the order being appealed, or that supplements any earlier written opinion or recorded oral bench ruling or opinion.

9001-1 DEFINITIONS

As used in these Local Rules, the following words and phrases have the meanings indicated:

- (a) "Amended Plan," in the context of a Chapter 11 or 13 case refers to a modified plan before confirmation as provided for in 11 U.S.C. §§ 1127 and 1323.
- (b) "Court" refers to the United States Bankruptcy Court for the Northern District of West Virginia, unless otherwise indicated.

- (c) "Clerk" refers to the Clerk of the Bankruptcy Court for the Northern District of West Virginia, unless otherwise indicated.
- (d) "CM/ECF" refers to the Case Management / Electronic Case Filing system as administered by the Bankruptcy Court for the Northern District of West Virginia.
- (e) "Debtor" includes any joint debtor in the case.
- (f) "District Court" refers to the United States District Court for the Northern District of West Virginia.
- (g) "File" (and all other tenses "filed", "filing" etc.) means filing with or in the Bankruptcy Clerk's office.
- (h) "*Nunc Pro Tunc*" refers to the effectiveness of an order to a time earlier than its entry on the case docket.
- (i) "*Pro Se*" refers to a person who is not represented by an attorney.

9004-1 PAPERS – REQUIREMENTS OF FORM

(a) Legibility

If a document cannot be filed in a readable manner, it shall be accompanied by a typed, attached substitute containing counsel's certification that the typed substitute contains, to the extent possible, the exact information set forth in the original document.

(b) Font Size and Spacing

Font size shall not be less than 10 point, and line spacing shall neither be more than double spaced nor less than single spaced.

(c) Page Limitations

No brief, motion, or accompanying memorandum shall exceed 25 pages in length, exclusive of exhibits, absent permission from the Court.

9006-1 TIME PERIODS

(a) No Bridge Order Required

Unless otherwise required by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, if a motion to extend the time to take any action is filed before the expiration

of the period established by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Rules, the Federal Rules of Civil Procedure as made applicable to bankruptcy proceedings, or by Court order, the time shall be automatically be extended until the Court acts on the motion without the necessity of a bridge order.

(b) Local Court Closure

When a time period is stated in days, and the last day falls on a day when all the Clerk's offices are closed, the time period continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday (as defined in Fed. R. Bankr. P. 9006(a)(6)), or Court closure. Court closures do not affect deadlines for e-filing parties.

9009-1 FORMS

The Clerk is authorized to post, revise, or remove, without notice, local forms. Local forms are not mandatory unless otherwise stated.

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

9011-1 ATTORNEYS - DUTIES

Failure to comply with these Local Rules may result in the imposition of sanctions against any party, counsel, other professional, or other fiduciary appearing before the Court. Upon notice and hearing sanctions may be imposed by the Court. Sanctions may include, but are not limited to:

- (a) All or part of a pleading or other document being stricken or a defense being disallowed;
- (b) Stay of further proceedings;

- (c) All or part of an order being vacated;
- (d) Dismissal of the case or adversary proceeding;
- (e) Imposition of costs and expenses, including Court reporting fees and attorney's fees;
- (f) Denial of confirmation of a Chapter 11, 12, or 13 plan;
- (g) Reduction of attorney's fees; and/or
- (h) A requirement for the completion of continuing education.

9013-1 MOTION PRACTICE

(a) General

All motions, unless made in open Court during a hearing, shall be in writing and filed with the Clerk. Any letter that is received by the Clerk may, but need not be, considered to be a motion. A motion will not be accepted by telephone, email, or facsimile without the prior consent of the Clerk or the Court and an original document must be subsequently mailed or e-filed through CM/ECF with the Clerk. Unless otherwise directed by the Court, Clerk, or these Local Rules, a proposed order should accompany all motions, which, if entered, would grant the relief sought in the motion. A motion to continue is governed by N.D.W. Va. LBR 5071-1.

- (1) No proposed order is necessary for continuing a hearing, wage withholding, or confirmation or modification of a Chapter 13 plan.

(b) Supporting Documentation

- (1) Legal Authorities

Copies of legal authorities cited in a motion or a supporting memorandum are not required unless specifically requested by the Court.

- (2) Supporting Memorandum

A party may include legal authorities, factual assertions, and analysis in a motion or other type of proceeding in lieu of submitting a supporting memorandum.

- (3) Supporting Documentation

When allegations of fact on which a motion or memorandum relies do not appear in the record, the source for that allegation of fact should be stated in the motion and supported by an exhibit.

(c) Service

- (1) When a motion is to be served upon a represented debtor, the motion must be served on the debtor and debtor's counsel.
- (2) When a party must notice or serve all parties on the mailing list, the certificate of notice or service may recite that notice or service was made on the case's mailing list on file with the Clerk in lieu of specifically including all the addresses on the mailing list on the certificate of notice or service.

(d) Response; Time for Response

A response, if any, to a motion shall be filed within 21 days from the date of the filing of the motion, or 3 days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided in the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, applicable rules in the Federal Rules of Civil Procedure, the Local Rules of this Court, Court order, or notice sent by the Clerk. The Clerk is authorized to except certain types of motions from this subparagraph and parties may appear at a scheduled hearing and be heard in the absence of a timely filed response.

(e) Content of Response

- (1) All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. A response may, but is not required to, contain affidavits and documents evidencing the facts stated in the response that do not appear in the record.
- (2) If a response is not filed, or is not in compliance with this provision, the Court, in its discretion, may resolve the matter based on the moving party's submissions without a hearing, or take other action as the Court may deem appropriate.

(f) Hearing on Motion / Relief Without a Hearing

- (1) The Court or the Clerk shall set all hearing dates. IN THE ABSENCE OF A TIMELY FILED WRITTEN RESPONSE TO A MOTION, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT THE NEED FOR A FURTHER HEARING.
- (2) Unless otherwise ordered, the Court, or the Clerk at the Court's direction, may set any motion for hearing even in the absence of any filed objections. Any party that intends to appear at the hearing to object should file a written objection with the

Court at least three days before the scheduled hearing.

(g) Expedited Relief in 10 Days or More

- (1) Unless otherwise directed by the Court, the party seeking to shorten a notice period shall serve the motion to shorten time together with the motion seeking the underlying relief. When the moving party is required to serve the notice and the motion together, the moving party is authorized to await entry of the Court order on the motion to shorten time before serving the motion and the notice on the affected parties. The date of service of the notice and motion must be reflected on a subsequently filed certificate of service.
- (2) The Court, in its discretion, may grant ex-parte relief shortening the applicable notice period, and/or may set the motion to shorten time for a hearing on an expedited basis.
- (3) Unless the movant is required to serve the notice, the Clerk will issue the order shortening time to the appropriate parties using the addresses on the case's mailing list. When a different method of service, or address for service, is required, it is the responsibility of the moving party to ensure service of the Court's order shortening time.

(h) Expedited Relief in Less than 10 Days

- (1) Unless otherwise directed by the Court, the party seeking to shorten a notice period shall serve the motion to shorten time together with the motion seeking the underlying relief. Where appropriate, the motions should be transmitted to all applicable parties either by hand delivery, overnight delivery, facsimile, or other electronic transmission.
- (2) The Court, in its discretion, may grant ex-parte relief shortening the applicable notice period, and/or may set the motion for a hearing on an expedited basis. Upon receipt of the order granting the motion for emergency relief that shortens the notice period (and/or sets a hearing), the movant shall serve notice on all parties entitled to notice of the underlying motion.

9015-1 JURY TRIALS

- (a) A demand for a jury trial shall state whether the party consents to the trial being conducted by the Bankruptcy Court.
- (b) 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) 14 days after the filing of a jury demand, any other party shall file a statement as to that party's consent to trial by the Bankruptcy Court.

- (c) Unless otherwise ordered by the Court, the rules governing jury trials before the District Court for the Northern District of West Virginia apply in bankruptcy proceedings.

9018-1 SECRET, CONFIDENTIAL, SCANDALOUS OR DEFAMATORY MATTERS

Parties are authorized to file sensitive documents with the Court under seal in CM/ECF. The documents will remain sealed until such time as the Court rules on the motion to seal. If service of the sealed document is required (either before or after entry of the Court's order on the motion to seal), the moving party must conventionally serve the sealed document on other parties to the case that are entitled to receive them. The Clerk or Court may, but is not required to, *sua sponte* restrict from viewing any document that appears to contain secret, confidential, scandalous or defamatory matters and may require the filing party to file a motion to redact and the redacted document, or a motion to seal, as appropriate.

9019-1 SETTLEMENTS AND AGREED ORDERS

In adversary proceedings, a motion to settle or compromise, when necessary, must be filed in both the adversary proceeding and the main bankruptcy case. Further proceedings on the motion to settle or compromise occur in the main bankruptcy case.

9019-2 ALTERNATIVE DISPUTE RESOLUTION

The court encourages alternative dispute resolution.

9029-1 LOCAL RULES - GENERAL

- (a) These Local Rules of the United States Bankruptcy Court for the Northern District of West Virginia are prescribed and promulgated as Local Rules governing practice and procedure before the Court. 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.
- (b) 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.
- (c) References to statutes, regulations, or rules shall be interpreted to include revisions and amendments made subsequent to the adoption of these Local Rules.

9029-3 LOCAL RULES – DISTRICT COURT

The Local Rules of the District Court for the Northern District of West Virginia apply to bankruptcy proceedings unless the application of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, these Local Bankruptcy Rules, Court order, or an order or notice sent by the Bankruptcy Clerk requires a different result.

9037-1 PRIVACY PROTECTIONS FOR FILINGS; REDACTION; PROTECTIVE ORDERS

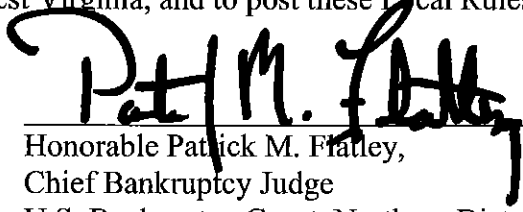
- (a) The responsibility for redacting personal identifiers rests solely with the filer.
- (b) Upon the filing of a motion to redact or seal, the Clerk may immediately seal any document alleged to require redaction.
- (c) The Clerk or Court may, but is not required to, *sua sponte* restrict from viewing any document that appears to require redaction and require the filing party to file a motion to redact and the redacted document.

9070-1 EXHIBITS

All exhibits that are admitted into evidence at trial or hearing shall be retained by the Clerk, unless required to be forwarded to an appellate Court for purposes of an appeal. If no appeal is timely taken, exhibits in the custody of the Clerk may be returned to the party tendering the exhibit. In the alternative, the Clerk may issue a letter to the submitting party allowing the party a fixed time in which to pick up the exhibits or make satisfactory arrangements for the costs of transfer. If the party that submitted the exhibits fails to timely respond to the Clerk's letter, the Clerk is authorized to destroy the exhibits.

Pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P. 83, Fed. R. Bankr. P. 9029, and the Delegation of Authority from the U.S District Court for the Northern District of West Virginia to Promulgate Local Rules of Bankruptcy Practice and Procedure dated August 14, 2018, it is **HEREBY ORDERED** that these Local Bankruptcy Rules for the Bankruptcy Court for the Northern District of West Virginia, be and hereby are EFFECTIVE as of October 1, 2019 (the “Effective Date”), and shall apply to all pending proceedings and all cases filed on or after the Effective Date.

As of the Effective Date, the Clerk of the Bankruptcy Court is DIRECTED to provide a copy of these Local Rules to the Court of Appeals for the Fourth Circuit, to the Director of the Administrative Office of the United States Courts, to the District Court for the Northern District of West Virginia, and to post these Local Rules on the Bankruptcy Court’s Website.



Honorable Patrick M. Fratley,
Chief Bankruptcy Judge
U.S. Bankruptcy Court, Northern District of West Virginia

8-20-2019
Date

Local Rules Committee Members:

Michael Proctor, Committee Chair
Aaron Amore
Anita Swaton
David Bissett
Helen Morris
James Voithofer
Mike Clagett
Ryan Johnson
Todd Johnson