

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

**Proposed Revised Local Rules
Redlined with Comments
for 10th Circuit Review**



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Local Bankruptcy Rules - District of New Mexico
Cite as NM LBR _____

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RULE 1001-1 **SCOPE, APPLICATION, WAIVER OF RULES, AND CONSTRUCTION**

(a) **Citation.** These rules shall be cited as “NM LBR ____ - ____.”

(b) **Scope.** Pursuant to the Administrative Order of the United States District Court, Misc. No. 84-0324, dated March 19, 1992, and D.N.M.LR-Civ. 1.6, ~~these local rules govern procedure in all bankruptcy cases and proceedings, whether heard by a bankruptcy judge or district judge in the United States District and Bankruptcy Courts of the District of New Mexico, except appeals.~~

(c) **Application.** These rules govern all actions pending on or filed after the effective date, unless the court orders otherwise.

(d) **Waiver of Rules.** These rules may be waived by a Judge to avoid injustice.

(e) **Construction.** These rules shall be construed consistently with the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code, and in such a way as to secure the just, speedy, and inexpensive determination of every case and proceeding.

(f) **Effective Date.** The effective date of these rules is , 2010. They supersede all previous local rules and orders adopting or amending local rules, and also supersede the court’s October 4, 2005, Order Directing That Payment Advices Not Be Filed with the Court but Instead Be Provided to Trustee and, upon Timely Request, to Creditors, No. MP 05-001.

Proposed [amended Rule 1001-1](#) clarifies the scope, application, construction, and effective date of these rules as well as the form of citation. The rule also provides for waiver of the local rules.

RULE 1002-1 **PETITION – CONCURRENT DISCLOSURE OF MARITAL STATUS AND NON-FILING SPOUSE**

(a) **File with Petition.** At the time of filing of a petition, an individual debtor shall file:

- (1) a certification that the debtor has no spouse, or
- (2) a ~~separate statement containing~~ **disclosing** the name **and, mailing** address, **and last four digits of the social security number (if known)** of any non-filing spouse, ~~or certifying that the debtor has no spouse.~~

When a statement pursuant to (a)(2) is filed concurrently with the filing of the petition, the clerk shall send the notice of the filing of the bankruptcy case, the meeting of creditors, and of the deadlines provided in Fed. R. Bankr. P. 4003(b), 4004(a), and 4007(c) and (d) to the non-filing spouse noted on the statement.

Note: Form NM LF 400 was created by the clerk for compliance with section (a) of this rule.

(b) Notice to Creditors of Non-filing Spouse Information. Within five days of filing a petition, an individual debtor who has a non-filing spouse shall mail the statement required by section (a)(2) of this rule to all creditors and other parties in interest. Within two days thereafter, the debtor shall file a certificate of compliance with this rule. Failure to mail the statement or to file the certificate of compliance may subject the individual debtor to sanctions, including dismissal of the case.

Note: Form NM LF 13 was created by the clerk for compliance with section (b) of this rule.

(c) Notices When Statement Not Filed with Petition. An individual debtor ~~failing who fails to file such a~~ the statement required under section (a) of this rule ~~with the petition will be required to provide notice of bankruptcy case, meeting or creditors and deadlines (the §341 notice) to the non-filing spouse, and to~~ shall

- (1) file the statement promptly upon becoming aware of such failure;
- (2) promptly serve the non-filing spouse with the 341 notice;
- (3) promptly file a certificate of service ~~of the notice within two days thereafter.~~ indicating compliance with section (c)(2) above; and
- (4) promptly comply with section (b) of this rule.

Note: Form NM LF 14 was created by the clerk for compliance with section (c)(3) of this rule.

(d) Failure to Comply. ~~Failure to file the statement, to provide the notice, or to file the certificate of service may subject the individual debtor to sanctions, including dismissal of the case.~~ The debtor may be subject to sanctions, including dismissal of the case, if the requirements of this rule are not met.

Reference: 11 U.S.C. § 342(a).

Proposed [amended Rule 1002-1](#) clarifies the local requirement for an individual debtor to disclose *marital status and non-filing spouse, if any*. The amended rule outlines the procedure and references local forms to be used.

RULE 1005-1 PETITION – CAPTION – NAME OF NON-INDIVIDUAL DEBTOR

(a) Registered Organization. If the debtor is a “registered organization” as that term is used in NMSA 1978 section 55-9-102(a)(69), the petition and caption shall include the debtor’s complete name, as such name was, at the time of filing the petition, recorded in the public record of the “jurisdiction of organization” of the debtor, as such term is defined in NMSA 1978 section 55-9-102(a)(50) and shall identify the jurisdiction of organization and the

form of organization of the debtor. Thus, if the debtor is a corporation organized under the laws of the State of New Mexico, the petition and caption will state the full name of the debtor, followed by “a New Mexico corporation,” and if the debtor is a limited liability company organized under the laws of the State of New Mexico, the petition and caption will state the full name of the debtor, followed by “a New Mexico limited liability company.”

(b) Not an Individual or Registered Organization. If the debtor is not an individual or a registered organization as that term is used in section (a) of this rule, the petition and caption shall include the complete name of the debtor, and, to the extent that the debtor exists under the laws of any jurisdiction, a description of the form of organization of the debtor and the jurisdiction under whose law the debtor exists. Thus, if the debtor is a general partnership existing under the laws of the State of New Mexico, the petition and caption will state the full name of the debtor, followed by “a New Mexico general partnership,” and if the debtor is an unincorporated association existing under the laws of the State of New Mexico, the petition and caption will state the full name of the association, followed by “a New Mexico unincorporated association.”

Proposed [new Rule 1005-1](#) requires a non-individual debtor to specify its organizational structure as part of the name set forth in the petition.

**RULE 1006-1 FEES – PAYMENT OF PETITION FILING FEE IN
INSTALLMENTS OR WAIVER OF CHAPTER 7 PETITION
FILING FEE – LOCAL FORM REQUIRED**

(a) Installments. A debtor seeking to pay the petition filing fee in installments shall file an application and submit a proposed order using the local forms required by the clerk.

(b) Waiver. A debtor seeking a waiver of the petition filing fee in a chapter 7 case shall file an application using the local form required by the clerk.

Note: Forms NM OF 3A and NM OF 3A order were created by the clerk for compliance with section (a) of this rule. Form NM OF 3B was created by the clerk for compliance with section (b) of this rule.

Proposed [new Rule 1006-1](#) requires use of local forms in lieu of Official Forms.¹

¹New Mexico’s versions of form 3A and form 3B are substantially similar to the national forms. New Mexico’s form 3A contains language regarding payment methods (i.e., no personal checks or credit cards of the debtor will be accepted). The order granting the application requires debtor’s signature (which is not included in the national official form). New Mexico’s version of form 3B, the application for waiver of the chapter 7 fee, includes a final section for the debtor to provide an installment payment schedule for approval if the application for waiver is denied.

RULE 1007-1 LISTS, SCHEDULES, AND STATEMENTS – NON-FILING SPOUSE PAYMENT ADVICES

~~At the time of filing schedules and statement of affairs, an individual debtor with a non-filing spouse shall file a separate statement certifying that to the best of the debtor's knowledge, information and belief they disclose all assets, liabilities, income and expenses of both spouses.~~

(a) Do Not File with Clerk. A debtor shall not file with the court and the clerk shall not accept without an order of the court, copies of the payment advices described in Fed. R. Bankr. P. 1007(b)(1)(E). Instead, a debtor shall provide copies of such documents (1) to the case trustee at least seven days before the first date set for the meeting of creditors and (2) to the United States trustee not later than ten days after service on the debtor of a request for such documents.

(b) Providing to Creditor. If a creditor, at least 14 days before the first date set for the meeting of creditors under section 341, requests copies of debtor's payment advices described in Fed. R. Bankr. P. 1007(b)(1)(E), the debtor shall provide them to the requesting creditor at the same time the debtor provides such documents to the case trustee.

Proposed new Rule 1007-1 codifies the court's October 4, 2005, *Order Directing That Payment Advices Not Be Filed with the Court but Instead Be Provided to Trustee and, upon Timely Request, to Creditors*, No. MP 05-001. The current Rule 1007-1 is deleted as an unreasonable burden on the debtor who has a non-filing spouse and as unreasonably requiring disclosure of separate assets of a non-filing spouse.

RULE 1007-5 STATEMENT OF SOCIAL SECURITY NUMBER (PRIVACY) INCLUDING NON-FILING SPOUSE INFORMATION

a. ~~—An individual debtor who fails to submit the verified statement of social security number required by Fed. R. Bankr. P. 1007(f) with the petition shall provide a copy of the statement to the trustee, all creditors and indenture trustees~~ **other parties in interest**. Within two days thereafter, **the debtor shall file** a certificate of compliance with this rule. ~~shall be filed with the clerk.~~ Failure to provide the statement or to file the certificate of compliance may subject the individual debtor to sanctions, including dismissal of the case.

Note: Form NM LF 12 was created by the clerk for compliance with this rule.

b. ~~—Within five days of filing a petition, an individual debtor who has a non-filing spouse, shall give the trustee, all creditors and indenture trustees notice by mail of the name, address, and the full 9-digit social security number (if known) of the non-filing spouse. The notice shall be verified by the debtor. Within two days thereafter, a certificate of compliance with this rule shall be filed with the clerk. Failure to provide the notice or to file the certificate of compliance may subject the individual debtor to sanctions, including dismissal of the case. Reference: 11 U.S.C. § 342(a).~~

Proposed [amended Rule 1007-5](#) removes the reference to non-filing spouse; see proposed [amended Rule 1002-1\(b\)](#).

RULE 1009-1 AMENDMENTS TO SCHEDULES – FORM AND CONTENT OF AMENDMENTS AND NOTICE OF AMENDMENT

(a) Form of Amended Schedule. If a debtor amends a schedule, the amended schedule shall be designated as such. The amended schedule shall restate the entire schedule, as amended, not merely the new or changed items. If the amended schedule affects the information on the *Summary of Schedules and Statistical Summary of Certain Liabilities and Related Data* (28 U.S.C. Section 159), Official Form 6, the debtor shall amend the summary and attach it to the amended schedule.

(b) Notice of Amendment. When a debtor amends a schedule, the debtor shall file a notice of amendment which specifies the amended or new information and sets forth a brief explanation of the reason for the amendment. The notice of amendment shall conform substantially to the local form. If schedule C is amended, NM LBR 4003-1.2(a) applies.

Note: Form NM LF 16 was created by the clerk for compliance with section (b) of this rule. Form NM LF 16C was created for compliance with section (b) of this rule and with section (a) of NM LBR 4003-1.2 when Schedule C is amended.

(c) Notice to Added Entities. If a debtor amends schedule D, E, F, G, or H to add an entity, the debtor shall contemporaneously serve notice of the bankruptcy case on the entity added. The notice shall conform substantially to the local form and shall be filed with the court.

Note: Form NM LF 32 was created by the clerk for compliance with section (c) of this rule.

Proposed [new Rule 1009-1](#) outlines local procedure and requires use of the local forms.

RULE 1010-1 PETITION – INVOLUNTARY – ADDITIONAL PETITIONERS

When fewer than three petitioners file an involuntary petition, and the debtor files an answer asserting the existence of twelve or more creditors, the petitioning creditor(s) may serve a copy of the petition, the answer, and a notice on the creditors identified by the debtor. The notice shall state that additional creditors may join in the petition prior to its disposition and shall give notice of the time and place of any hearing.

Proposed [new Rule 1010-1](#) sets forth a procedure for adding petitioners, an issue not covered by the federal rules.

RULE 1015-1 ~~JOINT ADMINISTRATION/CONSOLIDATION~~ AND JOINT ADMINISTRATION

A motion for consolidation or joint administration shall be heard by the judge assigned to

the case bearing the lowest number.

Reference: Fed. R. Bankr. P. 2009, 7042, 9013, 9014; 11 U.S.C. § 302.

Proposed [amended Rule 1015-1](#) changes the word order in the title to match the text and the federal rule. The references are removed as well.

~~RULE 1020-1~~ — ~~CHAPTER 11 SMALL BUSINESS CASES - GENERAL~~

~~a. — Election to Be Considered a Small Business in a Chapter 11 Reorganization Case.~~ In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election upon the filing of a proposed plan and disclosure statement, or within 60 days after the date of the order for relief, whichever is earlier, or by a later date as the court, for cause, may fix:

~~b. — Approval of Disclosure Statement.~~ If the debtor has made a timely election to be considered a small business in a chapter 11 reorganization case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Bankruptcy Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

_____ fix a time within which the holders of claims and interests may accept or reject the plan;

_____ fix a time for filing objections to the disclosure statement;

_____ fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

_____ fix a date for the hearing on confirmation.

~~c. — Application of Bankruptcy Rule 3017.~~ If the disclosure statement is conditionally approved, Bankruptcy Rules 3017 (a), (b), (c) and (e) do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of Bankruptcy Rule 3017 (d)

~~d. — Objections and Hearing on Final Approval.~~ Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Bankruptcy Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States Trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

[Current Rule 1020-1](#) is deleted as no longer applicable as a result of BAPCPA amendments.

RULE 1074-1 CORPORATIONS AND OTHER ENTITIES – REPRESENTATION BY ATTORNEY REQUIRED

For all purposes except filing proofs of claim, reaffirmation agreements, requests for unclaimed funds or participation in a meeting of creditors, any entity other than an individual, including but not limited to a corporation, limited liability company, partnership, or trust, must be represented by an attorney authorized to practice before this court.

Proposed [new Rule 1074-1](#) replaces [current Rule 9010-2, Attorneys – Representation of Corporations or Partnerships](#), which reads:

A corporation or partnership must be represented by an attorney authorized to practice before this court for all purposes except filing proofs of claim or participation in a meeting of creditors.

The Rule is renumbered to comport with the current Uniform Numbering System. The scope is expanded to cover any *entity other than an individual*, and two additional exceptions (filing of reaffirmation agreements and requests for unclaimed funds) have been added.

RULE 2003-1 MEETING OF CREDITORS ~~AND EQUITY SECURITY HOLDERS~~ – REQUESTS TO CHANGE

(a) Reschedule Due to Unavailability. Requests ~~for change of time and location of §341 meetings~~ to reschedule the initial meeting of creditors required by 11 U.S.C. section 341 due to the debtor's or the debtor's attorney's unavailability to attend on that day or at that time shall be ~~addressed to~~ made in accordance with the procedures established by the clerk and the United States trustee.

(b) Change Location. Requests to change the location of the initial meeting of creditors required by 11 U.S.C. section 341 shall be made in accordance with the procedures established by the clerk and the United States trustee.

Note: See Fed. R. Bankr. P. 2020.

Proposed [amended Rule 2003](#) sets forth current policy and procedure.

RULE 2004-1 EXAMINATIONS

(a) Examination. Counsel shall confer in good faith regarding the scheduling of examinations pursuant to Fed. R. Bankr. P. 2004 before filing a motion seeking an order for examination. If the parties agree, they may submit an agreed order without a motion. The time

for filing a response to the motion may be shortened by agreement of all parties or by court order. Service of the order for examination shall be made at least seven days before the scheduled examination. The time for serving the order may be shortened by agreement of all parties or by court order. A certificate of service of the order shall not be filed, except as an attachment to a motion to compel or to quash.

(b) Examination Fees. A court reporter must certify in an examination transcript the reporter's fees for the examination.

(c) Non-filing of Examination Transcripts. Unless the court orders otherwise, examination transcripts and certificates of completion of examinations shall not be filed.

Proposed [new Rule 2004-1](#) sets forth local procedures related to 2004 examinations that are already being applied.

RULE 2007.1-1 — TRUSTEES AND EXAMINERS (Ch. 11)

Election of Trustee in a Chapter 11 Reorganization

a. Request for an Election. ~~A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States Trustee in accordance with Bankruptcy Rule 5005 within the time prescribed by 11 U.S.C. § 1104(b). Pending court approval of the person elected, a person appointed trustee under § 1104(d) shall serve as trustee.~~

b. Manner of Election and Notice. ~~An election of a trustee under §1104(b) shall be conducted in the manner provided in Bankruptcy Rules 2003(b) (3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under Bankruptcy Rule 2002 (a) . A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 and by any other party entitled to solicit a proxy under Bankruptcy Rule 2006.~~

c. Application for Approval of Appointment and Resolution of Disputes. ~~If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the court, the United States Trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under Bankruptcy Rule 2007.1(b), except that the application need not contain names of parties in interest with whom the United States Trustee has consulted. If it is necessary to resolve a dispute regarding the election, the United States Trustee shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after the date of the creditors' meeting called under § 1104(b), a person appointed by the United States Trustee in accordance with § 1104(d) and approved in accordance with Federal Bankruptcy Rule 2007.1(b) shall serve as trustee.~~

Current Rule 2007-1.1, Trustees and Examiners (Ch 11), is deleted as unnecessary.

RULE 2015-1 TRUSTEES – PAYMENT OF ROUTINE EXPENSES

The case trustee or debtor in possession is authorized to pay routine, reasonable and necessary administrative expenses otherwise requiring court approval up to an aggregate of \$1,000, or such amount as may be set forth in Fed. R. Bankr. P. 2002(a)(6). Neither a notice to creditors nor a specific order of the court is required for such payments, so long as the funds used are not a creditor's cash collateral or are otherwise encumbered. All payments are subject to final review pursuant to 11 U.S.C. section 330 to the extent such section applies.

Proposed new Rule 2015-1 sets forth parameters for payments of routine administrative expenses without notice or an order and that payments are subject to final review as applicable.

RULE 2015-2 DEBTOR IN POSSESSION DUTIES – DISCLOSURE OF COMPENSATION TO DEBTOR'S PRINCIPALS OR INSIDERS IN CHAPTER 11 CASES

(a) Payment of Compensation. Unless the court orders otherwise, the debtor in possession in a chapter 11 case shall not pay compensation or other remuneration from assets of the estate to insiders as defined by 11 U.S.C. section 101(31), from the time of filing the petition until confirmation of the plan, unless the debtor in possession has filed a notice of compensation which sets forth and discloses

(1) the compensation or remuneration it intends to pay each such person post-petition, and

(2) the compensation or remuneration it paid each of those persons within the two-year period prior to the filing of the petition.

(b) Notice to Creditors. Unless the court orders otherwise, the debtor in possession in a chapter 11 case shall serve the notice of compensation on all creditors, equity security holders, and other parties in interest.

(c) Disgorgement. The court may require disgorgement of any compensation paid in violation of this rule, or which it determines was improvidently paid by the estate.

Proposed new Rule 2015-2 sets forth local requirements for disclosure of compensation paid to insiders in a chapter 11 case and for notice.

RULE 2016-1.1 COMPENSATION OF PROFESSIONALS – APPLICATIONS FOR COMPENSATION

Applications for interim or final compensation of professionals shall be accompanied by

detailed billing statements itemizing all services provided, the time spent on each service, the charge for the service, the identity and hourly rate of each person providing each service, all costs for which the professional seeks reimbursement, and all taxes passed on to the debtor or estate. Applications shall list the total amounts of fees, costs, and taxes previously requested, awarded, or paid.

Proposed [new Rule 2016-1](#) sets forth local requirements for the content of applications for compensation.

RULE 2016-1.2 COMPENSATION OF PROFESSIONALS – CHAPTER 13 FEES

Debtor's attorney's fees in chapter 13 cases will be allowed and paid by the chapter 13 trustee only with court approval.

Proposed [new Rule 2016-1.2](#) makes clear the abolition of the no-look presumptive reasonable fee in our jurisdiction and sets forth local procedures that are already being applied.

RULE 2082-1 CHAPTER 12 ~~–GENERAL–~~ NOTICE OF CONFIRMATION HEARING

The debtor in a chapter 12 case shall, within ~~five~~ **three** days of filing the plan, ~~call~~ **contact** the ~~judge's chambers and obtain~~ **courtroom deputy for the assigned judge to request** a confirmation hearing and ~~timely~~ **prepare, serve and timely** file a notice of the hearing.

Note: See 11 U.S.C section 1224.

Proposed [amended Rule 2082-1](#) changes 5 days to 3 days for the time after filing the plan to obtain a hearing date and makes word choice changes.

RULE 2083-1 CHAPTER 13 – DEBTOR CERTIFICATION AND STATEMENTS IN SUPPORT OF DISCHARGE

As soon as practicable after completion of payments under the plan, the debtor in a chapter 13 case shall

- (1) provide the chapter 13 trustee with the information described in 11 U.S.C. section 1302(d)(1)(C)(ii) and (iii), or file a statement that the debtor is not required to pay a domestic support obligation; and,
- (2) file with the court the certification pursuant to 11 U.S.C. section 1328(a) and the statements in support of discharge in relation to 1328(h) as required under Fed. R. Bankr. P. 1007(b)(8) using the local form required by the clerk.

Note: Form NM PF 283 was created by the clerk for compliance with this rule.

Proposed [new Rule 2083-1](#) requires the chapter 13 debtor to use the court's local form to file certification and statements in support of entry of discharge, after completion of plan payments.

RULE 2090-1 ATTORNEYS – ADMISSION TO PRACTICE

(a) Admission to Practice. Admission to practice before a bankruptcy judge the United States Bankruptcy Court for the District of New Mexico is governed by the local rules of the United States District Court for the District of New Mexico except as provided in paragraph (b) below.

~~**b. Non-resident Attorneys.** All attorneys residing outside the District who are members in good standing of the bar of any state may participate in a particular case or proceeding before this court without the association of a resident member of the bar of this court, provided, however, that in any case or proceeding in which the court deems it necessary for the purpose of appearance, or ready availability, or otherwise in the interest of expediting disposition of the case or proceeding, the court may require non- resident counsel to associate a resident member of the bar of this court. A non-resident attorney shall file a motion to be admitted *pro hac vice*, which shall contain the statement that the attorney has read and is familiar with these rules.~~

(b) Membership in Bar of this Court. An attorney admitted to practice before the United States District Court for the District of New Mexico is a member of the bar of this court.

~~**c. Temporary Waiver of Membership.** An attorney who is eligible for membership in the bar of the United States District Court for the District of New Mexico and who has applied but who has not yet been admitted, may, with leave of court, appear and plead in specific cases.~~

(c) Admission Pro Hac Vice. An attorney who is not a member of the bar of this court may not appear in this court unless admitted *pro hac vice*, except for the purpose of filing proofs of claim, reaffirmation agreements, requests for unclaimed funds, or for participation in a meeting of creditors. An attorney who is not a member of the bar of this court but who is a member in good standing of the bar of any state, of any territory of the United States, of the District of Columbia or of any federal court may file a motion to be admitted *pro hac vice*, which shall contain the statement that the attorney has read and is familiar with these rules.

(d) Association With Member of the Bar Not Required. Except as provided in subsection (e), an attorney who is not a member of the bar of this court is not required to associate with a member of the bar of this court, provided, however, that in any case or proceeding in which the court deems it necessary for the purpose of appearance, ready availability, familiarity with local procedures, or otherwise in the interest of expediting disposition of the case or proceeding, the court may require an attorney admitted *pro hac vice* to associate with a resident member of the bar of this court. A resident member of the bar of this court is a member of the bar of this court who resides in the State of New Mexico.

(e) Association by Debtor’s Counsel With a Resident Member of the Bar. Unless the court orders otherwise, an attorney who is not a member of the bar of this court and who is representing a debtor in a case pending before the court must associate with a resident member of the bar of this court. In a voluntary case, an attorney who is not a member of the bar of this court may commence the case without associating with resident counsel only if, on the petition date, such attorney files a motion for admission *pro hac vice* which includes a request to appear without resident counsel and promptly thereafter submits an order to the court granting the motion. Unless the court orders otherwise, the motion is to be served on the United States trustee and the case trustee, if any. The court may grant the motion without further notice or a hearing. This rule does not apply to adversary proceedings.

Proposed amended Rule 2090-1 clarifies the admission requirements by eliminating reference to “non-resident” attorney and temporary waiver of membership. The amended rule is straight-forward, stating that a member of the federal bar of New Mexico is admitted to practice before the United States Bankruptcy Court, and that any non-member may apply for admission *pro hac vice* if he or she is admitted to practice in another state. The amended rule requires non-member attorneys who represent debtors to associate with a resident member of the bar of this court, unless the court orders otherwise.

RULE 2091-1 ATTORNEYS – WITHDRAWAL AND SUBSTITUTION

~~a. Withdrawal of Attorneys. An attorney may withdraw from representation of a client:~~

~~(1) With Consent of Client: The request to withdraw shall show the consent of each party represented by the attorney, and the substitution of another attorney, or the appearance pro se of each unrepresented party with mailing addresses and telephone numbers, or~~

~~(2) Without Consent of Client: A written motion must be filed with proof of service on the party or parties represented by the attorney, with notice to the party or parties that they must serve and file objections within ten days from the date of service of the motion, or the attorney may submit to the court an ex parte order permitting the attorney's withdrawal. The motion shall also be served on such other parties as the court may direct. After the attorney has been authorized to withdraw, the party or parties previously represented shall be deemed to be appearing pro Se, until a new attorney enters an appearance.~~

~~Reference: See NM LBR 9010-2, Attorneys - Representation of Corporations or Partnerships.~~

(a) Withdrawal and Substitution. Unless withdrawal of an attorney is accompanied by a substitution of counsel filed of record that shows the client’s consent to the attorney’s withdrawal, and the substitution of another attorney, with mailing address, telephone number, facsimile number, if any, and e-mail address of the substituted attorney, an attorney must file a motion seeking an order to withdraw in any case or adversary proceeding. The

motion must:

(1) **With Client's Consent.** If the attorney has obtained the written consent of the client, the consent must be filed with the motion, and the attorney must submit a proposed order to the court showing the mailing address, telephone number, facsimile number, if any, and e-mail address, if any, of the self-represented individual. The court may grant the motion without notice. If the motion is granted, the withdrawing attorney must give prompt notice of the entry of the order to the client and to all other parties or their attorneys. An attorney representing a governmental unit is not required to obtain a client's signature to withdraw under this provision.

(2) **Without Client's Consent.** If the attorney has not obtained the written consent of the client, the motion to withdraw must show reasons therefor. The notice thereof must specify a 14-day deadline for filing objections to the motion and must be served on the client, any case trustee, and such other parties as the court may direct. The motion to withdraw must be accompanied by a statement of the moving attorney certifying that:

(A) the client has been notified in writing of the status of the case or proceeding, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and, if applicable, the need to comply with NM LBR 1074-1 (Corporations and Other Entities – Representation by Attorney Required); or

(B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case or proceeding.

If no objections are timely filed, the attorney may submit an order permitting the attorney's withdrawal. If an objection is timely filed, the attorney shall contact the courtroom deputy for the assigned judge to request a hearing and give notice to the objecting party. The order authorizing the withdrawal of the attorney shall show the mailing address, telephone number, facsimile number, if any, and e-mail address, if any, of the self-represented individual.

(b) **Death or Removal of an Attorney.** When an attorney dies or ceases to act as an attorney under circumstances not otherwise provided herein, the clerk ~~or a party in interest, by written notice,~~ shall notify ~~the~~ a party or parties represented by the attorney ~~of the need to retain another attorney or to appear in person in any further matters or, if applicable, to comply with~~ NM LBR 1074-1 (Corporations and Other Entities – Representation by Attorney Required). If after 21 days from the date of service of the notice another attorney does not enter an appearance, the following applies:

(1) if the party is an individual, the action shall proceed as if the individual is self-represented; or,

(2) if the party is not an individual, the action shall proceed but the entity may not appear on its own behalf and shall be deemed unrepresented until a new attorney enters an appearance.

~~Such notice may be served upon such party or parties in person or given by mailing the notice to the party's last known address. If after 20 days from the date of service of such notice another attorney does not enter an appearance, the action shall proceed as if the party or parties were appearing pro se.~~

Proposed [amended Rule 2091-1](#) makes clear that withdrawal and substitution go hand-in-hand. The rule sets forth procedures to follow when the client's consent is given and when it is not. And finally, the amended rule provides for the situation where the death of an attorney for a non-individual debtor may result in no immediate substitution of counsel.

RULE 3007-1 CLAIMS – OBJECTIONS

Unless the period is extended or shortened by order of the court, the time for filing a response to an objection to the allowance of a claim shall be 30 days from service of the objection and notice thereof. The notice of the objection shall set forth the time for filing a response and state that if no response is timely filed the court may disallow the claim as requested in the objection without further notice or a hearing. If a response is timely filed, the objecting party shall contact the courtroom deputy for the assigned judge to request a hearing. If no response is timely filed, the objecting party may submit to the court a proposed form of order, reciting the notice given and the date of expiration of the time to file a response, in lieu of the default procedure set forth in Fed. R. Bankr. P. 7055.

Proposed [new Rule 3007-1](#) sets forth the current practice of giving notice of objection to a claim, the time to file responses, and the procedure for obtaining a hearing or submitting an order absent a timely response.

RULE 3015-1 CHAPTER 13 – PLAN AND NOTICE OF CONFIRMATION HEARING

(a) **Clerk Mails Copy of Plan and Notice.** If both a plan and a confirmation hearing notice are filed with a chapter 13 petition in accordance with the clerk's case opening instructions, the clerk will include a copy of the plan and the confirmation hearing notice with the notice of meeting of creditors pursuant to section 341 in a time frame which ensures compliance with Fed. R. Bankr. P. 2002(b).

(b) **Debtor Mails Copy of Plan and Notice.** If both a plan and a confirmation hearing notice are not filed with a chapter 13 petition in accordance with the clerk's case opening instructions, the debtor shall serve on all creditors and other parties in interest a copy of the plan and the confirmation hearing notice in a time frame which ensures compliance with Fed. R. Bankr. P. 2002(b) and within three days thereafter file with the court a certification that such

service was made.

Note: NM LF 600 was created by the clerk for compliance with section (a) of this rule. NM LF 601 was created by the clerk for compliance with section (b) this rule.

Proposed [new Rule 3015-1](#) outlines the clerk's process for sending the ch 13 [plan and notice](#) of confirmation hearing with the §341 meeting notice, and the alternative process which requires the debtor to send the plan and notice to all creditors, addressed in paragraphs 2 and 3 of the [current Rule 3015-3](#), below.

~~RULE 3015-3~~ — ~~CHAPTER 13 - CONFIRMATION~~

~~The hearing on confirmation of a chapter 13 plan will be scheduled by the Court. The date, time, and location of the hearing will appear in the notice of the section 341 meeting of creditors. The deadline for filing objections to confirmation of the plan shall be no fewer than five business days prior to the hearing on confirmation.~~

~~If a plan is filed with a chapter 13 petition in accordance with the Clerk's case opening instructions, the Clerk will give notice of the contents of the plan, notice of the deadline for filing objections to confirmation of the plan, and notice of the hearing on confirmation in a time frame which ensures compliance with Fed. R. Bankr. P. 2002(b).~~

~~If a plan is not filed with a chapter 13 petition in accordance with the Clerk's case opening instructions, the debtor in a chapter 13 case shall give notice of the contents of the plan, notice of the deadline for filing objections to confirmation of the plan, and notice of the hearing on confirmation in a time frame with ensures compliance with Fed. R. Bankr. P. 2002(b).~~

The content of [current rule 3015-3](#) has been split into two rules: [proposed new Rule 3015-1.1](#) (above) and [new Rule 3015-3.1](#) (below).

RULE 3015-3.1 CHAPTER 13 – CONFIRMATION – HEARING AND DEADLINE FOR FILING OBJECTIONS

(a) Hearing on Confirmation. The hearing on confirmation of a chapter 13 plan will be scheduled by the court. The date, time, and location of the hearing will appear in the notice of the section 341 meeting of creditors.

(b) Deadline for Filing Objections. Unless the court orders otherwise, the deadline for filing objections to confirmation of the plan shall be no fewer than five days prior to the confirmation hearing.

Proposed [new Rule 3015-3.1](#) updates the chapter 13 confirmation procedure, currently addressed in the first paragraph of [current Rule 3015-3](#), above.

RULE 3015-3.2 CHAPTER 13 – CONFIRMATION – AUTOMATIC EXTENSION OF TIME FOR FILING OBJECTIONS TO CONFIRMATION

Unless the court orders otherwise, the chapter 13 trustee and the United States trustee shall have an automatic extension of the time for filing objections to confirmation of the plan until 14 days after conclusion of the section 341 meeting or five days before a rescheduled confirmation hearing, whichever is earlier.

Proposed [new Rule 3015-3.2](#) sets forth the time the chapter 13 trustee and the United States trustee have to file objections to confirmation.

RULE 3015-3.3 CHAPTER 13 – CONFIRMATION – ATTENDANCE AT CONFIRMATION HEARING

The debtor shall appear in person at any final hearing on confirmation of the chapter 13 plan, absent exigent circumstances or approval of the court. The debtor's failure to attend the confirmation hearing may be grounds for dismissal of the case.

Proposed [new Rule 3015-3.3](#) sets forth the practice currently in effect regarding the debtor's attendance at chapter 13 confirmation hearings.

RULE 3015-3.4 CHAPTER 13 – CONFIRMATION – CERTIFICATION OF INFORMATION BY DEBTOR

The chapter 13 trustee shall not approve any confirmation order until after the debtor has filed a certification of the requirements of 11 U.S.C. section 1325(a)(8) regarding domestic support obligations and of section 1325(a)(9) regarding tax returns. If the debtor is not required to pay any amounts under a domestic support obligation, the certification shall so state.

Proposed [new Rule 3015-3.4](#) informs debtor of local pre-confirmation requirements.

RULE 3017-2 CHAPTER 11 SMALL BUSINESS CASES - NOTICE OF CONFIRMATION HEARING

The debtor in a chapter 11 small business case shall, promptly after filing the plan and disclosure statement but no later than three days after filing, contact the courtroom deputy for the assigned judge to request a confirmation hearing.

Proposed [new Rule 3017-2](#) informs the chapter 11 small business debtor of when and how to obtain a confirmation hearing date.

RULE 3020-1 CHAPTER 11 – CONFIRMATION HEARING

Unless the court orders otherwise, in a chapter 11 case when the plan has been accepted by the requisite majorities and no objection to confirmation has been filed, the plan proponent

may establish that the plan meets the applicable requirements of 11 U.S.C. section 1129(a) by oral offer of proof, provided that any witness whose testimony is being proffered is present.

Proposed [new Rule 3020-1](#) allows the chapter 11 plan proponent to establish that the plan meets the requirements of § 1129(a) by oral offer of proof, as long as the witness whose testimony is given is present.

RULE 3070-1.1 CHAPTER 13 – PAYMENTS – MORTGAGE ARREARAGE CLAIMS

Absent the filing of an objection, and to the extent of available funds, the chapter 13 trustee shall pay a timely-filed claim for mortgage arrearages as set forth in the proof of claim unless a different amount is set forth in the confirmation order.

Proposed [new Rule 3070-1.1](#) clarifies that the amount of claim for mortgage arrearages set forth in the confirmation order takes precedence over the amount in the timely-filed proof of claim.

RULE 3070-1.2 CHAPTER 13 – PAYMENTS – PRIORITY CLAIMS

Absent the filing of an objection, to the extent of available funds and on the terms set forth in the confirmed plan or order confirming the plan, the chapter 13 trustee shall pay a timely-filed priority claim as set forth in the proof of claim unless a different amount is set forth in the confirmation order.

Proposed [new Rule 3070-1.2](#) clarifies the chapter 13 trustee's duties when the amount of a priority claim set forth in the proof of claim conflicts with the amount in the confirmation order.

RULE 3070-1.3 CHAPTER 13 – PAYMENTS – CESSATION OF PAYMENTS TO SECURED CREDITORS AFTER STAY RELIEF

Unless the court orders otherwise, when an order granting relief from the automatic stay unconditionally permits a creditor to proceed with foreclosure or repossess its collateral, and the order has become final, the chapter 13 trustee shall cease making payments on the creditor's secured claim. If the chapter 13 trustee receives notice of the order fewer than seven days before a monthly plan distribution, the chapter 13 trustee may make that scheduled payment to the secured creditor, and thereafter cease payment.

Note: See Fed. R. Bankr. P. 4001(a)(3).

Proposed [new Rule 3070-1.3](#) provides a cut-off date for the chapter 13 trustee's payment on a creditor's secured claim after an order for relief becomes final.

~~RULE 4001-1 — AUTOMATIC STAY - RELIEF FROM~~

~~a. — **Motions Pursuant to 11 U.S.C. § 362.** A motion for relief from the automatic stay shall be clearly and distinctly titled as such. Motions for relief from the automatic stay shall not be combined with any other request for relief. Failure to comply with this rule shall be deemed a waiver of the termination provision of 11 U.S.C. § 362(e).~~

~~b. — **Commencement of the 30-day Period Pursuant to 11 U.S.C. § 362(e).** Until a hearing has been requested and notice of a hearing has been served, the 30-day termination provision of 11 U.S.C. § 362(e) shall not commence.~~

~~INTERIM BANKRUPTCY RULE 4001-2 MOTION TO CONTINUE OR IMPOSE AUTOMATIC STAY~~

~~a. — **Motions Pursuant to 11 U.S.C. § 362(c)(3)(B).** Before filing a motion for continuation of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), the moving party shall contact the courtroom deputy for the judge assigned to the case to request a date and time for the final hearing on such motion. Upon receiving such date and time, the moving party shall prepare notice of such final hearing, file the motion and the notice, and immediately provide the notice and the motion to all parties affected by the motion.~~

~~b. — **Motions Pursuant to 11 U.S.C. § 362(c)(4)(B).** Before filing a motion to impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4)(B), the moving party shall contact the courtroom deputy for the judge assigned to the case to request a date and time for the final hearing on such motion. Upon receiving such date and time, the moving party shall prepare notice of such final hearing, file the motion and the notice, and immediately provide the notice and the motion to all parties affected by the motion.~~

Both [current Rule 4001-1](#), adopted in 1996, and [Interim Bankruptcy Rule 4001-2, Motion to Continue or Impose Automatic Stay](#), adopted by court order on October 14, 2005, have been completely revised. There are now four proposed rules regarding the automatic stay, as follows:

- [Rule 4001-1.1, Automatic Stay - Continuation or Imposition of;](#)
- [Rule 4001-1.2, Automatic Stay - Declaration of Status;](#)
- [Rule 4001-1.3, Automatic Stay - Motions for Relief from; and](#)
- [Rule 4001-1.4, Automatic Stay - Chapter 7 and 13 - Opposed Motions and Stipulated Stay Relief; Chapter 11 - Commencement of 30-day Period and Objections.](#)

RULE 4001-1.1 AUTOMATIC STAY – CONTINUATION OR IMPOSITION OF

(a) Scope of Rule. This rule applies to:

- (1) a motion to continue the automatic stay in consecutive individual cases

under chapter 7, 11, or 13 pursuant to 11 U.S.C. section 362(c)(3)(B);

(2) a motion to impose the automatic stay pursuant to 11 U.S.C. section 362(c)(4)(B);

(3) a motion to continue the automatic stay as to personal property of an individual debtor by a case trustee pursuant to 11 U.S.C. section 362(h)(2); and

(4) a motion to impose the automatic stay by a small business debtor pursuant to 11 U.S.C. section 362(n)(2).

(b) Content. A motion to continue or impose the stay shall set forth the following:

(1) the prior case number(s) of and the court(s) in which a prior case was filed;

(2) the circumstances under which each prior case was dismissed and the date of dismissal;

(3) whether a request for relief from the automatic stay had been granted or was pending in each prior case at the time of the dismissal;

(4) the identity and mailing address of any attorney or self-represented creditor who had filed a request for relief from the automatic stay for any party in each prior case;

(5) the identity and mailing address of any attorney who had filed a notice of appearance or request for notice in each prior case;

(6) the identity of creditors in the current case proposed to be stayed (e.g., all creditors or only particular creditors);

(7) the extent to which the movant wishes the automatic stay to be continued or imposed in the current case, including the length of the proposed continuation or imposition; and

(8) whether any presumption of lack of good faith arises in the current case pursuant to 11 U.S.C. section 362(c)(3)(C) or section 362(c)(4)(D) and, if so, the facts upon which movant relies to rebut the presumption.

(c) Time to File Motion. A motion to continue or impose the stay shall be filed within ten days from the filing of the new petition. If the motion is not timely filed, the court may deny the motion.

(d) Requirement to Obtain Hearing and Objection Deadline. Prior to filing a

motion to continue or impose the stay, movant shall contact the courtroom deputy for the assigned judge to request a hearing and an objection deadline date. Unless the court orders otherwise, the deadline for filing objections to a motion to continue or impose the stay shall be ten days from the service of the motion and notice. The notice shall state that if no objections are timely filed, the court may grant the relief requested without further notice. Movant shall immediately serve the motion with the notice.

(e) **Specificity in Response to Motion.** Unless the court orders otherwise, a party opposing the relief requested in a motion to continue or impose the stay shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed.

Proposed [new Rule 4001-1.1](#) replaces local interim bankruptcy Rule 4001-2, *Motion to Continue or Impose Automatic Stay*. The rule sets forth in detail the practice requirements for filing a motion for continuation or imposition of the automatic stay in the District of New Mexico.

RULE 4001-1.2 AUTOMATIC STAY – DECLARATION OF STATUS

(a) **Scope of Rule.** This rule applies to:

(1) a motion for an order confirming that no stay is in effect pursuant to 11 U.S.C. section 362(c)(4)(A)(ii); or

(2) a motion for a determination that the stay has been terminated pursuant to 11 U.S.C. section 362(j).

(b) **Content.** A motion for an order confirming that no stay is in effect pursuant to 11 U.S.C. section 362(c)(4)(A)(ii) or section 362(j) shall set forth the following information:

(1) the prior case number(s) of and the court(s) in which a prior case was filed; and

(2) the date each prior case was dismissed.

(c) **Prior Filing in Another District.** If the prior filing was in another District, the movant shall attach copies of the relevant court papers.

(d) **Service of Motion.** The movant shall file and serve the motion and a notice of the deadline for filing objections on the debtor and the case trustee, if any. In a chapter 11 case, the motion and notice shall also be served on any creditors' committees or the creditors holding the 20 largest unsecured claims if no committee has been appointed. If the movant seeks a declaration with respect to an act against property, the motion and notice shall also be served on all entities that claim an interest in the property, including all co-owners, lienholders, and taxing authorities.

(e) **Deadline for Filing Objections.** The deadline for filing objections shall be ten days from the date of service of the notice.

Proposed [new Rule 4001-1.2](#) sets forth practice requirements for filing a motion for an order confirming that no stay is in effect or to determine that stay has been terminated in the District of New Mexico.

RULE 4001-1.3 AUTOMATIC STAY – MOTIONS FOR RELIEF

(a) **Designation.** A motion for relief from the automatic stay (stay motion) shall be clearly and distinctly designated as such.

(b) **Content.** A stay motion relating to collateral shall specify the relief requested and shall set forth or attach the following:

(1) a description of the subject property (collateral), a description of the interest claimed by the creditor in the collateral, and the means by which the interest is perfected;

(2) if the value of the collateral is at issue, the movant's good faith estimate of the value of the collateral and the basis for the estimate;

(3) the amount secured by the interest in the collateral, with an itemization showing the outstanding principal balance, accrued but unpaid interest through a specific date, attorneys fees through a specific date, a *per diem* rate of interest accrual, and any other amounts owed;

(4) the amount of any other interests secured by the collateral (if known), and the movant's good faith belief as to the relative priorities of the interests; and

(5) any grounds alleged to constitute cause under 11 U.S.C. section 362(d)(1).

(c) **Insurance.** If the movant alleges that the collateral is not properly insured, the motion shall include sufficient detail to permit the debtor or case trustee to remedy the problem. If the debtor or case trustee fails to remedy the problem or refute the allegation by the time of the preliminary hearing, the court may enter an order modifying the stay without further notice or hearing.

(d) The 30-day termination provision of 11 U.S.C. section 362(e) shall be deemed waived such that it does not commence until movant has complied with the requirements of sections (a) and (b) of this rule.

Proposed [new Rule 4001-1.3](#) replaces current Rule 4001-1, *Automatic Stay – Relief From*, adopted in 1996. The proposed Rule sets forth designation and content requirements for filing a stay motion in the District of New Mexico.

**RULE 4001-1.4 AUTOMATIC STAY – CHAPTER 7 AND 13 – OPPOSED
MOTIONS AND STIPULATED STAY RELIEF; CHAPTER 11 –
COMMENCEMENT OF 30-DAY PERIOD AND OBJECTIONS**

(a) Opposed Motions – Chapters 7 and 13. A party filing a stay motion in a case under chapter 7 or chapter 13 shall in good faith attempt to ascertain prior to the filing of the motion whether it is opposed by the debtor or the case trustee. If a stay motion is opposed or the movant is unable to determine whether it is opposed after a good faith attempt, the motion shall recite that fact. The movant may then send notice of objection deadline or notice of hearing with no objection deadline, depending on which procedure the assigned judge permits, as follows:

(1) Notice of Deadline for Filing Objections. The movant shall file and serve a notice of the motion which identifies the motion, sets forth the time for filing objections, and, unless the motion is served with the notice, adequately describes the relief sought and provides any other information necessary to give adequate notice. The notice shall also state that if no objections are timely filed, the court may grant the relief requested without further notice or a hearing. Unless otherwise provided by the Federal Rules of Bankruptcy Procedure or these rules or unless extended or shortened by order of the court, the time for filing an objection shall be 21 days from service of the notice; and, either

(A) Obtain a Hearing After Objections are Filed. If an objection is timely filed, the movant shall contact the courtroom deputy for the assigned judge to request a hearing. The movant thereafter shall promptly file and serve notice of the hearing. If no objection is timely filed, the movant shall promptly submit to the court a proposed form of order, reciting that notice was given and the date of expiration of the time to object, in lieu of the default procedure set forth in Fed. R. Bankr. P. 7055; or

(B) Obtain a Hearing Before Service of the Notice. Movant may obtain a hearing prior to service of the notice of deadline for filing objections set forth in subsection (d)(1) of this rule, such that the notice of hearing is included in the notice of deadline for filing objections.

(2) Notice of Hearing With No Objection Deadline. Movant may obtain a hearing on the motion without service of a notice of deadline for filing objections by contacting the courtroom deputy for the assigned judge to request a hearing date for a preliminary or final hearing, or both, and file and serve notice of the hearing(s) with the motion as directed by the assigned judge.

(b) Stipulated Stay Relief in Chapter 7 and Chapter 13 Cases. In a case under chapter 7 or chapter 13, if the debtor, case trustee, and movant claiming an interest in the collateral agree, the court may enter a stipulated order granting relief from the stay submitted without a motion.

(c) **Chapter 11.** A party filing a stay motion in a case under chapter 11 shall in good faith attempt to ascertain prior to the filing of the motion whether it is opposed by the debtor or any trustee appointed in the case.

(1) If a stay motion is opposed by the debtor or any trustee appointed in the case or the movant is unable to determine whether it is opposed after a good faith attempt, the motion shall recite that fact. Unless a motion for approval of the agreement is required by Fed. R. Bankr. P. 4001(d), prior to filing the motion the movant shall contact the courtroom deputy for the assigned judge to request a preliminary hearing, or, with the permission of the court, a final hearing. The movant shall file and serve notice of the motion and the deadline for objections on all parties entitled to notice of the motion in accordance with NM LBR 9013-1.1(c)(1), except the notice shall also contain notice of the preliminary hearing, or, with the permission of the court, a final hearing or both.

(2) Unless the court directs otherwise, the movant shall file and serve notice of a motion to approve an agreement under Fed. R. Bankr. P. 4001(d) to any party holding or claiming an interest in cash collateral; the United States trustee; the official committee of unsecured creditors; or if no such committee has been appointed, to the creditors included on the list prepared under Fed. R. Bankr. P. 1007(d); and to counsel who have entered an appearance in the case.

(d) **Commencement of 30-Day Period.** The 30-day termination provision of 11 U.S.C. section 362(e) shall not commence until notice of the preliminary hearing has been served, or notice of the final hearing if the final hearing is not preceded by a preliminary hearing, so long as the movant is given the opportunity for a preliminary hearing or final hearing to be held within thirty days after service of the notice or within such other time fixed by the court in accordance with 11 U.S.C. section 362(e).

(e) **Objections.** If a written objection to a stay motion is required, any party objecting to a stay motion shall file an objection in the form required by Fed. R. Civ. Proc. 8(b), for answering pleadings.

Proposed [new Rule 4001-1.4](#) sets forth additional requirements regarding stay motions filed in the District of New Mexico.

RULE 4001-2 CASH COLLATERAL

In addition to the requirements of Fed. R. Bankr. P. 4001, unless the court orders otherwise, a motion for authorization to use cash collateral shall set forth:

- (1) if there is an insider relationship between the debtor and the creditor whose cash collateral is to be used, the nature of the relationship;
- (2) the nature or source of the cash collateral;

(3) a cash flow projection for the period for which authorization is sought that includes both projected revenue and a line-item proposed budget for the use of the funds;

(4) an estimated amount the debtor owes to creditors claiming an interest in cash collateral as of the date the petition was filed, including if known any accrued unpaid interest, costs or fees as provided in any pre-petition agreements; and

(5) a description of the collateral pledged to secure the claims of creditors claiming an interest in cash collateral, the debtor's estimate of the value of such collateral, and the basis for the valuation.

Proposed [new Rule 4001-2](#) sets forth additional requirements in the District of New Mexico for filing a motion for authorization to use cash collateral.

RULE 4001-3 OBTAINING CREDIT

In addition to the requirements of Fed. R. Bankr. P. 4001, unless the court orders otherwise, a motion for authorization to obtain credit shall set forth:

(1) if there is an insider relationship between the debtor and the proposed provider of credit, the nature of the relationship;

(2) the nature of the collateral and debtor's estimate of the value of the collateral to be pledged to secure the credit and the basis for the valuation;

(3) an estimated amount the debtor owes the proposed provider of credit as of the petition date, if any, including, if known, any accrued unpaid interest, costs or fees as provided in any pre-petition agreement; and

(4) a description of the collateral pledged to secure any amounts the debtor owes the proposed provider of credit as of the petition date, the debtor's estimate of its value, and the basis for valuation.

Proposed [new Rule 4001-3](#) sets forth additional requirements in the District of New Mexico for filing a motion for authorization to obtain credit.

RULE 4002-1.1 DEBTOR – DUTIES – CASE TRUSTEE REQUESTS FOR INFORMATION

(a) **Deadline for Responding to Trustee's Request.** No later than ten days after service of a written request to the debtor for information under 11 U.S.C. section 521(a)(3) or (a)(4) from a trustee serving in the case, a debtor shall:

(1) provide the requested information; or

(2) file with the court and serve a written objection stating the grounds therefor, attaching a copy of the request. The debtor shall contact the courtroom deputy for the assigned judge to request a hearing and then promptly give notice of a hearing on the objection.

(b) Non-filing of Requests and Responses. A request under this rule shall not be filed with the clerk unless the debtor fails to comply and the case trustee seeks to compel compliance. Unless the court orders otherwise, a response to a request under this rule shall not be filed with the clerk except in connection with an objection to the request, unless the response is in the form of an amendment to the schedules, statement of financial affairs, post-petition financial or other reports.

Proposed [new Rule 4002-1.1](#) sets forth requirements for production of documents to the case trustee.

RULE 4002-1.2 DEBTOR – DUTIES – DOCUMENTS TO BE PROVIDED TO THE CASE TRUSTEE

(a) Documents to be Provided. In addition to documents required by Fed. R. Bankr. P. 4002(b)(3), the debtor shall, at least seven days before the first date set for the meeting of creditors, provide the case trustee with the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

(1) in a case under chapter 12 or 13, documentation of debtor's current income, including income from employment, the operation of a business, disability benefits, social security benefits, and any other sources,

(2) in a case under chapter 12 or 13, a copy of the debtor's state income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, with all schedules, attachments, and forms 1099, W-2, and K1,

(3) in a case under chapter 12 or 13, if the case is filed prior to the filing of the immediate past calendar year's tax returns, a copy of all forms 1099, W-2, and K1 received by the debtor for the past tax year, and

(4) in a case under chapter 12 or 13, proof of any insurance coverage on the estate's interest in mobile homes, vehicles, and improvements to real property.

(b) Tax Return Transcript. For the purposes of Fed. R. Bankr. P. 4002(b)(3), a "transcript of the tax return" is the transcript described in Internal Revenue Service Form 4506-T, Request for Transcript of Tax Return, which includes most of the line-items of a tax return.

Proposed [new Rule 4002-1.2](#) sets forth requirements for chapter 12 and 13 debtors to

provide information to the case trustee. The Rule also defines “transcript of the tax return.”

RULE 4002-1.3 DEBTOR – DUTIES – TAX RETURNS IN CHAPTER 13 CASES

(a) **Certificate Regarding Requirement to File Tax Returns.** In chapter 13 cases, at least one day before the first date set for the meeting of creditors under 11 U.S.C. section 341(a), the debtor shall file with the court and serve on the case trustee a certificate

(1) stating whether the debtor has filed all of the tax returns referenced in 11 U.S.C. section 1308(a); and

(2) if any such tax returns have not been filed, identifying which tax returns were unfiled as of that date and the estimated time required to file the returns.

(b) **Copies of Tax Return.** In chapter 13 cases, if any tax return is filed after the commencement of the case, the debtor shall serve on the case trustee a complete copy of the filed tax return with all schedules and attachments.

Proposed [new Rule 4002-1.3](#) sets forth a requirement relating to tax returns in chapter 13 cases.

RULE 4002-2 ADDRESS OF DEBTOR

When a debtor’s mailing or street address changes during the pendency of the case, the debtor shall file the statement required by Fed. R. Bankr. P. 4002(a)(5) within 14 days of the date the change becomes effective.

Proposed [new Rule 4002-2](#) adds a time by which a change of address must be filed.

RULE 4003-1.1 EXEMPTIONS

(a) **Claim of Exemption.** A debtor asserting a claim of exemption in personal property shall list that property in schedule C of official form 6, using the numbered categories and descriptions for that property set forth in schedule B of official form 6. If the individual and aggregate value of property included in items 4, 5, 6, 7, 8 (other than firearms), 31, and 34 in schedule B does not exceed the value of such property claimed as exempt, then, unless the court orders otherwise it shall be sufficient to describe such property in schedules B and C of official form 6 generically by such categories and to set forth in schedule C by category the total value of the property being claimed as exempt.

(b) **Value of Property.** The value of a claimed exemption shall be stated in dollar amounts on schedule C of official form 6. If the value of a claimed exemption is unknown or uncertain, the amount of the claimed exemption shall be stated as no more than the dollar amount of the maximum allowable exemption.

(c) **Allowed Exemptions.** Other than with respect to property that may be exempted in an unlimited amount, an allowed exemption shall be limited to the dollar amount set forth on schedule C as the value of the claimed exemption notwithstanding any determination that the property has a greater value than the amount or value claimed as exempt.

(d) **Future Proceeds.** A claim of exemption of future proceeds of an unliquidated claim or cause of action shall include a full description of the claim or cause of action.

Proposed [new Rule 4003-1.1](#) sets forth local requirements for completion of Official Form 6, Schedule C.

RULE 4003-1.2 EXEMPTIONS – AMENDMENTS TO SCHEDULE C – FORM AND NOTICE OF AMENDMENT

In addition to complying with the requirements of NM LBR 1009-1(a) and (b), the debtor shall give notice of any amendment to schedule C to all creditors and other parties in interest on the day of filing the amended schedule. The notice shall include the period for filing objections to the amendment provided for in Fed. R. Bankr. P. 4003(b).

Note: Form NM LF 16C was created by the clerk for compliance with section (a) of this rule and with NM LBR 1009-1(b).

Proposed [new Rule 4003-1.2](#) sets forth local requirements for amending Schedule C, Exemptions.

RULE 4008-1 REAFFIRMATION – FORM AND CONTENT OF AGREEMENT

Reaffirmation agreements must follow form B 240A, Reaffirmation Agreement, as revised from time to time. All applicable parts of the agreement must be completed, and, if the reaffirmation agreement concerns a secured debt, the security agreement must be attached. Reaffirmation agreements filed without the reaffirmation agreement cover sheet, Official Form B27, may be denied without a hearing.

Proposed [new Rule 4008](#) sets forth local requirements for reaffirmation agreements.

~~RULE 5001-1 COURT ADMINISTRATION~~

~~a. Clerk's Practice and Procedure Guide. The clerk of the bankruptcy court shall prepare, distribute and maintain a practice and procedure guide containing procedural instructions, copy requirements, fee schedules, standard forms of pleadings and similar information. The guide may include guidelines, policy statements, suggested forms and similar information provided by the United States Trustee.~~

~~b. Electronic Filing Procedures. The clerk of the bankruptcy court shall prepare, distribute and maintain procedures for electronic filing and shall make them available on the Court's website.~~

~~These procedures shall have the force of local bankruptcy rules but shall be made, amended, and applied with due regard for developing technology.~~

~~c. Revisions of Guide and Procedures. Publication and revision of the Clerk's Practice and Procedure Guide and Electronic Filing Procedures shall be exempt from the requirements for adoption of local rules.~~

~~(Amended, effective March 1, 2005, by order dated 01/21/05.)~~

[Current Rule 5001-1](#) is deleted as no longer applicable. The provision for the clerk of court to publish procedures and forms is included as subsection (b) of proposed amended Rule 5003-1.

RULE 5003-1 CLERK – GENERAL/AUTHORITY

(a) **Maintenance of Files.** The clerk of the bankruptcy court shall maintain the files of all bankruptcy cases and proceedings, whether assigned to a district judge or bankruptcy judge, **except upon withdrawal of the reference.**

(b) **Information from the Clerk.** The clerk may, from time to time, publish ministerial procedures, forms, and similar information not subject to the public notice and comment requirements for adoption of local rules.

(c) **Official Record.** The official document of record is the electronic document stored in the court's database.

Proposed [amended Rule 5003-1](#) clarifies in section (a) that the clerk of the bankruptcy court does not maintain files for bankruptcy cases and proceedings in which the reference has been withdrawn; and provides in section (b) for the clerk to publish procedures and forms without requiring public notice and comment.

RULE 5005-1 FILING PAPERS – REQUIREMENTS

(a) **Date and Time of Electronic Filing (“the drop box rule”).** Any filing paper placed in the court's drop box ~~filed electronically after the close of business but~~ before 8:00 a. m. ~~Mountain Time the following business day will~~ shall be deemed filed at midnight the previous business day. **This rule shall not apply when an order specifies a date and time by which a paper must be filed.**

(b) **Filer's Duty to Review Scanned Image.** The filer of a paper document shall review for accuracy the scanned image of the document within ~~60~~ 14 days of the date of filing of the document. If no correction of the scanned image is requested by the filer within ~~60~~ 14 days of the date of filing of the document, the image of the document will stand as stored in the court's database.

Proposed [amended Rule 5005-1](#) applies the drop box rule to electronically filed papers and reduces the time for filer to review scanned images to 14 days of filing.

RULE 5005-4.1 ELECTRONIC FILING – MANDATORY ELECTRONIC FILING

(a) **Filing by Electronic Transmission Required. E-filing Mandatory for Attorneys.** ~~Attorneys and trustees shall file all papers by electronic transmission in accordance with guidelines established by the court.~~ Subject to subsection (c) below, and unless the court orders otherwise, all papers filed by an attorney shall be submitted electronically via the court's electronic filing system.

(b) **Electronic Filing Procedures.** The clerk shall prepare and publish procedures for electronic filing, which shall be amended from time to time, and applied, with due regard for developing technology. These procedures, which are exempt from the public notice and comment requirements for adoption of local rules, shall have the force of local rules.

~~b.(c) Facsimile Filings.~~ Any party may, upon a showing of good cause, and with prior judicial approval, file any paper by facsimile to a court facsimile machine. **The clerk shall not accept papers filed via facsimile without judicial approval unless:**

- (1) the filing is due to technical problems and is accompanied by a certificate of inability to electronically file as prescribed by the court's electronic filing procedures;
- or
- (2) the filing of the document is otherwise authorized under the electronic filing procedures.

~~If the judges are not~~ no judge is available, the clerk has the discretion to authorize filing by facsimile. Any required filing fee must be paid to the clerk of the bankruptcy court at or before the time of the facsimile filing.

~~A certificate of inability to electronically file due to technical problems (or any other document prescribed by the court's Electronic Filing Procedures) may be filed by facsimile to the clerk's facsimile machine at any time without prior approval.~~

Note: Form NM LF 11 was created by the clerk for compliance with subsection (c)(1) of this rule.

Proposed [new Rule 5005-4.1](#) replaces current [Rule 5005-4](#). The proposed Rule requires mandatory electronic filing for attorneys, provides for preparation by the clerk of procedures for electronic filing; and requires use of a local form to certify inability to file electronically.

RULE 5005-4.2 ELECTRONIC FILING – SIGNATURES ON PAPERS FILED ELECTRONICALLY

Any paper physically signed, and filed electronically or filed in paper form, and thereafter converted to an electronic document by the clerk, has the same force and effect as if the individual signed a copy of the paper. Verified papers filed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed or subscribed.

Proposed [new Rule 5005-4.2](#) sets forth the effect of signatures on papers filed electronically.

RULE 5005-4.3 ELECTRONIC FILING – REQUIREMENT FOR SIGNATURE OF PERSON OTHER THAN ELECTRONICALLY FILING ATTORNEY

An attorney shall not file a paper requiring a person’s signature without obtaining the person’s signature on such paper after its preparation.

Proposed [new Rule 5005-4.3](#) sets forth the requirement for signature of person other than electronically filing attorney on all documents filed with the court.

RULE 5011-1 WITHDRAWAL OF REFERENCE

A motion to withdraw the reference shall be filed with the clerk of the bankruptcy court. The movant shall contact the courtroom deputy for the assigned bankruptcy judge to make arrangements for the assignment of a district judge. Any papers relating to the motion to withdraw the reference shall be filed with the clerk of the bankruptcy court and shall also be filed with the clerk of the district court.

Proposed [new Rule 5011-1](#) sets forth a procedure in connection with motions for withdrawal of the reference.

RULE 5011-2 ABSTENTION

A motion to abstain shall be filed as follows:

(1) **Bankruptcy Case.** A motion to abstain from a case under either 11 U.S.C. section 305 or 28 U.S.C. section 1334 shall be deemed timely if filed not later than 30 days following the conclusion of the 11 U.S.C. section 341 meeting of creditors.

(2) **Adversary Proceeding.** A motion to abstain from an adversary proceeding shall be deemed timely if filed not later than the date set for filing a response under Fed. R. Bankr. P. 7012 or, if the proceeding was removed to the bankruptcy court pursuant to 28 U.S.C. section 1452, then within 21 days after the notice of removal is filed. If a motion for abstention is filed

and denied, then the time for filing an answer or other responsive pleading shall be extended until 14 days after the entry of an order denying the motion.

(3) Contested Matter. In a contested matter, a motion for abstention shall be deemed timely filed if filed within the time allowed for responses or objections to the matter. If a motion for abstention is filed and denied, then the time for filing a response or objection to the contested matter shall be extended until 14 days after the entry of an order denying the motion.

Proposed [new Rule 5011-2](#) provides time periods not provided in Fed. R. Bankr. P. 5011.

RULE 5071-1 CONTINUANCE

A motion for continuance of a hearing ~~shall not be granted~~ based ~~only~~ **solely** on the agreement of counsel **will not automatically be granted**. ~~No such motion will be granted other than for good cause shown and upon such terms as the court may impose.~~

Proposed [amended Rule 5071-1](#) rewords the current rule to specifically provide for the exercise of judicial discretion.

RULE 5073-1 PHOTOGRAPHY, RECORDING DEVICES, AND BROADCASTING

Subject to any specific order of the court to the contrary:

(1) Prohibition Against Cameras, Transmitters, Receivers, and Recording Equipment. No cameras, transmitters, receivers or recording equipment may be brought into or used in any courtroom or court environs. Environs include:

- (A) the entire floor where a bankruptcy courtroom is located;
- (B) the entire floor where a bankruptcy judge's chambers are located; and
- (C) the entire floor where any meeting of creditors is located.

(2) Authority to Impound Equipment. The U. S. Marshals Service may impound the above-described equipment brought into the courtroom or court environs.

(3) Exemptions from Prohibition. The prohibitions of this rule do not apply to:

- (A) a stenographic or recording device used by an official court reporter, **case** trustee, or other authorized court personnel or personnel of the Office of the United States trustee;
- (B) equipment brought into court during investitive, ceremonial or naturalization proceedings;

(C) a telephone, pager, personal digital assistant or any other device, including any device which includes a camera **or audio** component (for still or video photography **or recording**) if the device (including the camera **or audio** component) is turned off while court is in session; however, at no time may the camera **or audio** component be activated while in the courthouse unless in connection with an investitive, ceremonial or naturalization proceeding;

(D) a laptop computer as long as it does not make noise or interfere with court proceedings; or

(E) a device required because of a person's disability.

Proposed [amended Rule 5073-1](#) reformats the current rule.

RULE 5077-1 TRANSCRIPTS OF PROCEEDINGS

A transcript of a court proceeding shall include the name of the entity who ordered the transcript.

Proposed [new Rule 5077-1](#) is necessary now that transcripts are filed electronically but not available for viewing remotely for 90 days unless purchased from the transcriber. With this information at hand, the Clerk's Office can automatically provide remote access to the entity who ordered the transcript.

RULE 6004-1 SALE OF ESTATE PROPERTY

(a) Motions for and Notices of Sale of Property. A motion for sale and the notice thereof shall, in addition to the information required by Fed. R. Bankr. P. 2002 and Fed. R. Bankr. P. 6004, set forth:

- (1) the terms of the sale;
- (2) in a private sale, the name of the purchaser and the purchaser's relationship, if any, to the debtor;
- (3) any valuations of the property to be sold made within the 12-month period prior to the filing of the motion that are known to the movant;
- (4) the anticipated fees and expenses related to the sale;
- (5) whether the sale includes personally identifiable information;
- (6) in a chapter 11 case, whether the assets proposed to be sold comprise a substantial part of debtor's estate or will affect debtor's ability to continue operating as a going concern;

- (7) in the notice, the date of the hearing on the motion (if set); and
- (8) in the notice, the deadline for filing objections to the motion.

(b) Additional Requirements for Motions for and Notices of Sales Free and Clear of Interests. In addition to the information required under subdivision (a), the notice of a motion to sell property free and clear of liens or other interests under 11 U.S.C section 363(f) shall include:

- (1) a statement that the property is to be sold free and clear of liens or other interests;
- (2) the name of the alleged holder of and the amount and nature of each lien or other interest in the property;
- (3) the sub-paragraphs of 11 U.S.C. section 363(f) under which the sale is claimed to be authorized; and
- (4) if the proceeds of the sale appear to be insufficient to pay all the liens and other interests in the property, then the notice shall further state:
 - (A) the liens and other interests that may not be paid from the sale proceeds; and
 - (B) why the sale is necessary.
- (5) If the movant does not intend for the interests of others in the property to attach to the proceeds, the movant shall clearly set forth this intent and provide the basis for the request.

Proposed [new Rule 6004-1](#) sets forth additional disclosures in relation to motions and notices concerning sales of estate property to promote transparency and efficiency.

RULE 6006-1 EXECUTORY CONTRACTS – MOTIONS TO ASSUME OR REJECT

Unless the court orders otherwise, notice of:

- (1) a motion to assume or reject executory contract;
- (2) a motion to compel performance of a lease of non-residential real property or to extend the time for performance under 11 U.S.C. section 365(d)(3); or
- (3) a motion under 11 U.S.C. section 365(d)(3) or 365(d)(4) to extend the period to assume or reject an unexpired lease of real property shall be provided to, in addition to the

entities listed in Fed. R. Bankr. P. 6006(c) and Fed. R. Bankr. P. 9013,

- (A) those entities entitled to receive notice under the terms of the contract or lease;
- (B) in a chapter 9 or 11 case, any creditors' committees or the creditors holding the 20 largest unsecured claims if no committee has been appointed;
- (C) in a chapter 12 or chapter 13 case, the case trustee; and
- (D) any party who has requested notice.

Proposed [new Rule 6006-1](#) sets forth additional entities to whom a motion under 11 U.S.C. § 365 must be provided in the District of New Mexico.

RULE 7007-1 ADVERSARY PROCEEDINGS – MOTION PRACTICE

Except for motions for summary judgment that are governed by NM LBR 7056-1, a respondent shall file and serve a response to a motion within 21 days after service of the motion. The movant may file and serve a reply within 14 days after service of the response. Briefs or memoranda are optional, unless otherwise ordered by the court.

Proposed [new Rule 7007-1](#) sets forth requirements for filing motions in an adversary proceeding.

RULE 7016-1 PRETRIAL PROCEDURES – PRETRIAL ORDER

(a) **Form.** Pretrial orders shall substantially conform to the form promulgated by the judge assigned to the matter.

(b) **Unilateral Pretrial Order.** Any party who does not cooperate in preparing the joint pretrial order in a timely manner may be subject to sanctions, including being precluded from calling any witnesses or submitting any exhibits at trial. The opposing party may file a motion seeking entry of a pretrial order in the form prepared by that party, setting forth the details of the other party's lack of cooperation.

Proposed [new Rule 7016-1](#) sets forth requirements of form of pretrial order and consequences of failure of a party to cooperate in preparing the joint pretrial order.

RULE 7026-1 DISCOVERY – GENERAL

(a) ~~**Rules Governing Discovery in Contested and Adversary Matters.** This rule governs the applicability of the December 1, 1993, amendments to Rule of Civil Procedure 26, which modify Bankruptcy Rules 7026 and 9014.~~

~~(1) Rule of Civil Procedure 26(a) (1) shall not apply in contested and adversary matters unless a judge so orders.~~

~~(2) Discovery of insurance agreements may be had under the provisions of former Rule of Civil Procedure 26(b) (2).~~

~~Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.~~

~~(3) The timing of disclosures relating to expert witnesses pursuant to Rule of Civil Procedure 26(a) (2) and pretrial preparation pursuant to Rule of Civil Procedure 26(a) (3) shall be established by court order in each adversary proceeding. These two subsections shall not apply in contested matters.~~

~~(4) The first sentence of Rule of Civil Procedure 26(d) shall not apply in contested and adversary matters unless a judge so orders.~~

~~(5) Rule of Civil Procedure 26(f) shall not apply in contested and adversary matters unless a judge so orders.~~ **Application of Fed. R. Civ. P. 26. Unless the court orders otherwise, Fed. R. Civ. P. 26(a), 26(d)(1), and 26(f) shall not apply in contested matters or in adversary proceedings.**

~~(b) **Form of Discovery Requests.** A party, when serving the following documents, must provide space, when not on a diskette, for an answer, response or objection after each: interrogatory; request for production of documents or things; or request for admission.~~

~~Regardless of the number of sets, a party must sequentially number: interrogatories; requests for production of documents or things; or requests for admission.~~

~~For example, the first set of interrogatories is numbered 1-10; the same party's second set of interrogatories is numbered 11-20, etc. The party answering, responding or objecting to a discovery request must either set forth the answer, response or objection in the space provided or quote fully each interrogatory or request before any answer, response or objection.~~ **Format. When interrogatories, requests for production of documents or things, or requests for admission are served, in addition to service in paper (if required), the proponent shall provide the discovery documents in Word or WordPerfect format, if feasible. The answer, response, or objection shall be set forth after the**

interrogatory or request, or in the space provided.

(c) **Numbering.** Each interrogatory or request shall be numbered sequentially across sets, e.g., first set, numbered 1-5; second set, numbered 6-10; etc.

~~e.~~(d) **Non-filing of Discovery Materials Documents.** ~~(1) Discovery requests, responses thereto, and certificates of service thereof, including i~~Interrogatories, requests for production ~~or inspection of documents,~~ requests for admission and **notices of deposition,** ~~responses thereto are served upon other parties but are~~ shall not be filed with the court **except in connection with a motion to compel, for a protective order, or for discovery sanctions.**

~~(2) Notice to take a deposition or proof of service of such a notice is not filed with the clerk except when the adequacy or content of the notice is the basis for a motion, or response to a motion, relating to Bankruptcy Rule 7030 or 7031.~~

~~(3) Deposition transcripts are not filed unless otherwise ordered.~~

~~(4) A certificate of completion of deposition is not filed unless otherwise ordered.~~

Proposed amended Rule 7026-1 is reformatted for clarity.

RULE 7030-1 DEPOSITIONS

(a) **Notice of Deposition; Notice Not Filed.** Counsel ~~must~~ shall confer in good faith regarding scheduling of depositions before serving notice of deposition. Service of notice of deposition in accordance with Fed. R. Bankr. P. 7030 ~~must~~ shall be made at least ~~14 ten~~ calendar days before the scheduled deposition. The time for serving notice may be shortened by agreement of all parties or by court order. **Notices of depositions and proof of service thereof shall not be filed, except as attachments to motions to compel or to quash.**

(b) **Non-appearance at Deposition.** Failure of a deponent to appear at the time and place designated may be regarded as a willful failure to appear pursuant to Fed. R. Bankr. P. 7037 or as contemptible conduct pursuant to Fed. R. Bankr. P. 9016 unless a motion for protective order and a notice of non-appearance are served at least ~~five~~ calendar **three** days before the scheduled deposition; ~~or if t.~~ The court **may impose sanctions if it** finds that the motion is frivolous or **put forth** for dilatory purposes.

(c) **Deposition Fees.** A court reporter must certify in a deposition transcript the reporter's fees for the deposition.

(d) **Depositions Not Filed.** Unless the court orders otherwise, deposition transcripts and certificates of completion of depositions shall not be filed.

Proposed amended Rule 7030 is reformatted for clarity.

RULE 7054-1 COSTS – TAXATION/PAYMENT

(a) **Motion to Tax Costs; Bill of Costs.** ~~A motion to tax costs must be filed and served on each party within thirty calendar days of entry of judgment. Failure to file and serve within this time period constitutes a waiver of a claim for costs.~~ **Within 14 days after entry of the judgment, unless the time is extended by motion filed prior to the expiration of the time, a party allowed costs shall file with the court and serve upon all adverse parties a motion to tax costs. The motion to tax costs must shall include an itemized cost-a bill documenting of costs and including receipts as required by rule or statute; and a party's affidavit that the costs claimed are allowable by law, correctly stated, and necessary to the litigation. verified pursuant to 28 U.S.C. section 1924 which itemizes the costs claimed under 28 U.S.C. section 1920. Copies of receipts, billings, and payments shall be attached to the bill of costs.**

~~A claim for attorney's fees or other expenses not taxable in accordance with 28 U.S.C. § 1920 must be made in a separate motion.~~

(b) **Objections.** Unless the clerk directs otherwise, notice of the motion to tax costs shall give adverse parties 14 days to file and serve on the movant any objections to the bill of costs. Objections must have supporting evidence attached.

(c) **Taxation by Clerk.** Unless otherwise ordered, the clerk will tax costs without a hearing if no objection is timely filed. A request to review the clerk's action must be filed within 14 days of entry of the clerk's order taxing costs.

(d) **Allowable Costs.**

(1) **Transcript.** The cost of an original transcript of a court proceeding is taxable when ~~requested by a party and~~ authorized by the court before transcription.

(2) **Deposition Costs- Reporter's Transcript Fees.** The reporter's charge for the original or a copy of a deposition transcript is taxable when the deposition is reasonably necessary to the litigation. ~~Reasonably Necessary to the Litigation.~~ A deposition is reasonably necessary to the litigation when a substantial portion of the deposition is admitted into evidence or used at trial for impeachment purposes; the deposition was used by the court in ruling on a motion for summary judgment; or the court so determines.

(3) **Witness Costs.**

(A) **Lay Witness.** ~~The rates for w~~Witness fees, mileage, and subsistence ~~are set by statute and~~ costs are taxable if the witness testifies at

trial or at a deposition found reasonably necessary to the litigation. ~~(B) The witness will be paid the smaller of: mileage from the distance from the witness's residence to court, or the *per diem* specified by 28 U.S.C. § 1821. The request for witness costs shall be itemized, separating witness fees, mileage, and allowance for subsistence.~~

(B) Expert Witness Fees. An expert witness fee is not taxable under 28 U.S.C. section 1920 unless the court, *sua sponte* or on motion by a party, appoints the expert and approves the fee amount. An expert witness not appointed by the court will be paid the same fee as a lay witness.

(C) Witness is a Party. A party will not receive a witness fee, mileage, or allowance for subsistence.

(4) Interpreter and Translator Fees. An interpreter's fee or translator's fee is taxable if the ~~cost of~~ **fee for** the witness whose testimony is interpreted or translated is taxable or **if** the translated document is admitted into evidence.

(5) Copies of Papers. The cost for copying an exhibit is taxable when the exhibit is requested by the court or when the copy is admitted into evidence in place of an original.

(6) ~~Maps, Charts, Models, Photographs, Summaries, Computations, and Statistical Summaries~~ Other Items. The cost of a photograph, 8" x 10" in size or less, is taxable if the photograph is admitted into evidence. The following costs are not taxable unless the court orders otherwise: photographs larger than 8" x 10"; costs of charts or models; or the cost of compiling summaries, computations, or statistical comparisons.

(7) Jury Cost Assessment. All jury costs, mileage and *per diem* allowances are taxed equally to all parties when a jury trial is settled or otherwise disposed of in advance of trial or during trial but prior to verdict. No assessment will be made if the clerk is notified of the settlement before noon on the business day before the action is set for trial or if good cause is shown.

Note: See 28 U.S.C. sections 1920 and 1924; Fed. R. Bankr. P. 7054; and Fed. R. Civ. P. 54.

Proposed [amended Rule 7054-1](#) reformats and rewords most of the current rule and changes the time for filing a motion to tax costs from 30 calendar days to 14 days after entry of judgment. The amended rule now includes provision for notice and filing of objections and for filing requests to review the clerk's action.

RULE 7056-1 SUMMARY JUDGMENT

(a) Memoranda. The ~~moving party~~ **movant** shall file with the motion a memorandum containing a ~~short~~, concise statement in support of the motion with a list of authorities ~~relied upon~~. A motion for summary judgment filed without ~~the required written~~ **a** memorandum may be summarily denied. A party opposing the motion shall, within ~~20~~ **21** days after service of the motion, file a ~~written~~ memorandum containing a ~~short~~, concise statement in opposition to the motion with **a list of** authorities. If no ~~such responsive pleading~~ **response** is filed, the court may grant the motion for summary judgment. The ~~moving party~~ **movant** may, within ~~ten~~ **14** days after the service of ~~such memorandum~~ **a response**, file a ~~written~~ reply memorandum.

(b) Undisputed Facts. The memorandum in support of the motion shall set out as its opening a concise statement of all of the material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies.

(c) Disputed Facts. A memorandum in opposition to the motion shall contain a concise statement of the material facts as to which the party contends a genuine issue does exist. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and shall state the number of the movant's fact that is disputed. All material facts set forth in ~~the movant's~~ **the movant's** statement of ~~the movant~~ **that are properly supported** shall be deemed admitted unless specifically controverted.

Proposed [amended Rule 7056-1](#) reformats the current Rule, makes some wording changes, and changes 20 days to 21 for filing a response and ten days to 14 for filing a reply.

RULE 7067-1 ~~REGISTRY FUND~~ DISBURSEMENT OF FUNDS DEPOSITED WITH THE COURT

~~Orders for disbursement from the court registry shall set out~~ **The clerk shall not disburse funds deposited with the court without an order which:**

(1) sets forth the ~~payee's name and address, and social security number or employer identification number~~ of each payee; and

(2) specifies the amount of principal and interest (if any) to which each payee is entitled; or a means ~~by which the clerk may ascertain~~ **for ascertaining** the same.

The clerk shall not disburse funds to a payee until a tax identification or social security number for that payee has been received.

Proposed [amended Rule 7067-1](#) eliminates use of the out-dated terms "court

registry” and “registry funds” and reflects current practice.

RULE 9003-1 EX PARTE CONTACT

Unless the court orders otherwise, a party shall not transmit to a judge any communication regarding relief sought. This rule does not preclude *ex parte* submission of orders for entry. A communication regarding relief or opposition to relief directed to a judge or the clerk may be filed in the case or proceeding. The court is not required to take any other action on the communication unless a party requests a hearing, moves to strike, or takes other action to properly bring the matter before the court.

Proposed [new Rule 9003-1](#) governs *ex parte* communication.

~~**RULE 9004-1 PAPERS – REQUIREMENTS OF FORM**~~

~~The clerk of the bankruptcy court shall determine the form and number of copies of petitions, lists, schedules, statements, pleadings, exhibits and other papers to be filed and the manner of their assembly and disposition.~~

[Current Rule 9004-1](#) is deleted as unnecessary.

RULE 9004-1.1 PAPERS – REQUIREMENTS OF FORM – DESIGNATION

The designation of all pleadings, motions and applications shall include the specific relief sought. Orders shall include in the designation a reference to the subject motion or application.

Note: See Fed. R. Bankr. P. 9004(b).

Proposed [new Rule 9004-1.1](#) sets forth requirements for the titles of all pleadings, motions, and applications.

RULE 9004-1.2 PAPERS – REQUIREMENTS OF FORM – CONTENTS OF NOTICE OF DEADLINE FOR FILING OBJECTIONS

If relief may be granted “after notice and hearing” as defined in 11 U.S.C. section 102, and unless otherwise specifically provided in these rules, the notice must contain the designation (title) of the motion or application, the date the motion was filed, and, unless a copy of the motion or application is served with the notice, a detailed summary of the relief requested. The notice shall state that if no objections are timely filed, the court may grant the relief requested without further notice or a hearing.

Proposed [new Rule 9004-1.2](#) sets forth local requirements for notices of deadline for filing objections.

RULE 9004-2 CAPTION – PAPERS, GENERAL

Every paper filed shall be captioned:

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

and filed with the clerk of the bankruptcy court. ~~The docket number shall include the initials of the assigned bankruptcy judge or district judge.~~ **On every paper filed after the petition, the docket number shall include the chapter number of the case (noted first) and the initial of the assigned judge followed by the initial of the location of the section 341 meeting of creditors (noted last), e.g., 7-08-12345-SA, when the case is a chapter 7 case, the judge’s initial is “S,” and the location is Albuquerque. This rule does not apply to papers generated by the court’s electronic filing program for filing in a case.**

Note: See Fed. R. Bankr. P. 1005, 5005, 7010, 9001(1), 9009, Official Forms, and 9004(b).

[Proposed amended Rule 9004-2](#) sets forth current docket number format for documents filed.

RULE 9006-1 TIME PERIODS

(a) In General. A motion for enlargement of time shall recite grounds for the motion and the original ~~time set~~ **deadline for taking action**, any previous enlargement sought or granted, and the additional time sought. A motion for reduction of time shall recite grounds for the motion and the means by which affected parties shall receive or have received fair and adequate notice.

(b) Statements, Schedules, and Chapter 13 Plan. A motion for enlargement of time to file statements or schedules, or a chapter 13 plan, shall set forth the date and time of the meeting of creditors and shall set forth the concurrence or opposition of the case trustee or in a chapter 11 case, the United States trustee.

[Proposed amended Rule 9006-1](#) reformats the Rule and adds requirement to contact the case trustee or U. S. trustee for concurrence when requesting enlargement of time to file statements, schedules, and chapter 13 plans.

**RULE 9009-1 WHEN USE OF ADMINISTRATIVE OFFICE DIRECTOR’S
PROCEDURAL FORMS AND LOCAL FORMS REQUIRED**

Those Administrative Office Director’s Procedural Forms and those local NM Forms (in lieu of an Official or Director’s Procedural Form) designated by the clerk as “required forms” must be used. The clerk will publish the required forms on the court’s website “Forms” pages.

Proposed [new Rule 9009-1](#) adds the requirement to use certain forms designated by the clerk as required forms, which will be posted by the clerk on the court's website.

~~**RULE 9010-1**~~ — ~~**ATTORNEYS - NOTICE OF APPEARANCE**~~

~~An attorney admitted to practice before the court or an unrepresented party shall have a continuing duty to notify the clerk, in writing, of all changes in mailing address, telephone number, facsimile number, and e-mail address.~~

[Current Rule 9010-1](#) is replaced by [proposed new Rule 9011-1.2](#) and [proposed new Rule 9011-2](#) to comport with the Uniform Numbering System.

~~**RULE 9010-2**~~ — ~~**ATTORNEYS - REPRESENTATION OF CORPORATIONS OR PARTNERSHIPS**~~

~~A corporation or partnership must be represented by an attorney authorized to practice before this court for all purposes except filing proofs of claim or participation in a meeting of creditors.~~

[Current Rule 9010-2](#) is replaced by [proposed new Rule 1074](#) to comport with the Uniform Numbering System.

~~**RULE 9011-1**~~ — ~~**ATTORNEYS AS SURETY**~~

~~No attorney shall be accepted as a surety for costs, or as surety on any appearance bond, appeal bond or other bond which may be given in any case pending in this court in which the attorney is counsel.~~

[Current Rule 9011-1](#) is replaced by [proposed new Rule 9011-1.3](#) to comport with the Uniform Numbering System.

RULE 9011-1.1 **ATTORNEYS – DUTIES – PROFESSIONALISM**

“A Creed of Professionalism of the New Mexico Bench and Bar” applies in all proceedings before the United States Bankruptcy Court for the District of New Mexico.

Note: See <http://www.nmbar.org/Attorneys/creed.html>.

Proposed Rule 9011-1.1 is new.

RULE 9011-1.2 **ATTORNEYS – DUTIES – CONTACT INFORMATION AND CHANGES**

An attorney appearing before the court shall ensure that any paper submitted to the

court sets forth the attorney's name, address, telephone number, facsimile number, if any, and e-mail address below the attorney's signature line. That attorney has a continuing duty to promptly notify the clerk, in writing, of all changes in mailing address, telephone number, facsimile number, or e-mail address, including updating the attorney's Electronic Case Filing (ECF) account information.

Proposed [new Rule 9011-1.2](#) replaces [current Rule 9010-1](#) regarding attorney's duty to maintain up-to-date contact information with the clerk.

RULE 9011-1.3 ATTORNEYS – DUTIES – ATTORNEYS AS SURETY

No attorney shall be accepted as a surety for costs, or as surety on any appearance bond, appeal bond or other bond which may be given in any case pending in this court in which the attorney is counsel.

Proposed [new Rule 9011-1.3](#) replaces [current Rule 9011-1](#).

RULE 9011-2 ~~PRO-SE~~ SELF-REPRESENTED PARTIES – DUTIES – CONTACT INFORMATION AND CHANGES

An individual appearing before the court without representation by an attorney shall ensure that any paper he or she submits to the court sets forth the individual's name and the individual's address, telephone number, facsimile number, if any, and e-mail address, if any, below the individual's signature line. That individual has a continuing duty to promptly notify the clerk, in writing, of all changes in mailing address, telephone number, facsimile number, or e-mail address.

Proposed [amended Rule 9011-2](#) replaces [current Rule 9010-1](#) regarding self-represented party's duty to maintain up-to-date contact information with the clerk. [Current Rule 9011-2, *Pro se Parties*](#), which reads "Except by leave of this court, a party who is represented in a case by an attorney may not appear *pro se* or file papers," is deleted as unnecessary.

RULE 9011-4 SIGNATURES

The court will treat a duplicate signature as an original signature.

Note: See Fed. R. Evid. 1003.

There is no change to current Rule 9011-4, Signatures.

~~RULE 9011-5 CONTACT INFORMATION~~

~~A paper submitted to the Court shall state the signer's address, telephone number, and facsimile number (or contain an affirmative statement that the signer has no facsimile~~

number):

Current Rule 9011-5 is replaced by proposed new Rule 9011-1.2 (as to attorney filers) and proposed new Rule 9011-2 (as to self-represented filers). The proposed rules put the responsibility on the filer instead of the paper filed.

RULE 9013-1.1 MOTION PRACTICE; HEARINGS; BRIEFS

(a) **Form of Motions.** The title designation (title) of a motion shall describe the relief sought.

Note: See NM LBR 4001-1.3, Automatic Stay – Motions for Relief from.

(b) **Concurrence of Affected Party.** Unless a motion requires notice to all creditors, is governed by Bankruptcy Rule 4001 notice to all creditors on a court-approved limited mailing list for the case, or notice to all creditors included on the list filed pursuant to Fed. R. Bankr. P. 1007(d), or the court for cause waives this requirement, movant shall determine whether or not the motion will be opposed. If the motion will not be opposed, an order approved by the affected party or counsel therefor that party's attorney shall accompany the motion may be submitted to the court. If the motion is opposed, the motion it shall recite the attempt made to obtain concurrence of the opposing party and the result thereof so state. If the movant has not obtained either concurrence or opposition to the motion from the opposing party, the motion shall recite the attempts movant has made to contact the opposing party. Movant shall not assume that the nature of the motion obviates the need for a good faith request for concurrence from the opposing party.

(c) **Procedure to Secure Hearing; Disposition With or Without Hearing.** With respect to a motion, other than one which may be heard *ex parte* or a motion for summary judgment, and unless provided otherwise in the Federal Rules of Bankruptcy Procedure or these rules, a the movant shall secure a hearing or disposition without a hearing by one of the following three procedures:

(1) **Notice of Deadline for Filing Objections.** The movant shall file and serve with a notice of the motion a notice, including a certificate of service, identifying which identifies the motion, sets forth the time for filing an objection, and, unless the motion is served with the notice, adequately describes the relief sought and provides any other information necessary to give adequate notice. ; The notice shall also state; that if no objections is are timely filed with the clerk and served upon the movant, the court may enter an order granting the relief requested without further notice or a hearing. Unless otherwise provided by the Federal Rules of Bankruptcy Procedure or these rules or unless extended or shortened by order of the court, the time for filing an objection shall be 20 21 days from service of the notice; and, either

(A) **Obtain a Hearing After Objections are Filed.** If an

objection is **timely** filed, the movant shall **contact the courtroom deputy for the assigned judge to promptly request a hearing as provided in subsection (2) below. The movant thereafter shall promptly file and serve notice of the hearing.** If no objection is **timely** filed ~~and served~~, the movant shall promptly submit **to the court** a proposed form of order, reciting ~~the~~ **that** notice given and the **date of** expiration of the time to object, in lieu of the default procedure set ~~out~~ **forth** in Fed. R. Bankr. P. 7055. ~~This procedure is not applicable to motions in adversary proceedings., or~~

~~(2) — Contemporaneously with filing the motion or forthwith upon service of an objection to the motion, the movant shall call the judge’s chambers and request a hearing or file a request for hearing substantially conforming to the local form thereof. Upon receiving a hearing date and time, the movant shall prepare, serve and file a notice of the hearing.~~

(B) Obtain a Hearing Before Service of the Notice. With the permission of the assigned judge, the movant may obtain a hearing prior to service of the notice of deadline for filing objections set forth in subsection (c)(1) of this rule, such that the notice of hearing is included in the notice of deadline for filing objections.

~~(3) — With permission of the court, a hearing may be obtained prior to filing a motion, such that notice of the hearing may be sent with the motion.~~

(2) Obtaining a Hearing Without a Notice of Deadline for Filing Objections. With the permission of the assigned judge, movant may obtain a hearing on the motion without service of a notice of deadline for filing objections, by contacting the courtroom deputy for the assigned judge to request a hearing date for a preliminary or final hearing, or both, and file and serve notice of the hearing(s) with the motion as directed by the assigned judge.

(3) Hearings in Adversary Proceedings. In adversary proceedings, the movant may obtain a hearing on a motion by contacting the courtroom deputy for the assigned judge. The procedures set forth in sections (c)(1), (c)(2), and (c)(3) of this rule are not applicable to motions in adversary proceedings.

(d) Motions Automatically Generally Set for Preliminary Hearing. ~~Except in adversary proceedings, all;~~ All motions shall **generally** be set for preliminary hearing ; ~~rather than final;~~ unless otherwise ~~requested and ordered~~ **directed** by the court. **Except for preliminary hearings held pursuant to Fed. R. Bankr. P. 4001(b)(2), testimony and exhibits shall ordinarily will** not be received at a preliminary hearing. Counsel shall confer prior to the **preliminary** hearing and shall be prepared to advise the court of the likelihood of settlement, the disputed and undisputed facts, their legal theories, anticipated discovery, witnesses, exhibits, and **estimated** duration of a final hearing.

(e) **Briefs.** Unless ~~otherwise ordered by the court~~ **orders otherwise** or as required for motions for summary judgment **pursuant to** { NM LBR 7056-1 }, briefs or supporting points with citations or authorities need not be submitted with a motion.

Proposed [amended Rule 9013-1.1](#) renumbers Rule 9013-1 to comport with the Uniform Numbering System, and rewords and reformats the Rule for clarity.

RULE 9013-1.2 MOTION PRACTICE – MOTION TO CONVERT OR DISMISS A CHAPTER 11 CASE

~~Motions Pursuant to 11 U.S.C. § 1112(b).~~

(a) **Commencement of 30-day Period.** Except as provided in subsection (c), ~~B~~ before filing a motion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. § **section** 1112(b), the ~~moving party~~ **movant** shall contact the courtroom deputy for the **assigned** judge assigned to the case to request a ~~date and time for a hearing. on such motion. Upon receiving such date and time, the moving party shall prepare notice of such hearing, file the motion and the notice, immediately provide the notice to all creditors and parties in interest, and serve the motion on the debtor, the United States trustee, any committee, and any party who has entered an appearance. The notice shall include notice of the deadline for filing objections, set for five business days prior to the date of the hearing.~~ **The 30-day period under 11 U.S.C. section 1112(b)(3) will not begin to run until the movant has served notice of the hearing.**

(b) **Scheduling Conference, then Final Hearing.** Except as provided in subsection (c), a motion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. section 1112(b) will be set first for a scheduling conference and then for a final hearing. The movant shall file with the motion, and serve within two days of the filing of the motion, a notice that includes notice of the scheduling conference, the final hearing, and the deadline for filing an objection to the motion, and that states that if no objections are timely filed the court may grant the relief requested without further notice or a hearing. The deadline for filing an objection shall be a date certain that is ten days from the date of service of the notice, unless the tenth day is a Saturday, Sunday, or legal holiday, in which case the period continues to run until the end of the next business day.

(c) **Waiver of 30-day Period.** If the movant expressly waives the 30-day period under 11 U.S.C. section 1112(b)(3), unless the court orders otherwise, the procedure set forth in NM LBR 9013-1.1(c) shall apply to a motion to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. section 1112(b).

Proposed [amended Rule 9013-1.2](#) is reformatted to more clearly set forth procedure. The Rule amends current Rule 9013-2, adopted by general order dated 10/14/05.

RULE 9013-3 CERTIFICATE OF SERVICE – MOTIONS AND NOTICES

A certificate of service shall be filed for all motions and notices within a reasonable time after service. The certificate of service may be part of the motion or notice or in a separate document.

Proposed [new Rule 9013-3](#) sets forth the requirement to file a certificate of service with all motions and notices. The new Rule allows for reference to the requirement in other rules to be removed for clarity.

Proposed RULE 9015-1 JURY TRIAL

(a) Statement of Consent. The time for filing a statement of consent under Fed. R. Bankr. P. 9015(b) shall be set by the court.

(b) No Consent. If the requirements of Fed. R. Bankr. P. 9015(b) have been met but all parties do not consent to have a jury trial conducted by a bankruptcy judge, the bankruptcy judge will preside over the pretrial proceedings. When the proceeding is ready to be tried by a jury, the court will so certify those facts to the district court. Along with the certification, the bankruptcy judge will submit an order withdrawing the reference.

Note: See Administrative Order of the United States District Court, Misc. No. 94-323, entered December 1, 1994 (addendum to these rules), which “designates the Bankruptcy Judges of this District to conduct jury trials in those proceeding that may be heard by a Bankruptcy Judge.”

Current ~~RULE 9015-1~~ — ~~JURY TRIAL~~

~~**a. Applicability of Certain Federal Rules of Civil Procedure.** Rules of Civil Procedure 38, 39, 47-51, and 81(c) insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule of Civil Procedure 38(b) shall be filed in accordance with Bankruptcy Rule 5005.~~

~~**b. Consent to Have Trial Conducted by Bankruptcy Judge.** If the right to a jury trial applies, a timely demand has been filed under Rule of Civil Procedure 38(b), and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than the time fixed by the court.~~

[Current Rule 9015-1](#) basically restates the federal rule; [proposed amended Rule 9015-1](#) sets forth the procedure in the District of New Mexico for jury trial in the bankruptcy court when demand is made.

RULE 9019-1 SETTLEMENTS AND AGREED ORDERS

Unless the court determines otherwise, hearings will not be vacated due to resolution unless a written order is submitted prior to the scheduled hearing and the judge's office is notified by telephone of the submission of such an order. Otherwise, counsel shall appear at the scheduled hearing to apprise the court of their resolution of the matter.

Proposed amended Rule 9019-1 rewords the current rule to specifically provide for the exercise of judicial discretion.

RULE 9021-1 JUDGMENTS AND ORDERS – ENTRY OF

(a) **Form of Judgments and Orders.** The title of a judgment or order shall identify the motion or application upon which it is based by title and shall specifically set out the relief granted specifically, not simply by reference to the motion, e.g., **Order Denying Plaintiff's Motion for Summary Judgment; Order Granting Motion to Sell Property at 500 Gold Avenue SW, Albuquerque, New Mexico, etc.**

Note: See Fed. R. Bankr. P. 9004(b).

(b) **Prompt Submission.** Upon At the conclusion of a hearing, a party as directed by the court shall promptly submit a proposed form of judgment or order.

(c) **Signature.** A judgment or order shall be signed by the submitting movant or attorney submitting the same. Such The signature shall constitute a certification of the facts recited therein.

Note: See NM LBR 5005-4.2 and 5005-4.3.

(d) **Approval; Listing of Those Entitled to Notice.** A judgment or order shall also contain the signature or other form of consent of ~~be approved by~~ all parties ~~consenting thereto~~ appearing in the matter unless for good cause shown the court directs that such approval is not necessary. ~~and~~ It shall also list the names, addresses, ~~and~~ telephone numbers, facsimile number, if any, and e-mail address, if known, of all attorneys and others entitled to notice of entry of the judgment or order. The listing of each attorney shall identify the party represented.

(e) **Consent Stipulated Orders.** An consent order approved by all parties entitled to notice need not be accompanied by a motion.

(f) **Final Judgment Based Upon a Negotiable Instrument.** A negotiable instrument that is the basis of a final judgment must accompany the judgment. The instrument must be:

- (1) filed as an exhibit upon entry of judgment;
- (2) merged into the judgment and marked as merged; and
- (3) marked with the docket number of the action.

The instrument may be delivered to a party only by court order.

Reference: ~~Fed R. Bankr. P 9022(a).~~

Proposed [amended Rule 9021-1](#) reformats the current Rule for clarity.

~~RULE 9028-1~~ ~~DISABILITY OR MISCONDUCT OF A JUDGE~~

~~A person may lodge a complaint against a judge in accordance with 28 U.S.C. § 372(c) by obtaining a complaint form from the clerk of the bankruptcy court and filing with:~~

~~—— Circuit Executive
—— United States Court of Appeals for the Tenth Circuit
—— Byron White U.S. Courthouse
—— 1823 Stout Street
—— Denver, CO 80257~~

~~Such proceedings are governed by the Rules of the Judicial Council of the Tenth Circuit Governing Complaints of Judicial Misconduct or Disability, which are available from the clerk.~~

[Current Rule 9028-1](#), adopted in 1996, is deleted. The information regarding disability or misconduct of a judge is posted on the homepage of the court's public website.

RULE 9029-1 LOCAL RULES – GENERAL – RENUMBERING

Renumbering of these rules to conform to any changes in the uniform numbering system prescribed by the Judicial Conference of the United States shall be exempt from the public notice and comment requirements for adoption of local rules.

Proposed [new Rule 9029-1](#) allows for renumbering of these rules when the Judicial Conference amends the current uniform numbering system which was last revised in May 2003.

RULE 9036-1 SERVICE AND NOTICE BY ELECTRONIC TRANSMISSION

(a) **Service and Notice by the Clerk.** Notice of entry of orders and judgments and service of certain papers by the clerk shall be by electronic transmission in accordance

with guidelines established by the court.

(b) Service and Notice by Electronic Filers. Pursuant to Fed. R. Civ. P. 5(b) ~~(2)(D)~~ (3), the court authorizes **registered electronic filers** to use ~~of the notice transmission facilities of~~ its case management and electronic filing system ~~by registered electronic filers~~ **for the transmission of notices.**

Proposed amended Rule 9036-1 removes “service” from subsection (b) and changes citation to Fed. R. Civ. P. 5(b)(3).

RULE 9070-1 EXHIBITS

Unless the court orders otherwise, exhibits of such size **or nature** as to be unsuited for ~~filing in the case file~~ **proper electronic storage** shall be retained following hearing or trial by the party introducing the same in evidence. ~~Such~~ **The** party shall be responsible for producing exhibits if required for an appeal record. **Exhibits not claimed by the parties within 90 days of a final disposition of the matter may be disposed of by the court.**

Proposed amended Rule 9070-1 updates the rule for electronic records storage and provides for disposal of unclaimed exhibits.

K:\Rules\Proposed Local Rules 03-09-10 with current 1996 rules.wpd