

LOCAL RULES
OF THE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY



Dated: February 2, 2015

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D.N.J. LBR 1001-1. Scope of Rules

(a) Scope. These Local Bankruptcy Rules govern procedure before the United States Bankruptcy Court for the District of New Jersey, and supplement the United States Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

(b) Modification. The court may modify the application of a Local Bankruptcy Rule in a particular case or proceeding.

(c) Citation. A Local Bankruptcy Rule should be cited as “D.N.J. LBR ____.”

2015 Comment

Certain of these Rules are derived from the Local Civil Rules of the United States District Court for the District of New Jersey.

The court’s General Orders, Guidelines, and Local Forms also govern procedure before the court. They may be found on the court’s website (www.njb.uscourts.gov).

D.N.J. LBR 1002-1. Commencement of Case

A petition commencing a case must be filed in the vicinage in which the debtor is domiciled or in which it maintains its residence, principal place of business, or principal assets.

2015 Comment

This Rule is amended to eliminate petition content requirements that already appear in Bankruptcy Rule 1003 or Official Form B1.

The court is divided into three units known as "vicinages," based on the locations of the three federal courthouses in the District of New Jersey.

The Newark vicinage consists of Bergen, Essex, Hudson, Morris, Passaic, Sussex, and Union counties.

The Trenton vicinage consists of part of Burlington (except for the townships of Cinnaminson, Delran, Edgewater Park, Evesham (Marlton), Maple Shade, Moorestown, Mount Laurel, Palmyra, Riverside and Riverton), Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, and Warren counties.

The Camden vicinage consists of Atlantic, part of Burlington (the townships of Cinnaminson, Delran, Edgewater Park, Evesham (Marlton), Maple Shade, Moorestown, Mount Laurel, Palmyra, Riverside and Riverton), Camden, Cape May, Cumberland, Gloucester, and Salem counties.

D.N.J. LBR 1007-1. Mailing List

(a) Instructions. The mailing list required by Bankruptcy Rule 1007 must comply with the instructions in the *CM/ECF User's Guide* available on the court's website.

(b) Amendment of schedules. The mailing list must be updated when an amendment to schedules D, E, F, G, or H is filed.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 1007-2. The Rule eliminates obsolete formatting requirements and replaces the term “matrix” with “mailing list.”

D.N.J. LBR 1009-1. Amendment to List or Schedule

A party seeking to amend a list or schedule must file Local Form *Amendment to Schedule D, E, F, G, H, or List of Creditors* and must include only the change made and indicate if the change is an addition, modification, or deletion.

2015 Comment

The service requirements for amendments are provided in Local Form *Order Respecting Amendment to Schedule D, E, F, G, H, or List of Creditors*.

D.N.J. LBR 2002-1. Certification of Service and Change of Address

(a) Certification of service. A party seeking relief from the court must file Local Form *Certification of Service*.

(b) Change of address. A party that changes its address during a case or proceeding must file Local Form *Change of Address*.

2015 Comment

This Rule is new. Use of the local form required under subdivision (a) simplifies the court's review of service.

Subdivision (b) provides a uniform method for informing the court, a trustee, and any affected party of a change of address.

D.N.J. LBR 2002-2. Notice of Proposed Compromise or Settlement

A party seeking approval of a proposed compromise or settlement of a controversy, other than approval of an agreement pursuant to Bankruptcy Rule 4001(d), must file Local Form *Notice of Proposed Compromise or Settlement of Controversy*.

2015 Comment

This Rule is new. It provides the procedure for a party seeking approval of a proposed compromise or settlement of controversy to supply information to the court to satisfy the clerk's responsibility to send notice under Bankruptcy Rule 2002(a)(3).

Local Bankruptcy Rule 6004-1 addresses the notice requirements under Bankruptcy Rule 2002(a)(2) for a motion to sell property.

D.N.J. LBR 2004-1. Examination

(a) Examination on parties' agreement. A motion under Bankruptcy Rule 2004(a) is not required if the party from whom an examination or document production is sought agrees to voluntarily appear or produce documents.

(b) Examination on subpoena. An attorney for a party in interest seeking to compel an examination or production of documents under Bankruptcy Rule 2004 may serve Local Form *Subpoena for Rule 2004 Examination*; a motion is not required. A self-represented party seeking to compel an examination or production of documents must file an application for an order compelling discovery.

(c) Date and place of examination. A subpoena issued under subdivision (b) must set the examination or document production not earlier than 14 days after service of the subpoena. The examination or document production must take place at the location set by the party issuing the subpoena, provided that the location complies with Federal Rule 45(c). The parties may agree to modify these requirements.

(d) Quashing or modifying subpoena. On motion of the examinee or a party in interest, the court may quash or modify a subpoena issued under subdivision (b). The filing of the motion prior to the date set for examination or document production stays the subpoena until the court rules on the motion.

(e) Compelling attendance and production of documents. If the examinee fails to comply with a subpoena issued under subdivision (b) and fails to file a motion under subdivision (d), the party issuing the subpoena may file a motion for an order directing an examination or document production under Bankruptcy Rule 2004.

2015 Comment

An attorney may serve a Bankruptcy Rule 2004 subpoena without a court order.

Subdivision (c) provides that the location set by the issuer of the subpoena will not be subject to challenge if the location is within the geographical limits specified in Federal Rule 45(c).

Subdivision (d) clarifies that while a motion to quash or modify a subpoena is pending, the movant does not need to comply with the subpoena.

Local Bankruptcy Rule 9016-1 addresses other types of subpoenas.

D.N.J. LBR 2014-1. Employment of Professional Persons

(a) General requirements. An applicant seeking approval of employment of a professional person must file and serve Local Forms *Application for Retention of Professional*, *Certification of Professional in Support of Application for Retention of Professional*, and *Order Authorizing Retention* on the debtor, the trustee, secured creditors, official committees, and parties requesting notice of all proceedings

(b) Objection. If an application seeking approval of the employment of a professional person is filed within 21 days after the filing of the petition, an objection to the application must be filed and served within 14 days after the filing of the application. After the initial 21 day period, an objection must be filed and served within 7 days after the filing of the application. The court may conduct a hearing on the objection.

2015 Comment

Subdivision (a) is amended to add a reference to the relevant Local Forms.

Local Bankruptcy Rule 2014-2 addresses the requirements for the retention of auctioneers.

Local Bankruptcy Rule 6004-4 addresses the requirements for the retention of liquidators.

Bankruptcy Rule 6003 provides that unless necessary to avoid harm, the court will not grant an application under Bankruptcy Rule 2014 within the first 21 days of a case. The 14 day objection period in subdivision (b) balances Rule 6003's aim of alleviating "some of the time pressures present at the start of a case" with a professional person's interest in obtaining a prompt determination on the employment application.

D.N.J. LBR 2014-2. Employment of an Auctioneer

(a) Additional requirements for auctioneers. An application for employment of an auctioneer must contain, in addition to the requirements under Bankruptcy Rule 2014 and Local Bankruptcy Rule 2014-1, the following information:

- (1) the applicant's qualifications and prior experience with the liquidation or sale of similar property;
- (2) a description of the property to be sold and its location;
- (3) the proposed method of calculation, including rates and formulas, of the applicant's compensation;
- (4) an estimate of all costs and expenses, including labor, security, advertising, delivery, mailing, and insurance, to be reimbursed to the applicant from the sale proceeds;
- (5) whether the auctioneer or its principals have been convicted of a criminal offense; and
- (6) proof of a surety bond in favor of such party as the court may direct and in an amount at least equal to the estimated gross proceeds of sale, or proof of an adequate blanket bond. The bond must be conditioned upon the faithful and prompt performance of the auctioneer's duties; an accounting for all monies and property that may come into the auctioneer's possession, control, or custody; and compliance with rules, orders, and judgments of the court. The auctioneer must certify that the bond is presently in effect, and that it will remain so through the date of turnover of the auction proceeds.

(b) Waiver of fee application requirement. An auctioneer may apply for a waiver of the requirements of Local Bankruptcy Rule 2016-1, unless the actual compensation and expenses sought exceed the estimate in the application for employment.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 2014-1(c).

D.N.J. LBR 2014-3. Alternative Procedure for a Flat Fee Professional Person in a Chapter 13 Case

In a chapter 13 case, the court may authorize the retention of a professional person on a flat fee basis and waive the requirements of Local Bankruptcy Rule 2016-1 if the fee does not exceed \$1,000 and the retention order provides that payment may be made only on satisfactory completion of services.

2015 Comment

This Rule is new. A fee application is no longer required in certain chapter 13 flat fee cases.

D.N.J. LBR 2016-1. Application for Compensation and Reimbursement of Expenses

(a) Compensation on an hourly rate basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

(1) for an application for compensation under \$10,000:

(A) the date and docket number of the applicant's order of retention or authorization;

(B) the date and docket number of any administrative fee order providing for interim compensation;

(C) a description of services rendered, by date and person;

(D) the time spent in 1/10th of an hour increments by each person, with applicable time sheets attached;

(E) the billing rate for each person who rendered services;

(F) the total time spent by each person who rendered services;

(G) a list of actual expenses summarized by category; and

(H) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity.

(2) for an application for compensation of \$10,000 or more:

(A) Local Form *Attorney Fee Application Cover Sheet*;

(B) a description of services rendered, by date and person;

(C) the time in 1/10th of an hour increments spent by each person, with applicable time sheets attached;

(D) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity.

(b) Compensation on a contingent fee basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

- (1) the date and docket number of the applicant's order of retention or authorization;
- (2) a list of actual expenses summarized by category;
- (3) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity; and
- (4) an explanation of the calculation of the fee and expense request.

(c) Compensation on a commission basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

(1) General requirements.

- (A) the date and docket number of the applicant's order of retention or authorization;
- (B) a list of actual expenses summarized by category;
- (C) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity; and
- (D) an explanation of the calculation of the fee and expense request.

(2) Exemption for certain real estate brokers. A real estate broker who is retained under Local Bankruptcy Rule 2014-1 and whose fees and expenses are approved in an order authorizing the sale of real property and the payment of certain professional persons at closing under Local Bankruptcy Rule 6004-1(b) is exempt from this Rule.

(d) Compensation on a flat fee basis. The application must contain:

- (1) the date and docket number of the applicant's order of retention or authorization; and
- (2) a statement indicating that the purpose for which the applicant was retained has been fulfilled.

(e) Other compensation arrangements. In any other circumstances, the statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

(1) a narrative explaining the grounds on which the applicant seeks allowance of fees and expenses; and

(2) to the extent applicable, the items required in an application of an hourly rate applicant under subdivision (a) or a contingent fee applicant under subdivision (b).

(f) Request for reimbursement of expenses of a committee member. An official committee member may submit a list of actual expenses summarized by category.

2015 Comment

This Rule has been significantly revised to accommodate both the electronic filing process and the variety of compensation arrangements in bankruptcy proceedings. The Rule now allows for payment of both flat fee professionals and real estate brokers retained on a commission basis without the need for a full fee application.

The required narrative assists the court in its review of fee applications consistent with the precedent established in In re Busy Beaver Building Centers, Inc., 19 F.3d 833 (3d Cir. 1994) and Zolfo Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253 (3d Cir. 1995).

The procedure for compensating auctioneers is now found in Local Bankruptcy Rule 2014-2.

D.N.J. LBR 2016-2. Application for Compensation of an Auctioneer

If the court has under Local Bankruptcy Rule 2014-2(b) granted a waiver of the fee application requirement, the auctioneer must file Local Form *Notice of Proposed Auctioneer Compensation* not later than 21 days before payment of compensation. If an objection is filed, the court may require the applicant to file an application for compensation and reimbursement of expenses under Local Bankruptcy Rule 2016-1 or may schedule a hearing.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 2016-1(g).

D.N.J. LBR 2016-3. Application for Interim Compensation and Reimbursement of Expenses in a Chapter 11 Case; Monthly Fee Statement

(a) Motion for authority. A debtor seeking authorization for allowance of compensation of professional persons on a monthly basis must file a motion for an administrative fee order. The debtor must serve a copy of the order on all parties served with the motion; all affected professional persons; and all parties listed in subdivision (b)(1).

(b) Monthly fee statement.

(1) Not later than the 25th day of the month following the month for which compensation is sought, a professional person seeking compensation under an administrative fee order must file and serve, by electronic transmission, hand delivery, or overnight delivery, or by any means directed by the court, a monthly fee and expense statement on the following parties:

(A) the officer designated by the debtor as responsible for such matters;

(B) the debtor;

(C) any official committee;

(D) the United States trustee;

(E) any secured creditor;

(F) any post-petition lender;

(G) any party requesting notice of all proceedings; and

(H) any other party designated by the court.

(2) A monthly fee statement must comply with Local Bankruptcy Rule 2016-1(a).

(c) Objection. An objection to a monthly fee statement must be filed and served on the professional person and the parties listed in subdivision (b)(1) not later than 14 days after service of the statement. The objection must set forth the nature of the objection and the amount of fees and expenses at issue. Grounds for objection include: (i) the debtor's failure to timely file monthly operation reports; and (ii) the debtor's failure to remain current with administrative expenses and fees under 28 U.S.C. § 1930.

(d) Payment.

(1) On the expiration of the objection deadline under subdivision (c), a professional person may file and serve on the parties listed in subdivision (b)(1) Local Form

Certification of No Objection or Certification of Partial Objection, and then receive 80% of the fees and 100% of the expenses not subject to an objection. The professional person may seek authorization as part of the next interim or final fee application to receive the remaining 20% of fees not subject to an objection.

(2) If the parties resolve an objection and if the professional person files and serves on the parties listed in subdivision (b)(1) a statement indicating that the objection is withdrawn and describing the terms of the resolution, the debtor may pay in accordance with subdivision (d)(1) that portion of the monthly fee statement which is no longer subject to an objection.

(3) If the parties are unable to reach a resolution of the objection not later than 14 days after the deadline for filing an objection under subdivision (c), the professional person may either (i) file a response to the objection together with a request for payment of the fees and expenses to which the objection applies; or (ii) forgo payment of those fees and expenses until the next interim or final fee application or another date directed by the court.

(e) Fee application.

(1) A professional person who has received monthly payments under an administrative fee order must, at four month intervals or such other intervals directed by the court, file and serve on the parties listed in subdivision (b)(1) an interim application under § 331 of the Code for allowance of the compensation and reimbursement of the expenses sought in the monthly statements issued during the applicable period.

(2) The interim fee application must include a summary of the monthly fee statements that are the subject of the request and any other information requested by the court.

2015 Comment

The text of this Rule was formerly part of the Appendix to Local Bankruptcy Rule 2016-1(h), which incorporated the Guidelines Governing Procedures for Payment of Interim Compensation and Reimbursement of Expenses to Professionals in Chapter 11 Cases.

D.N.J. LBR 2016-4. Application for Final Compensation and Reimbursement of Expenses in a Chapter 11 Case

An application for allowance of final compensation and reimbursement of expenses must be filed not later than 90 days after entry of the order confirming a chapter 11 plan.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 2016-1(i).

D.N.J. LBR 2016-5. Application for Compensation and Reimbursement of Expenses in a Chapter 13 Case

(a) Fee charged by chapter 13 debtor's attorney.

(1) A chapter 13 debtor's attorney who charges a fee of \$3,500 or less is not required to file an application for allowance of compensation. The fee covers the following legal services:

(A) meeting with the debtor to review the debtor's financial situation and discuss the bankruptcy process;

(B) preparing, filing, and serving the debtor's petition, plan, schedules, statement of financial affairs, and any necessary amendments;

(C) providing the chapter 13 trustee with all required documents including payment advices, redacted tax returns, real property valuations, and any other documents requested by the trustee;

(D) representing the debtor at the meeting of creditors under § 341(a) of the Code and all confirmation hearings;

(E) responding to routine objections to plan confirmation;

(F) filing a statement of completion of a course concerning personal financial management as required by Bankruptcy Rule 1007(b)(7);

(G) taking the steps necessary to discharge liens modified under the plan; and

(H) providing such other legal services as necessary for the administration of the case, including responding to telephone calls and correspondence.

(2) A chapter 13 debtor's attorney who charges a fee of more than \$3,500 must file and serve on the chapter 13 trustee and the debtor an application for compensation and reimbursement of expenses in accordance with Local Bankruptcy Rule 2016-1 not later than 7 days before the confirmation hearing.

(b) Supplemental fees charged by chapter 13 debtor's attorney.

(1) A chapter 13 debtor's attorney who files a supplemental fee application of \$2,000 or less must file and serve on the chapter 13 trustee and the debtor Local Forms *Certification of Debtor's Counsel Supporting Supplemental Chapter 13 Fee* and *Order Granting Supplemental Chapter 13 Fee*.

(2) A chapter 13 debtor's attorney who files a supplemental fee application of more than \$2,000 must file and serve on the chapter 13 trustee and the debtor an application for

compensation and reimbursement of expenses in accordance with Local Bankruptcy Rule 2016-1.

(3) A supplemental fee application in a chapter 13 case may not be submitted more than once every 120 days.

(c) Reimbursement of expenses. A chapter 13 debtor's attorney may file Local Form *Certification of Debtor's Counsel Supporting Supplemental Chapter 13 Fee and Order Granting Supplemental Chapter 13 Fee* to request reimbursement of expenses.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 2016-1(j).

The calculation of the fee amounts in this Rule is exclusive of the filing fee and expenses.

D.N.J. LBR 3001-1. Request for Payment of Administrative Expense

(a) Required form. An entity seeking payment of an administrative expense must file Local Form *Request for Payment of Administrative Expense*.

(b) Hearing. The court does not schedule a hearing on a request for payment of an administrative expense unless an objection is filed. To obtain immediate payment, the entity must file a motion.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3003-2.

The filing of Local Form *Request for Payment of Administrative Expense*, without a motion under subdivision (b), will result in payment in the ordinary course.

An application for compensation and reimbursement of expenses filed by a professional person must comply with Local Bankruptcy Rule 2016-1.

D.N.J. LBR 3002.1-1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

(a) Termination of notice requirements. The entry of an order granting a secured creditor relief from the automatic stay terminates the notice requirements of Bankruptcy Rule 3002.1(b) and (c).

(b) Applicability of notice requirements. If a post-petition event renders a secured creditor subject to the automatic stay and the requirements of Bankruptcy Rule 3002.1, the secured creditor must:

(1) within 30 days of the date on which the automatic stay becomes applicable, file and serve on the debtor a notice of payment changes under Bankruptcy Rule 3002.1(b) if the amount of the monthly payment changed during the period in which the automatic stay was not in effect; and

(2) within 180 days of the date on which the automatic stay becomes applicable, file and serve on the debtor a notice of fees, expenses, and charges under Bankruptcy Rule 3002.1(c) for any fees, expenses, and charges incurred during the period in which the automatic stay was not in effect.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3002.1-2.

A post-petition event under subdivision (b) includes the entry of an order reopening a case, reinstating a case, or converting a case to chapter 13.

D.N.J. LBR 3003-1. Filing Proof of Claim or Equity Security Interest in a Chapter 11 Case

(a) Time for filing. A creditor or equity security holder subject to Bankruptcy Rule 3003(c)(2) must file a proof of claim or interest not later than 90 days after the original date set for the meeting of creditors under § 341(a) of the Code.

(b) Rejection damages. A proof of claim arising from the rejection of an executory contract or unexpired lease must be filed by the later of:

(i) 30 days after rejection; or

(ii) 90 days after the original date set for the meeting of creditors under § 341(a) of the Code.

2015 Comment

An adjournment of the meeting of creditors does not affect the deadlines in this Rule.

D.N.J. LBR 3007-1. Objection to Claim in a Chapter 11, 12, or 13 Case

(a) Procedure. An objection to the allowance of a claim must be brought by motion or adversary proceeding.

(b) Time for filing. A motion or adversary proceeding objecting to a claim must be filed by the later of:

(i) 60 days after the entry of the order confirming the plan; or

(ii) 60 days after the claim is filed or amended.

(c) Extension. A request for an extension of the time to object to the allowance of a claim must be brought by motion filed before the expiration of the time to object.

2015 Comment

An objection to the allowance of a claim now requires a motion or complaint; a letter to the court or other document, such as an “objection,” is insufficient.

D.N.J. LBR 3011-1. Unclaimed Funds in a Chapter 7, 12, or 13 Case

(a) Deposit. A trustee must file Local Form *Notice Depositing Unclaimed Funds Pursuant to D.N.J. LBR 7067-1* to deposit unclaimed funds into the court's registry without court order.

(b) Withdrawal.

- (1) All requests for withdrawal must be brought by motion.
- (2) The motion may be brought only by:
 - (A) the original payee or its legal successor; or
 - (B) the original payee's assignee or its legal successor.
- (3) The certification in support of the motion must include the reason the funds were unclaimed.
- (4) The motion must be served on the trustee or the disbursing agent, as applicable. In a closed case, the motion must be served on the United States trustee.

2015 Comment

Section 2041 of title 28 governs deposit of funds in pending or adjudicated cases, and section 2042 governs withdrawal of funds deposited in court.

This Rule applies only to unclaimed distributions deposited into court by a trustee under § 347(a) of the Code. All other funds deposited into court are governed by Local Bankruptcy Rule 7067-1.

In a closed case, the chief bankruptcy judge will hear the motion for withdrawal.

D.N.J. LBR 3015-1. Filing and Service of a Chapter 13 Plan and Motions

(a) Required form. A chapter 13 debtor must file Local Form *Chapter 13 Plan and Motions*.

(b) Motions permitted in plan. The only motions that may be included in a *Chapter 13 Plan* are: (i) a motion to avoid a judicial lien under § 522(f) of the Code; and (ii) a motion to avoid a lien and reclassify the related claim in whole or in part.

(c) Service. If a plan includes a motion, the debtor must serve by first class mail each affected lienholder with Local Forms *Chapter 13 Plan and Motions* and *Chapter 13 Plan Transmittal Letter*. The debtor must serve each affected lienholder not less than 28 days before the confirmation hearing, and file Local Form *Certification of Service* on the same day.

2015 Comment

The 21 day time period in former subdivision (b) was changed to 28 days as required under Bankruptcy Rule 2002(b). The phrase “potentially affected creditor” was changed to “each affected lienholder” to clarify to whom notice of the plan and *Chapter 13 Plan Transmittal Letter* must be provided.

Service by first class mail as required by subdivision (c) complies with the service requirements of Bankruptcy Rule 9014.

This Rule applies to both the original chapter 13 plan and any modification.

D.N.J. LBR 3015-2. Modified Chapter 13 Plan

(a) Hearing. The filing of a modified chapter 13 plan does not change the date of any previously scheduled confirmation hearing unless an adjournment is granted.

(b) Service. The debtor must serve by first class mail each affected lienholder with the entire modified plan and file Local Form *Certification of Service* on the same day.

2015 Comment

Notice of the hearing on the modified plan will be provided in accordance with Bankruptcy Rule 2002(b).

D.N.J. LBR 3015-3. Objection to Confirmation of a Chapter 13 Plan

An objection to chapter 13 confirmation must be filed and served not later than 7 days before the hearing date set in the *Notice of Hearing on Confirmation of Plan* or *Notice of Modification of Chapter 13 Plan*. An objecting party must appear at the confirmation hearing.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3015-6(b). The Rule eliminates the provision in the former Rule that allowed the filing of a proof of claim to serve as an objection to confirmation.

D.N.J. LBR 3015-4. Appearance at a Chapter 13 Confirmation Hearing

The debtor's attorney or a self-represented debtor must appear at any chapter 13 confirmation hearing unless, before the hearing, the chapter 13 trustee has recommended confirmation of the plan.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3015-3. It standardizes the practice of excusing an appearance when, before the hearing, the chapter 13 trustee recommends confirmation. A chapter 13 trustee does not recommend confirmation if a filed objection remains unresolved.

D.N.J. LBR 3016-1. Modification of a Chapter 11 Plan or Disclosure Statement

If a chapter 11 plan proponent files a modified plan or disclosure statement, the entire modified document must be filed. The title must use a numerical designation such as “First Modified Plan” or “Second Modified Plan.”

2015 Comment

The following Local Forms are available: *Chapter11 Plan*; *Chapter 11 Small Business Debtor’s Combined Plan of Reorganization [or Liquidation] and Disclosure Statement*; and *Individual Debtor’s Chapter 11 Combined Plan of Reorganization [or Liquidation] and Disclosure Statement*.

D.N.J. LBR 3018-1. Acceptance or Rejection of a Plan in a Chapter 11 Case

(a) Return of ballots. Ballots must be sent to the attorney for the chapter 11 plan proponent or to an entity authorized by the court not later than 7 days before the confirmation hearing.

(b) Certification of balloting. The ballot recipient must file Local Form *Certification of Balloting* not later than 3 days before the confirmation hearing. A copy of the *Certification of Balloting* must be served on the debtor, trustee, United States trustee, and any official committee.

(c) Retention of ballots. The ballot recipient must retain the ballots for two years from the closing of the case.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3018-2. The Rule now sets a deadline for balloting and introduces a new Local Form *Certification of Balloting*.

D.N.J. LBR 3020-1. Chapter 11 Plan Effective Date

The effective date of a chapter 11 plan is 30 days after entry of the order confirming the plan unless the plan or confirmation order provides otherwise.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 3016-1(b). The default effective date was changed from “when the order of confirmation becomes final” to “30 days after entry of the order confirming the plan” to provide a definitive date.

D.N.J. LBR 3021-1. Chapter 11 Plan Distributions

(a) Disbursing agent. A chapter 11 plan providing for distribution of property must designate a disbursing agent and state the terms of any compensation to the disbursing agent.

(b) Deposit of funds. The disbursing agent must deposit funds in a segregated account. Distributions from the account must indicate the source of the funds.

(c) Funds held for more than 30 days. If the chapter 11 plan requires the disbursing agent to maintain funds for more than 30 days, the funds must be held in an interest-bearing account or certificate for the benefit of creditors and interest holders.

(d) Report of Distributions. Within 14 days after each distribution, and until the case is closed, the disbursing agent must file and serve on the debtor, the chapter 11 plan proponent, and any official committee Local Form *Report of Distributions Under Confirmed Chapter 11 Plan*.

(e) Unclaimed distributions. Unclaimed security, money, or other property must be returned to the debtor or the entity acquiring the assets of the debtor under the chapter 11 plan within 180 days from the date of distribution unless the plan provides otherwise.

(f) Chapter 11 individual debtor. A debtor who is an individual must file Local Form *Chapter 11 Individual Debtor's Certification of Completion of Plan Payments* after final distribution.

2015 Comment

Subdivision (a) has been amended to require that a chapter 11 plan providing for distribution of property must designate a disbursing agent.

Subdivision (b) has been amended to allow for distributions by means other than check, such as electronic transfer. Any check must identify the case name and the disbursing agent's name.

Subdivision (e) supplements § 347(b) of the Code, and in the absence of a time period set forth in a plan, provides a deadline for return of unclaimed security, money, or other property.

Subdivision (f) supplements § 1141(d)(5) of the Code, which provides that in a case in which the debtor is an individual the court does not grant a discharge until the debtor has completed all payments under the plan.

D.N.J. LBR 3022-1. Closing a Chapter 11 Case

(a) Closing case. The court will close a chapter 11 case 180 days after entry of the order confirming the plan.

(b) Extension. On motion of a party in interest filed before the case is closed, the court may extend the time for closing the case.

2015 Comment

The changes to this Rule are stylistic.

D.N.J. LBR 4001-1. Relief From Automatic Stay

(a) General requirements.

(1) A party moving for relief from the automatic stay must file a statement of amount due that includes, as applicable:

- (A) unpaid principal;
- (B) accrued interest from a specific date to a specific date;
- (C) unearned interest;
- (D) per diem interest;
- (E) late fees from a specific date to a specific date;
- (F) attorney's fees;
- (G) advances for taxes and insurance;
- (H) total post-petition arrearages;
- (I) any other fees and charges; and
- (J) date of last payment.

The movant must file Local Form *Certification Re: Calculation of Amount Due* as the statement if the amount claimed due is secured by a mortgage on real property owned by the debtor.

(2) The movant must file a certification that includes the following supporting exhibits, as applicable:

- (A) note;
- (B) bond;
- (C) mortgage bearing the stamped date of recordation;
- (D) security agreement;
- (E) financing statement bearing the stamped date of filing;
- (F) assignment; and

(G) appraisal.

(3) When the movant alleges that the debtor has failed to make a post-petition mortgage or vehicle payment, the party must file either Local Form *Certification Re: Post-Petition Payment History (Note and Mortgage)* or Local Form *Certification of Secured Creditor Regarding Post Petition Payment History (Vehicle Loan/Lease)*.

(b) Opposition in a chapter 13 case.

(1) To oppose a motion for relief from the automatic stay, a chapter 13 debtor must file and serve on the movant and the chapter 13 trustee Local Form *Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default* not later than 7 days before the hearing date.

(2) To oppose a *Creditor's Certification of Default*, the debtor must file and serve on the movant and the chapter 13 trustee Local Form *Chapter 13 Debtor's Certification in Opposition to Creditor's Motion or Certification of Default* not later than 14 days after the filing of the certification of default.

(c) Effect of failure to oppose an adjournment request. A movant's failure to oppose a request for an adjournment of a hearing on a motion for relief from the automatic stay constitutes consent to the adjournment under § 362(e) of the Code.

2015 Comment

The Rule eliminates the provision stating that court appearances are not required for uncontested motions relating to the automatic stay because Local Bankruptcy Rule 9013-3(d) provides that the court decides all matters on the papers unless opposition is filed.

Local Bankruptcy Rule 9013-2 addresses consent orders in lieu of a motion for stay relief in chapter 11 cases where no committee has been appointed.

D.N.J. LBR 4001-2. Monthly Statements, Payment Coupons, and Related Notices

A secured creditor or lessor does not violate the automatic stay imposed by § 362 of the Code or the discharge injunction imposed by § 524 of the Code when it sends any of the following documents to the debtor:

- (1) a regular monthly statement or payment coupon;
- (2) a reminder statement which is informational only, and which does not demand payment;
- (3) a notice regarding the status of the escrow account, including a notice regarding calculation of a new monthly payment based on changes in property taxes or insurance premiums; or
- (4) a notice regarding an adjustment to a variable rate monthly mortgage payment resulting from a change in the interest rate.

2014 Comment

This Rule was formerly Local Bankruptcy Rule 4001-3(a). It has been amended to include lessors.

D.N.J. LBR 4001-3. Use of Cash Collateral; Obtaining Credit

(a) Motion for use of cash collateral. A motion for use of cash collateral must:

- (1) include a detailed 4 week cash flow budget for a motion for interim use of cash collateral and a detailed 12 week budget for a motion for final use of cash collateral; and
- (2) summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:
 - (A) the amount of cash collateral sought to be used;
 - (B) the adequate protection to be provided for the use of cash collateral; and
 - (C) any of the provisions in subdivision (c).

(b) Motion to obtain credit. A motion for authority to obtain credit must:

- (1) include the following items:
 - (A) a description of the efforts to obtain credit;
 - (B) the facts demonstrating that the movant has obtained the best available terms for the proposed credit;
 - (C) a detailed budget supporting the proposed credit; and
 - (D) the facts demonstrating that the extension of credit is made in good faith;
- (2) summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:
 - (A) the amount of credit sought, including any committed amount, and any borrowing base formula and the estimated availability under the formula;
 - (B) material conditions to closing;
 - (C) pricing and economic terms, including fees and the treatment of costs and expenses of the lender, any agent for the lender, and their respective professionals;
 - (D) the application of credit to pay pre-petition debt or that otherwise has the effect of converting pre-petition debt to post-petition debt, *i.e.*, a rollup;
 - (E) the repayment of post-petition credit in connection with a plan;

(F) the waiver of the right to incur liens that prime or that are *pari passu* with liens granted under § 364 of the Code; and

(G) any of the provisions in subdivision (c).

(c) Additional provisions. A motion for use of cash collateral or to obtain credit must summarize the following provisions, if applicable, and identify the location of each in any relevant document and in the proposed order:

(1) the effect of the relief sought on existing liens;

(2) elevation of pre-petition debt to administrative expense or super-priority status or the grant of a lien on post-petition assets to secure pre-petition debt;

(3) termination or default provision, including any cross-default provision or provision that the use of cash collateral or credit will cease on:

(A) the filing of a challenge to the lender's pre-petition lien or claim;

(B) the entry of an order granting relief from the automatic stay;

(C) the filing of a motion for the appointment of a trustee or examiner;

(D) the entry of an order granting a change of venue;

(E) a management change; or

(F) the departure of any identified employee;

(4) establishment of a deadline or a requirement for:

(A) the sale of property of the estate or of a non-debtor affiliate; or

(B) the filing of a plan;

(5) limitation of the court's authority, or enhancement or restriction of the rights, powers, or duties of a trustee, examiner, debtor, or committee appointed under the Bankruptcy Code;

(6) limitation or waiver of rights under § 506(c) of the Code;

(7) agreement binding the debtor or other parties in interest with respect to the validity, perfection, or amount of the lender's pre-petition claim, or the waiver of claims against the lender;

(8) grant of a lien on causes of action arising under §§ 544, 547, 548, or 549 of the Code;

- (9) carve-outs from liens or super-priorities;
- (10) change of control;
- (11) cross-collateralization;
- (12) funding of a non-debtor affiliate with cash collateral or credit proceeds and the approximate amount of such funding; and
- (13) in related debtor cases, a term that affects joint liability of debtors or the allocation of liability among estates.

(d) Modifications. A proposed order allowing use of cash collateral or authority to obtain credit may permit the parties to enter into waivers or consents with respect to the use of cash collateral or the credit agreement, or amendments thereto, without the need for further court approval provided that:

- (1) the modification is not material;
- (2) notice of the proposed modification is filed with the court; and
- (3) notice of the proposed modification is provided in advance to counsel for any official committee, any party requesting notice of all proceedings, and the United States trustee.

2015 Comment

This Rule was formerly part of the Appendix to Local Rule 4001-4, which is deleted.

D.N.J. LBR 5005-1. Filing and Service of a Document

(a) Mandatory electronic filing. A document submitted by an attorney who regularly practices before the court must be filed electronically. An attorney regularly practices before the court if the attorney files 10 or more documents in a 12 month period.

(b) Case Management/Electronic Case Filing System.

- (1) By accepting a login and password from the court, an individual becomes a participant in CM/ECF.
- (2) A participant must file all related documents under a single docket entry.
- (3) Signatures.
 - (A) The filing of a document in CM/ECF constitutes the participant's signature for purposes of Bankruptcy Rule 9011.
 - (B) An electronic signature must be preceded by "/s/", *e.g.*, "/s/Jane Doe."
 - (C) A participant must retain a document bearing the original signature of a third party for 7 years after the closing of the case or proceeding. On request of the court or other party, a participant must provide the document bearing the original signature.

(c) Service of a document by non-electronic means.

- (1) The following documents must be served by non-electronic means:
 - (A) a complaint as required under Bankruptcy Rule 7004;
 - (B) a document initiating a contested matter as required under Bankruptcy Rule 9014, which includes all motions; and
 - (C) any other document that must be served pursuant to Bankruptcy Rule 7004 under these Rules; and
- (2) The following parties must be served by non-electronic means:
 - (A) a non-participant; or
 - (B) a state or federal governmental office or agency, other than the United States trustee.

(d) Service of a document by electronic means.

(1) Except for service of the documents in subdivision (c)(1), a participant consents to service by electronic means and waives the right to service by non-electronic means,

(2) The court's issuance of a Notice of Electronic Filing constitutes service on a participant under Federal Rule 5(b)(2)(E).

2015 Comment

This Rule is amended to delete provisions that have become outdated since the adoption of electronic filing in 2001. Also, certain technical requirements have been moved to the *CM/ECF User's Guide* available on the court's website.

Subdivision (b)(2) provides that related documents must be filed under a single docket entry. For example, a notice of motion should be filed as the main document, and any certification in support, memorandum of law, certification of service, and proposed order should be filed as attachments.

Subdivision (c) identifies the types of documents and parties that must be served in the manner required for service of a summons and complaint by Bankruptcy Rule 7004. Subdivision (c)(1)(B) clarifies that electronic service of a motion through the Notice of Electronic Filing is not proper service. All motions are contested matters, regardless of whether opposition is filed; therefore, the initiating pleading must be served in accordance with Bankruptcy Rule 9014(b). A document filed after the initiating pleading, *e.g.*, an opposition or reply, may be electronically served on a participant under Federal Rule 5(b)(2)(E).

Electronic filing of a document under seal is now addressed in Local Bankruptcy Rule 9018-1.

Former Local Bankruptcy Rule 7005-1, which is deleted, is incorporated into this Rule.

D.N.J. LBR 5007-1. Requesting a Recording

A party may request that an audio file of a court proceeding be made available on the docket. The request must be made to the electronic court recording operator before the proceeding commences.

2015 Comment

This Rule is new. It is intended to make parties aware that the court has the ability to tag hearings and place an audio file of the hearing on the court's docket.

D.N.J. LBR 5011-1. Withdrawal of Reference

(a) Filing of motion. A party seeking withdrawal of the reference of a case or proceeding must file a motion with the clerk of the bankruptcy court.

(b) Service of motion. A motion to withdraw the reference of a case must be served on all creditors and parties in interest. A motion to withdraw the reference of a proceeding must be served on all parties.

(c) Transmittal to the district court. The clerk of the bankruptcy court will transmit the motion to the district court. All papers filed after the initial motion must be filed with the clerk of the district court.

2015 Comment

The Rule was amended to add service requirements.

D.N.J. LBR 5071-1. Adjournment

(a) Procedure. An adjournment request in advance of a hearing must be made by submitting Local Form *Adjournment Request* to the chamber's email address.

(b) Timing. An adjournment request in advance of a hearing must be made not later than 3 days before the hearing date.

(c) Peremptory date. If the court grants an adjournment requested less than 3 days before the hearing, the resulting date is a peremptory hearing date, so no further adjournment of that hearing will be permitted.

2015 Comment

This Rule now requires the use of Local Form *Adjournment Request* for all adjournment requests made before the scheduled hearing date. Nothing in this Rule prevents a party from appearing at a hearing to request an adjournment.

If the 3 day period under subdivision (b) falls on a weekend or federal holiday, the request must be made not later than the preceding day the court is open.

The peremptory hearing date procedure in subdivision (c) is intended to encourage parties to request adjournments at least 3 days before the scheduled hearing.

D.N.J. LBR 6004-1. Motion to Sell Property

(a) General requirements. A motion to sell property under § 363 of the Code must include:

- (1) a copy of the proposed sale agreement, or a form of agreement substantially similar to the form that will be executed in connection with the proposed sale;
- (2) a copy of the proposed order approving the sale;
- (3) the material terms of the proposed sale, including:
 - (A) a description of the property to be sold;
 - (B) the date, time, and place of sale;
 - (C) the purchase price;
 - (D) a condition of the sale;
 - (E) a deadline for the approval or closing of the sale;
 - (F) a deposit requirement and the conditions under which the deposit may be forfeited;
 - (G) a request for a tax determination under § 1146(b) of the Code;
 - (H) an identification of the entity that will retain or have access to the debtor's books and records, if the proposed sale is of substantially all of the debtor's assets;
 - (I) an identification of any executory contract or unexpired lease to be assumed and assigned under § 365 of the Code;
 - (J) a provision regarding credit bidding under § 363(k) of the Code; and
 - (K) a broker or sales agent's anticipated fee or commission; and
- (4) a request for the appointment of a consumer privacy ombudsman under § 322 of the Code, if applicable.

(b) Special provisions. The motion must identify the location of any of the following provisions in the sale agreement and proposed order:

- (1) identification of any insider to which property is being sold; description of the insider's relationship to the debtor; and description of any measures taken to ensure the fairness of the sale process and the proposed transaction;

- (2) description of the material terms of any agreement with management or key employees regarding compensation or future employment; statement as to whether the terms comply with § 503(c) of the Code; and a description of the measures taken to ensure the fairness of the sale and the agreement;
- (3) a waiver, release, or satisfaction of any claim;
- (4) an agreement to limit marketing of the property or to not solicit competing offers;
- (5) an interim agreement with the proposed purchaser;
- (6) a release of sale proceeds on or after the closing, or allocation of sale proceeds between or among sellers, without further court order;
- (7) a sale or limitation of the right to pursue avoidance claims under chapter 5 of the Code;
- (8) a limitation of the proposed purchaser's successor liability;
- (9) a provision to sell property free and clear of a leasehold interest, license, or other right; and
- (10) a provision to waive the stay of an order imposed by Bankruptcy Rule 6004(h) or 6006(d).

(c) Notice of sale. A motion to sell property must be accompanied by Local Form *Notice of Private Sale* or *Notice of Public Sale*.

2015 Comment

This Rule now incorporates a portion of the Guidelines for Sale of Estate Property in Chapter 11 cases, which were formerly in the Appendix to the Rule.

Local Bankruptcy Rule 6004-2 addresses bidding and auction procedures.

Subdivision (c) provides the procedure for a party seeking approval of a proposed sale to supply information to the court to satisfy the clerk's responsibility to send notice under Bankruptcy Rule 2002(a)(2).

D.N.J. LBR 6004-2. Bidding and Auction Procedures for Sale of Property

(a) Motion. An entity requesting approval of bidding and auction procedures for a sale of property under § 363 of the Code must file a motion. The entity may include the request in a motion to sell property under Local Bankruptcy Rule 6004-1 or file a separate motion.

(b) Material provisions. The motion must identify the following material provisions:

- (1) a provision governing a bidder's qualifications, including an obligation to:
 - (A) deliver financial information by a stated deadline to the movant and other key parties;
 - (B) demonstrate a bidder's financial ability to consummate a sale;
 - (C) maintain the confidentiality of information obtained from the debtor or other parties or execute a non-disclosure agreement; or
 - (D) make a non-binding expression of interest or execute a binding agreement.
- (2) a provision governing a bid's qualifications, including:
 - (A) a requirement regarding a deposit, including the amount and the conditions under which the deposit may be refundable;
 - (B) a deadline for submitting a bid or for modifying a bid not deemed a qualifying bid; or
 - (C) a requirement regarding the form of a bid, including whether:
 - (i) a bidder must mark its bid against a stalking horse agreement or a template of the movant's preferred sale terms;
 - (ii) a bidder may bid for a portion of the assets; or
 - (iii) a bidder must leave its bid open for a specified period.
- (3) a proposed form of stalking horse bidder protection, including:
 - (A) the amount of an initial overbid and any successive bidding increments;
 - (B) a no-shop, no-solicitation, or other limitation on the movant's ability or right to solicit higher or better offers;
 - (C) an agreement to seek an order authorizing break-up or topping fees and reimbursement of expenses, and the terms and conditions of payment; or

(D) a requirement that the stalking horse bidder receive a bidding credit equal to the amount of the break-up fee, topping fee, or reimbursement of expenses, or a requirement that the stalking horse bidder, upon submitting a higher or better bid, is deemed to have waived the break-up fee, topping fee, or reimbursement of expenses.

(4) a provision that would authorize the movant to modify any bidding or auction procedures without court order.

(5) a provision that would authorize the movant to accept and close on an alternative qualified bid if the successful bidder fails to close the transaction.

(c) Order. A proposed order approving bidding and auction procedures must provide:

(1) the date, time, and place at which the auction will be conducted, and the method for providing notice to parties of these terms and any changes;

(2) that each participating bidder will be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the sale;

(3) that the auction will be conducted openly and that all parties in interest will be permitted to attend;

(4) that bidding at the auction will be documented, recorded, or videotaped;

(5) the date on which the court will consider whether to confirm the results of the auction and whether to approve the sale.

2015 Comment

This Rule was formerly part of the Appendix to Local Bankruptcy Rule 6004-1(c), which contained the Guidelines for Sale of Estate Property in chapter 11 cases. This Rule addresses only requests for approval of bidding and auction procedures for a sale of property. The information and disclosures that must be included in a motion to sell property are now addressed in revised Local Bankruptcy Rule 6004-1.

D.N.J. LBR 6004-3. Public Auction

(a) Advertisement. Any advertisement regarding a public auction of property under § 363 of the Code must specify all terms and conditions of the auction.

(b) Announcement of terms. The terms and conditions of the auction must be announced before the start of the auction.

(c) Alternative bidder. If the highest bidder fails to pay the balance of the bid price, the sale may proceed with the next highest bidder.

(d) Report. An auctioneer report must be filed not later than 14 days after the conclusion of bidding.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 6005-1. The Rule now permits conclusion of the sale to the next highest bidder from the public auction if the highest bidder defaults. The deadline for filing an auctioneer report formerly in Local Bankruptcy Rule 2014-1 has been shortened to 14 days after the auction.

The portion of the former Local Bankruptcy Rule 6004-1(a), which required the trustee, debtor, or authorized representative to attend the auction, has been deleted because that fiduciary duty arises independent of the Rule.

D.N.J. LBR 6004-4. Liquidator

(a) Motion. A motion to sell property under § 363 of the Code by use of a liquidator must include:

- (1) the information required of an auctioneer under Local Bankruptcy Rule 2014-2;
- (2) a description of any state and local laws and regulations applicable to the sale and the liquidator's proposal for compliance;
- (3) a description of the effect of the sale on any leasehold agreement; and
- (4) a description of all applicable agreements between and among the liquidator and any affiliate, the debtor, the trustee, and others, including agreements that provide for the following:
 - (A) financing;
 - (B) acquisition of an interest in estate property; or
 - (C) indemnification or release of claims;

(b) Report. The liquidator must file a report not later than 14 days after the conclusion of the sale.

2015 Comment

This Rule is new. It imposes the disclosure and reporting requirements for auctioneers on liquidators.

D.N.J. LBR 6004-5. Payment of Professional Persons for Services Relating to Use, Sale, or Lease of Property

A motion for the use, sale, or lease of property may include a request to pay a commission or fee at closing to a professional person retained to provide services relating to the use, sale, or lease. The motion, Local Form *Notice of Proposed Private Sale*, and proposed order must: (i) identify the professional; (ii) describe the services rendered; and (iii) state the amount to be paid.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 6004-1(b).

The Rule was expanded to permit, under any chapter, the payment at closing of the commission or fees of a retained professional person under the conditions provided.

D.N.J. LBR 6007-1. Abandonment

A trustee or debtor seeking to abandon property under § 554 of the Code must file Local Form *Notice of Proposed Abandonment*. The clerk will send notice of the proposed abandonment.

2015 Comment

The changes to this Rule are stylistic.

D.N.J. LBR 7003-1. Commencement of Adversary Proceeding

A complaint filed by non-electronic means must be accompanied by a completed adversary proceeding cover sheet. A complaint filed electronically does not require a cover sheet.

2015 Comment

This Rule incorporates former Local Bankruptcy Rule 7001-1, which has been deleted.

The adversary proceeding cover sheet should conform to Director's Procedural Form B104.

D.N.J. LBR 7015-1. Amended Pleading

(a) Proposed amended pleading. A party seeking leave to file an amended pleading must attach to the motion (i) a copy of the proposed amended pleading; and (ii) a redlined or similar document marked with the changes to the original pleading.

(b) Filing and service. If leave is granted, the movant must file and serve the amended pleading.

2015 Comment

This Rule is new. It is derived from Local Civil Rule 7.1(f). Subdivision (a)(ii) imposes the additional requirement that the movant include a document comparing the proposed amended pleading to the original.

D.N.J. LBR 7016-1. Pretrial Procedure

(a) Duty to confer. The parties must confer on the dates to be included in Local Form *Joint Order Scheduling Pretrial Proceedings and Trial*. Based on those dates, the court will set a trial date.

(b) Appearance at pretrial conference. If the parties agree on dates and submit Local Form *Joint Order Scheduling Pretrial Proceedings and Trial* and, where required under Local Bankruptcy Rule 9019-2(a)(4), Local Form *Joint Mediation Order* not later than 3 days before the scheduled pretrial conference, they do not need to appear at the pretrial conference.

(c) Initial disclosures. The parties must exchange the initial disclosures required by Federal Rule 26(a)(1)(A) not later than 7 days before the scheduled pretrial conference. Any modification of the Federal Rule 26 disclosure requirements must be included in the joint order.

(d) Additional terms. By agreement, the parties may add terms to the joint order, including:

(i) the scope of discovery;

(ii) protocol concerning preservation, storage, and production of discoverable information, including electronically stored information; or

(iii) deadlines for joining other parties and amending the pleadings.

2015 Comment

This Rule is new. It codifies the existing practice of allowing parties to confer and submit a consensual proposed *Joint Order Scheduling Pretrial Proceedings and Trial* in lieu of appearance at a pretrial conference.

The date for the pretrial conference is set in the summons issued by the clerk when the adversary proceeding is initiated.

Subdivision (c) modifies the deadline in Federal Rule 26(a)(1)(C) for the exchange of initial disclosures to reflect the timing of events in an adversary proceeding.

Local Bankruptcy Rule 9019-2 addresses mediation procedures.

D.N.J. LBR 7026-1. Discovery Subject to a Claim of Privilege

When a party asserts a claim of privilege in response or objection to a discovery request, the party must identify the nature of the privilege claimed and indicate whether with respect to the privilege (i) any document exists, or (ii) any oral communication occurred.

2015 Comment

This Rule has been amended to delete the reference to Local Civil Rules 26.1 and 37.1.

Local Bankruptcy Rule 7016-1(c) addresses initial disclosures under Federal Rule 26(a)(1)(A).

Local Bankruptcy Rule 7037-1 addresses a motion for an order compelling disclosure or discovery.

D.N.J. LBR 7033-1. Interrogatories

(a) Format. A blank space, reasonably calculated to enable the answering party to insert the answer, must appear after each separate question or request. Each question must be answered separately in the space allowed. If the space allowed is insufficient, the answering party may insert an additional page or retype the question followed by the answer.

(b) Signature. If the person who signs the answers to interrogatories does not have personal knowledge of an answer, the person must identify the individual from whom the information was obtained or, if the source of the information is documentary, provide a full description of the document, including its location.

2015 Comment

This Rule is new. It is derived from Local Civil Rule 33.1. Subdivision (c) of Local Civil Rule 33.1 is now incorporated in Local Bankruptcy Rule 7026-1.

The answering party may request that interrogatories be provided in an electronically fillable format.

D.N.J. LBR 7036-1. Requests for Admission

A blank space, reasonably calculated to enable the answering party to insert the answer, must appear after each separate request for admission. Each request must be answered separately in the space allowed. If the space allowed is insufficient, the answering party may insert an additional page or retype the request followed by the answer.

2015 Comment

This Rule is new. It is derived from Local Civil Rule 36.1. Subsection (c) of Local Civil Rule 36.1 is now incorporated in Local Bankruptcy Rule 7026-1.

The answering party may request that requests for admission be provided in an electronically fillable format.

D.N.J. LBR 7037-1. Motion for an Order Compelling Disclosure or Discovery

(a) Certification. The certification required under Bankruptcy Rule 7037 must identify the date and means by which the movant conferred or attempted to confer with the person or party failing to make disclosure or provide discovery.

(b) Exhibit. A motion for an order compelling disclosure or discovery must include as an exhibit a copy of the pertinent portion of the deposition, interrogatory, request for admission, response, or any other document that is the subject matter of the motion.

2014 Comment

This Rule is new. It is derived from Local Civil Rule 37.1.

D.N.J. LBR 7055-1. Default; Default Judgment

(a) Entering a Default. A party requesting entry of default must file:

- (1) a request for entry of default;
- (2) a certification stating that:
 - (A) the party against whom default is sought has been properly served with the summons and complaint;
 - (B) the party has failed to plead or otherwise defend within the allowed time; and
 - (C) the party has not requested or the party has not been granted an extension of time to plead or otherwise defend; and
- (3) Local Form *Entry of Default*.

(b) Entering a Default Judgment under Federal Rule 55(b)(1). A party requesting entry of default judgment under Federal Rule 55(b)(1) must file:

- (1) a request for entry of default judgment;
- (2) a certification that includes:
 - (A) a statement regarding the defendant's military status in compliance with 50 App. U.S.C. § 521; and
 - (B) a statement that the defendant is not a minor or incompetent person, unless represented by a fiduciary who has appeared; and
- (3) Local Form *Default Judgment for a Sum Certain*.

(c) Entering a Default Judgment under Federal Rule 55(b)(2). A party applying for entry of default judgment under Federal Rule 55(b)(2) must file:

- (1) a request for entry of default judgment;
- (2) a certification that includes:
 - (A) facts supporting at least one cause of action asserted in the party's pleading;
 - (B) a statement regarding the defendant's military status in compliance with 50 App. U.S.C. § 521; and

(C) a statement that the defendant is not a minor or incompetent person, unless represented by a fiduciary who has appeared;

(3) any documentary evidence;

(4) a memorandum of law or a statement why no memorandum of law is necessary; and

(5) a proposed judgment.

(d) Proof Hearing. The court will schedule a proof hearing if necessary.

2015 Comment

The Rule has been amended to clarify that a party seeking entry of default or default judgment need file only a request, not a motion.

D.N.J. LBR 7058-1. Entering Judgment in Adversary Proceeding

(a) Order template. A party submitting a proposed judgment must use Local Form *Order Template – Adversary*.

(b) Title. The title of a proposed judgment must identify the relief sought.

(c) Revised proposed judgment. If the court’s ruling differs from a proposed judgment, the prevailing party must not later than 7 days after the court’s decision submit to the chamber’s email address and serve on all interested parties a revised proposed judgment reflecting the court’s ruling. The email must identify the parties served and the manner of service.

(d) Objection period. An objection to a judgment submitted under subdivision (c) must be submitted to the chamber’s email address and served on all interested parties not later than 7 days after submission of the judgment. The objection must include an alternative proposed judgment. The court may conduct a hearing in its discretion.

2015 Comment

This Rule is new. It includes provisions of former Local Bankruptcy Rules 9072-1 and 9072-2.

The 7 day objection period in subdivision (d) does not apply if the parties inform the court that they agree to the entry of the revised judgment.

Local Bankruptcy Rule 9013-4 addresses proposed orders.

Local Bankruptcy Rule 9021-1 addresses consent orders.

D.N.J. LBR 7065-1. Order to Show Cause

A party applying for an order requiring an adverse party to show cause why a preliminary injunction or temporary restraining order should not issue must file a verified complaint or verified counterclaim. An order to show cause will not be granted except on a showing by certification or verified pleading of sufficient reasons why emergent relief is necessary.

2015 Comment

This Rule is new. It is derived from Local Civil Rule 65.1.

Former Local Bankruptcy Rule 9075-1, which addressed emergency orders, has been deleted. Use of an order to show cause is limited to an adversary proceeding in which immediate injunctive relief is requested.

An order to show cause issued at the beginning of the action is not a substitute for a summons under Bankruptcy Rule 7004.

Local Bankruptcy Rule 9013-2 addresses an application for an order shortening time on a motion.

D.N.J. LBR 7067-1. Registry Fund

(a) Eligible funds. Registry funds maintained under 28 U.S.C. § 2041 may include:

- (1) unclaimed distributions in chapter 7, 12, or 13 cases remaining unpaid 90 days after the distribution deposited in accordance with Local Bankruptcy Rule 3011-1; and
- (2) funds held in escrow pending resolution of a dispute, as authorized by court order.

(b) Deposit of funds.

- (1) No funds may be sent to the court for deposit in the court's registry without a court order.
- (2) The party depositing or transferring funds to the court's registry must serve on the clerk the order permitting the deposit.

2015 Comment

This Rule is amended to avoid unnecessary repetition of the court's *Amended Order Regarding Deposit and Investment of Registry Fund* dated May 18, 2011.

Subdivision (b)(1) does not apply to unclaimed distributions deposited by a trustee under § 347(a) of the Code. Local Bankruptcy Rule 3011-1 addresses unclaimed distributions.

D.N.J. LBR 9001-1. Definitions

The following words and phrases used in these Local Bankruptcy Rules have the meanings indicated:

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Chamber’s email address” means the email address for the chambers of the judge before whom a case or proceeding is pending. The email address for each chambers is available on the court’s website.

“Court” means the Bankruptcy Court for the District of New Jersey.

“Local Form” means a form prescribed by the court. Local Forms are available on the court’s website.

2015 Comment

This Rule is new.

D.N.J. LBR 9004-1. General Requirements of Form

(a) Attorney; party represented. All documents must contain in the top left corner of the first page the following information:

- (1) the name, address, telephone number, and email address of the attorney of record for the filing party; and
- (2) the name of the party represented, or if a party is self-represented, the name, address, telephone number, and email address of the self-represented party.

(b) Caption. A document requiring a caption must include the chapter of the case, initials of the judge, and applicable hearing date.

2015 Comment

This Rule was formerly Local Bankruptcy Rule 9004-2.

D.N.J. LBR 9009-1. Forms

Use of the Local Forms included in these Rules is required.

2015 Comment

This Rule is new. Forms can be found on the court's website.

D.N.J. LBR 9010-1. Admission of Attorney to Practice

(a) Scope of admission. The bar of this court consists of any attorney admitted to practice before the United States District Court for the District of New Jersey.

(b) Admission *pro hac vice*

(1) Local counsel must file on behalf of an attorney seeking admission *pro hac vice* an application and Local Form *Order for Admission Pro Hac Vice* on notice to the debtor, any official committee, and the United States trustee, and make the payments required by the *Order*;

(2) The application must include a certified statement of the attorney seeking admission that discloses:

(A) each bar in which the attorney seeking admission is a member in good standing, and the year of admission;

(B) whether any disciplinary proceeding is pending against the attorney seeking admission and, if so, the jurisdiction, the nature of the alleged violation, and the likely date of disposition; and

(C) whether discipline has been imposed against the attorney seeking admission during the five year period preceding the application, and, if so, the date, the jurisdiction, the nature of the violation, and the penalty imposed.

(3) Local counsel must file Local Form *Notice of Appearance*.

(4) Only local counsel, and not the attorney admitted *pro hac vice*, is permitted to file papers, enter appearances, and receive notices and service of papers.

(5) An attorney admitted *pro hac vice* must promptly advise the court of the disposition of a pending disciplinary proceeding or the institution of a new disciplinary proceeding against the attorney.

(6) An attorney admitted *pro hac vice* is within the disciplinary jurisdiction of the court.

2015 Comment

This Rule is derived in part from Local Civil Rule 101.1(c). The Rule allows admission by application rather than motion, and allows good standing to be established by attorney certification rather than a certificate of good standing.

D.N.J. LBR 9010-2. Withdrawal of Appearance

(a) Substitution of attorney. An attorney seeking to substitute for another attorney must file Local Form *Notice of Substitution of Attorney*. Both attorneys must sign the form.

(b) Withdrawal of appearance. Unless another attorney is substituted, an attorney may not withdraw an appearance except by leave of court.

2015 Comment

This Rule is new.

Subdivision (b) is derived from Local Civil Rule 102.1.

D.N.J. LBR 9013-1. Motions: Form

(a) Required documents. A motion or cross-motion must be supported by the following documents:

- (1) a notice of motion setting forth the date, time, and place of the hearing; a request for relief; and the legal basis for the relief requested;
- (2) a certification of facts supporting the relief requested;
- (3) a memorandum of law, or a statement why a memorandum of law is unnecessary;
- (4) a proposed order; and
- (5) Local Form *Certification of Service*.

(b) Waiver of 14 day stay. A request for a waiver of the stay of an order imposed by Bankruptcy Rules 4001(a)(3), 6004(h), or 6006(d) must appear in the title of the notice of motion.

2015 Comment

Subdivision (a) has been amended to specify the documents required in support of a motion. Former Local Bankruptcy Rules 9013-2 and 9013-3 have been incorporated into this Rule.

The proposed order must comply with Local Bankruptcy Rules 9009-1 and 9013-4.

Certain former subdivisions of this Rule have been incorporated in Local Bankruptcy Rules 9013-2 through 9013-4.

D.N.J. LBR 9013-2. Motions: Filing and Service; Hearing Date

(a) Filing and service.

(1) A motion must be filed and served not later than 21 days before the hearing date.

(2) Any (i) opposition to a motion or (ii) cross-motion must be filed and served not later than 7 days before the hearing date. A cross-motion must relate to the original motion.

(3) Any (i) reply or (ii) opposition to a cross-motion must be filed and served not later than 4 days before the hearing date.

(b) Hearing date. The movant must schedule the hearing date for the motion. Hearing dates for each judge are available on the court's website.

(c) Application to shorten time. A movant seeking shortened time for hearing on a motion must file Local Forms *Application for Order Shortening Time* and *Order Shortening Time Period for Notice and Setting Hearing*.

2015 Comment

This Rule is new. It is derived from Local Bankruptcy Rule 9013-1.

As provided in Local Bankruptcy Rule 5005-1, electronic service of a motion is not proper service.

Local Bankruptcy Rule 5071-1 addresses adjournment requests.

Local Bankruptcy Rule 7065-1 addresses use of an order to show cause.

D.N.J. LBR 9013-3. Motions: Hearing

(a) Duty to confer on contested motion. If opposition to a motion is filed, the parties must confer before the hearing to determine whether the issue can be resolved.

(b) Duty to report settlement or withdrawal of motion. If the parties settle a motion, or the movant withdraws a motion, the movant must file Local Form *Status Change Form* and immediately notify chambers.

(c) Telephonic appearance. Each judge's policy regarding appearance by telephone is available on the court's website.

(d) Oral argument. All motions will be decided on the papers unless opposition is filed. Oral argument may be presented only by the movant or by a party that has filed opposition to a motion.

(e) Oral Testimony. A party may not, without prior court authorization, present oral testimony at a hearing on a motion, except for a motion under § 363(b), (c), (f), or § 364 of the Code.

2015 Comment

This Rule is new. It is derived from former Local Bankruptcy Rule 9013-1.

Subdivision (d) does not preclude a movant from appearing at a hearing on an uncontested motion. If a party does not intend to appear for oral argument on a contested motion, the party should inform chambers.

Under subdivision (e), and consistent with Local Bankruptcy Rule 9013-1(a)(2), factual evidence in support of a motion must be presented by certification.

Local Bankruptcy Rule 9021-1 addresses consent orders.

D.N.J. LBR 9013-4. Motions: Proposed Order

- (a) Separate document.** A proposed order must be a separate document.
- (b) Order template.** A party submitting a proposed order must use Local Form *Order Template*.
- (c) Title.** The title of a proposed judgment or order must identify the relief sought.
- (d) Revised proposed order.** If the court's ruling differs from a proposed order, the prevailing party must not later than 7 days after the court's decision submit to the chamber's email address and serve on all interested parties a revised order reflecting the court's ruling. The email must identify the parties served and the manner of service.
- (e) Objection period.** An objection to an order submitted under subdivision (d) must be submitted to the chamber's email address and served on all interested parties not later than 7 days after submission of the order. The objection must include an alternative proposed order. The court may conduct a hearing in its discretion.

2015 Comment

This Rule is new. It includes provisions of former Local Bankruptcy Rules 9072-1 and 9072-2.

The 7 day objection period in subdivision (e) does not apply if the parties inform the court that they agree to the entry of the revised order.

Local Bankruptcy Rule 7058-1 addresses proposed judgments in adversary proceedings.

Local Bankruptcy Rule 9021-1 addresses consent orders.

D.N.J. LBR 9013-5. Motions: First Day Matters in a Chapter 11 Case

(a) Required forms. A chapter 11 debtor requesting expedited hearing of a motion or application filed at the beginning of the case must file with the motion or application the following documents:

- (1) Local Form *Application for Expedited Consideration of First Day Matters*; and
- (2) Local Form *Order Regarding Application for Expedited Consideration of First Day Matters*.

(b) Notice to court. The debtor must, immediately after filing the documents in subdivision (a), submit to the chamber's email address a notification that the *Application for Expedited Consideration* has been filed.

(c) Notice to parties. The debtor must, immediately after filing the documents in subdivision (a), and in no event less than 24 hours before the hearing date, send by email, fax, hand delivery, or overnight mail copies of the documents in subdivision (a) and copies of the motions or applications to the following parties:

- (1) all secured creditors;
- (2) the creditors that hold the 20 largest unsecured claims;
- (3) the United States Trustee; and
- (4) all other necessary parties.

(d) Objection. An objection to relief sought under this Rule may be made at the hearing.

(e) Proposed order. A proposed order under this Rule, other than an order under § 363 of the Code approving the use of cash collateral or an order under § 364 of the Code approving post-petition financing, must provide that any party may move for modification of the order.

(f) Service of order. If the court grants relief under this Rule, the debtor must, not later than 48 hours after entry of the order and in the manner directed by the court, serve the order on the parties in subdivision (c) and any other party identified by the court.

2015 Comment

This Rule is new. It is derived from Appendix A to former Local Bankruptcy Rule 6003-1. These "first day" procedures should be used only at the beginning of a chapter 11 case for a motion or application for which expedited consideration is necessary to preserve an estate asset or maintain an ongoing business operation.

Subdivision (c) does not relieve the debtor of the service requirements in Bankruptcy Rules 9014 and 5005-1(c).

D.N.J. LBR 9016-1. Subpoena

(a) Date for compliance. A subpoena issued pursuant to Bankruptcy Rule 9016, other than a subpoena to testify at a hearing or trial, must set the date for compliance no earlier than 14 days after service of the subpoena.

(b) Effect of motion to quash or modify. A motion to quash or modify a subpoena filed before the date set for compliance stays the subpoena until the court rules on the motion.

2015 Comment

This Rule is new.

The production, inspection, or deposition must take place at the location set by the issuer of the subpoena if the location is within the geographical limits specified in Federal Rule 45(c).

Local Bankruptcy Rule 2004-1 addresses subpoenas issued under Bankruptcy Rule 2004.

D.N.J. LBR 9018-1. Motion to File a Document Under Seal

A party seeking to file a document under seal must file a motion consistent with the procedures in the court's *CM/ECF User's Guide*. The motion must include Local Form *Order Sealing Document*.

2015 Comment

This Rule is new. A self-represented party should contact the clerk's office for guidance.

If the court grants the motion, the document will be kept under seal until the case or adversary proceeding is closed, at which time the clerk will follow the procedures for the treatment of sealed documents under the judiciary's record retention policy.

If the court denies the motion, the clerk will delete the proposed sealed document.

D.N.J. LBR 9019-1. Mediation: Mediator Qualifications and Compensation

(a) Register of mediators. The clerk must establish and maintain a register of persons designated by the court to serve as mediators in the mediation program.

(b) Mediation program administrator. The chief bankruptcy judge will appoint a judge of this court to serve as the administrator of the program. The administrator will receive applications for designation to the register of mediators, maintain the register, track and compile reports on the program, and otherwise administer the program.

(c) Qualifications and training of mediators.

(1) An applicant to the mediation program must:

(A) have at least 10 years of professional experience in their field of expertise;

(B) certify that they are in good professional standing in their field of expertise;

(C) for applicants who have little or no mediation experience, participate in a mediation training program, either provided or approved by the court, and with the following components:

(i) a mediation skills course for a minimum of 20 hours, followed by

(ii) an advanced mediation skills course for a minimum of 20 hours; and

(iii) for a new mediator, observe mediations conducted by an experienced mediator, or conduct a mediation observed by an experienced mediator

(D) for applicants who have extensive mediation experience, defined as having conducted a minimum of 100 mediations, but who have little or no experience in the bankruptcy field:

(i) participate in a training program covering basic bankruptcy principles; and

(ii) if a new mediator opts to observe mediations conducted by an experienced mediator, or opts to be observed by an experienced mediator while conducting a mediation, agree to conduct a mediation, with compensation, while being observed by a new mediator, and to observe a mediation, without compensation, conducted by a new mediator;

(E) agree to take a minimum of 4 hours a year of continuing mediation training; and

(F) agree to accept at least one pro bono mediation appointment per year.

(2) An applicant may seek a waiver of the training or mediation experience requirements from the program administrator where an acceptable substitute for the required training or mediation experience is provided.

(d) Application to become a mediator. Each applicant must submit to the mediation program administrator a statement of professional qualifications, experience, training and other information demonstrating the qualifications required of a mediator.

(e) Court certification. The court in its sole and absolute discretion may grant or deny any application submitted under this Rule. If the court grants the application, the applicant's name will be added to the register to serve a three-year term, subject to removal either voluntarily or for cause, as the court may determine. At the expiration of the term, the mediator may apply to renew the appointment for another three-year term, which the court, in its sole and absolute discretion, may grant or deny.

(f) Compensation. A mediator must be compensated at a reasonable hourly rate, as agreed to in writing by the parties prior to the commencement of the mediation, and may be reimbursed for expenses, as agreed to by the parties. The register will include each mediator's customary hourly rate for mediation services. Court approval of a mediator's fees and reimbursement of expenses will be required if the bankruptcy estate is sought to be charged for any part of the mediator's compensation or reimbursement of expenses. A mediator seeking compensation from the bankruptcy estate must comply with the requirements of Local Bankruptcy Rule 2016-1. A copy of the mediator's application for compensation must be served on each party to the mediation.

(g) Costs. The parties will share equally in the costs and fees of the mediation, unless otherwise agreed or otherwise ordered by the court.

(h) Pro bono mediator. If the court determines, prior to the commencement of the mediation, that a party to a matter assigned to mediation cannot afford to pay the fees and costs of the mediator, the court may appoint a mediator who is willing to serve *pro bono* as to that party.

2015 Comment

This Rule is new.

D.N.J. LBR 9019-2. Mediation: Procedures

(a) Referral to mediation.

(1) Every adversary proceeding will be referred to mediation after the filing of the initial answer to the adversary complaint, except as provided in subdivisions (a)(2) and (3). A contested matter under Bankruptcy Rule 9014 may also be referred to mediation either by joint request of the parties, or by the court at a status conference or other hearing.

(2) An adversary proceeding will not be presumptively referred to mediation if:

(A) one or more parties is self-represented;

(B) a party seeks a temporary restraining order or preliminary injunction; or

(C) the action is initiated by the Office of the United States trustee.

An adversary proceeding identified in subdivisions (2)(A), (B) or (C) may be referred to mediation only by the request of a party, on written notice to the other parties and the court, or by the court's own motion at a status conference or other hearing.

(3) A party subject to presumptive mediation may file a motion requesting to be excused from mediation participation, or requesting a determination that the mediation should not proceed. If a party intends to raise an objection to mediation at the pretrial conference, then not later than 7 days before the pretrial conference the objector must notify the court and all parties to the adversary proceeding that an objection to mediation will be raised at the hearing.

(4) Parties who do not contest the referral of an adversary proceeding to mediation must, not later than 3 days before the scheduled pretrial conference, file:

i) Local Form *Joint Mediation Order*; and

ii) Local Form *Joint Order Scheduling Pretrial Proceedings and Trial*.

If both orders are filed, the parties do not need to appear at the pretrial conference.

(b) Selection of mediator.

(1) The parties must confer regarding the selection of a mediator. Where the parties are submitting a *Joint Mediation Order* and have agreed on a mediator, the designation of the selected mediator must be noted in the order. If the court overrules an objection to mediation then not later than 14 days after the pretrial conference the parties must submit a *Joint Mediation Order*. If the parties cannot agree on a mediator or fail to timely submit a *Joint Mediation Order*, the court will enter Local Form *Order Referring Matter to Mediation and Designating Mediator*.

(2) The parties may select, or the court may designate, an individual who is not on the court's register of mediators.

(c) Disclosure by mediator.

(1) Promptly after receiving a notice of appointment, the mediator must determine whether there is a basis for disqualification, or whether the mediator is unable to serve for any other reason. That determination should include a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorneys, and by the applicable rules pertaining to the profession of the mediator. Not later than 5 days after receiving notice of appointment, the mediator must file with the court and serve on the parties either: (1) a statement accepting the appointment and disclosing, to the best of the mediator's knowledge, all of the mediator's connections with the parties and their professionals, together with a statement that the mediator believes that there is no basis for disqualification; or (2) a notice of withdrawal.

(2) A party to the mediation who believes that the assigned mediator has a conflict of interest or other basis for disqualification must promptly bring the issue to the attention of the mediator, as applicable, and to the other parties. If the mediator does not withdraw, and the movant is dissatisfied with the mediator's decision, the issue must be brought to the attention of the court for resolution.

(d) Mediation period. Mediation must commence not later than 60 days after the entry of an order assigning a matter to mediation. Parties may seek an extension of time to conduct the mediation by consent order or by motion.

(e) Effect of mediation on discovery. Unless otherwise ordered by the court, the assignment to mediation will stay discovery, but will not stay the initial disclosures required under Federal Rule 26(a)(1). Any party may file a motion requesting that discovery proceed during mediation or that Rule 26 disclosures be stayed.

(f) Informal mediation discussions. Following the filing of the statement accepting the appointment, the mediator will hold an organizational telephone conference. The mediator will be entitled to confer with any or all counsel and self-represented parties prior to, during, or after the commencement of the mediation session. Such discussions may include all matters that the mediator believes will be beneficial to the mediation process or the conduct of the mediation, and will be subject to the confidentiality requirements of this Rule.

(g) Mediation statement. The mediator will fix a date for the parties to exchange and serve on the mediator a brief statement of facts, applicable law, and proposals for settlement. The mediation statement should not exceed 15 pages. The mediation statement must contain:

(1) any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute significantly to settlement;

(2) the history of any prior settlement discussions, including disclosure of prior and any currently outstanding offers and demands; and

(3) an estimate of the cost and time to be expended for further discovery, pretrial motions and trial. At the discretion of the parties, each party's mediation statement may be prepared and submitted to the mediator for review without service of the statement on other parties. All documents prepared for mediation will be subject to the confidentiality requirements of this Rule. Mediation statements must not be filed with the court.

(h) Attendance at mediation session.

(1) Unless excused by the mediator or the court on a showing of good cause or hardship, or if the mediator or the court determines that it is consistent with the goals of the mediation to excuse a particular person from attending, the following persons must attend the mediation session personally:

(A) each party that is a natural person;

(B) if the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who either has full authority to negotiate and settle the matter on behalf of the party, or has authority to recommend a settlement and has prompt access to any board or governmental body whose approval is required to settle the matter;

(C) the attorney who has primary responsibility for each party's case, and

(D) other interested parties, such as insurers or indemnitors, whose presence is necessary or beneficial to reaching a full resolution of the matter.

(i) Failure to Attend. Willful failure to attend any mediation session may be reported to the court by the mediator or any other party, and may result in the court imposing sanctions.

(j) Confidentiality of mediation proceedings.

(1) Except as provided in subdivision (j)(2), unless all of the participants in a mediation, including the mediator, agree otherwise in writing, or to the extent disclosure is permitted by this Rule or applicable statute, no party, mediator, or other participant in a mediation may disclose any mediation communication (including any document, report or other writing presented or used solely in connection with the mediation) to anyone who was not a participant in the mediation.

(2) A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law, or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm.

(k) Attorney conduct. A lawyer representing a client at a mediation session is governed by the Rules of Professional Conduct.

(l) Evidentiary privilege. A mediation communication, whether written or verbal, is not subject to discovery or admissible in evidence in any subsequent proceeding. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

(m) Preservation of privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the communication.

(n) Procedure following mediation. Not later than 7 days after the mediator determines that the mediation is concluded, the mediator must report to the court in writing whether the entire matter or any severable claim has been settled. If an agreement between the parties is reached, the agreement must be set forth in a written document that is signed by all of the parties or their legal representatives. If the matter is not resolved, a pretrial conference will be scheduled within 30 days. If a *Joint Order Scheduling Pretrial Proceedings and Trial* was filed in accordance with subdivision (a)(4) of this Rule, the parties do not need to appear at the pretrial conference.

2015 Comment

This Rule is new.

D.N.J. LBR 9021-1. Consent Order

(a) Consent order resolving a pending adversary proceeding or contested matter. A proposed consent order resolving a pending adversary proceeding or contested matter must be submitted to the chamber's email address. The email must identify the parties served, their relationship to the proceeding or matter, and the manner of service. The email must include as an attachment a completed Local Form *Certificate of Consent Regarding Consent Order*. The *Certificate of Consent* must be filed on the docket prior to submission of the consent order to chambers.

(b) Consent order in lieu of motion. A proposed consent order submitted in lieu of a motion may be presented by application. The application must include the facts and law supporting entry of the proposed consent order.

(c) Notice in a chapter 11 case. If a committee of unsecured creditors has not been appointed in a chapter 11 case, the court may enter a consent order in lieu of a motion without the written consent of the creditors holding the 20 largest unsecured claims, provided the application and proposed consent order were served on the creditors holding the 20 largest unsecured claims and on the United States trustee, and no objection was filed within 7 days of service of the application.

2015 Comment

This Rule is new. Subdivision (a) is derived from former Local Bankruptcy Rule 9072-1. Subdivisions (b) and (c) are derived from former Local Bankruptcy Rule 9013-1(j).

D.N.J. LBR 9027-1. Removal

(a) Filing of Notice of Removal. A party seeking to remove a claim or cause of action from a state or federal court to the bankruptcy court must file a notice of removal with the clerk of the bankruptcy court.

(b) Service. A notice of removal must be served under Bankruptcy Rule 7004. Not later than 7 days after service, the party filing the notice must file Local Form *Certification of Service*.

(c) Procedure after removal. Not later than 14 days after the filing of the notice of removal, the party filing the notice must file with the clerk of the bankruptcy court a copy of the docket sheet and all pleadings from the original court.

2015 Comment

This Rule was amended to provide a deadline for filing a certification of service.

D.N.J. LBR 9037-1. Privacy Protection for Filings Made with the Court

(a) General requirements.

(1) An entity seeking to redact from a filed document information set forth in Bankruptcy Rule 9037(a) must file Local Form *Application Requesting Redaction of Personal Information*. Notice of the application is not required.

(2) Not later than 7 days after entry of Local Form *Order Directing Redaction of Personal Information*, the entity that filed the original document, or such other entity as the court directs, must file a redacted document.

(b) Transcript. An entity seeking to redact from a filed transcript information set forth in Bankruptcy Rule 9037(a) must file Local Form *Notice of Intent to Request Redaction* not later than 7 days after the filing of the transcript; and file and provide to the transcriber Local Form *List of Items to be Redacted* not later than 21 days after the filing of the transcript.

2015 Comment

This Rule has been revised to streamline the procedure for protecting personal information in a filed document. On the filing of Local Form *Application Requesting Redaction of Personal Information*, the application and the document containing the personal information will be immediately restricted from public viewing until the court enters Local Form *Order Directing Redaction of Personal Information* and the entity originally filing the document or such other entity as the court directs files the redacted document.

The procedure for obtaining redaction of personal information contained in a transcript is derived from the Judicial Conference Policy on Privacy and Public Access to Electronic Case Files.

Bankruptcy Rule 9018 addresses the protection of other kinds of sensitive information.