

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

LOCAL RULES

Adopted August 2, 2010, with Amendments Through August 29, 2011



**Office of the Clerk
United States Bankruptcy Court
District of New Mexico
Post Office Box 546
Albuquerque, NM 87103-0546
505-348-2500
866-291-6805
www.nmcourt.fed.us/usbc**

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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 rules govern procedure in all bankruptcy cases and proceedings in the United States District and Bankruptcy Courts of the District of New Mexico, except appeals.

(c) **Application.** These rules govern all cases and adversary proceedings pending or filed on or 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 August 2, 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.

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 statement disclosing the name, mailing address, and last four digits of the social security number (if known) of any non-filing 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 900 was created by the clerk for compliance with section (a)(1) of this rule. Form NM LF 901 was created by the clerk for compliance with section (a)(2) 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 who fails to file the statement required under section (a) of this rule with the petition 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. The debtor may be subject to sanctions, including dismissal of the case, if the requirements of this rule are not met.

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.”

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

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

*Note: Form NM OF 3A was 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.*

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

(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.

RULE 1007-5 STATEMENT OF SOCIAL SECURITY NUMBER (PRIVACY)

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 other parties in interest. Within two days thereafter, the debtor shall file a certificate of compliance with this rule. 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.

**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 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 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.

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.

Note: See Fed. R. Bankr. P. 1003(b).

RULE 1015-1 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.

**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.

RULE 2003-1 MEETING OF CREDITORS – REQUESTS TO CHANGE

(a) **Reschedule Due to Unavailability.** Requests 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 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.

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.

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.

**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.

**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.

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.

RULE 2082-1 CHAPTER 12 – NOTICE OF CONFIRMATION HEARING

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

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

**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.

RULE 2090-1 ATTORNEYS – ADMISSION TO PRACTICE

(a) Admission to Practice. Admission to practice before 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 below.

(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) 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.

RULE 2091-1 ATTORNEYS – WITHDRAWAL AND SUBSTITUTION

(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 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 shall notify a party represented by the attorney of the need 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.

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.

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.

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.

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.

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.

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 having met 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.

**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.

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.

**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.

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.

**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).

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.

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.

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.

**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 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 are timely filed, the court may grant the relief requested without further notice or a hearing. If no objection is timely filed, the movant shall promptly submit to the court a proposed form of order, reciting the notice 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. 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; 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 for answering pleadings required by Fed. R. Civ. Proc. 8(b).

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.

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.

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.

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.

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.

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.

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.

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 this rule and with NM LBR 1009-1(b).

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.

RULE 5003-1 CLERK – MAINTENANCE OF FILES; NEW PROCEDURES AND FORMS; OFFICIAL RECORD

(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.

RULE 5005-1 FILING PAPERS – REQUIREMENTS

(a) **Date and Time of Electronic Filing (“the drop box rule”).** Any paper filed electronically after the close of business but before 8:00 a. m. Mountain Time the following business day 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 14 days of the date of filing of the document. If no correction of the scanned image is requested by the filer within 14 days of the date of filing of the document, the image of the document will stand as stored in the court's database.

RULE 5005-4.1 ELECTRONIC FILING – MANDATORY ELECTRONIC FILING

(a) **E-filing Mandatory for Attorneys.** 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.

(c) **Facsimile Filings.** 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 no judge is available, the clerk has the discretion to authorize filing by facsimile. Any required filing fee must be paid to the clerk at or before the time of the facsimile filing.

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

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.

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.

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.

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.

RULE 5071-1 CONTINUANCE

A motion for continuance of a hearing based solely on the agreement of counsel will not automatically be granted.

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) 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.

RULE 5077-1 TRANSCRIPTS OF PROCEEDINGS

A transcript of a court proceeding shall include the name of 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.

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.

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.

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.

RULE 7026-1 DISCOVERY – GENERAL

(a) **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) **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.

(d) **Filing of Discovery Documents.**

(1) Discovery requests and responses thereto, including interrogatories, requests for production or inspection of documents, and requests for admission, are served upon other parties but shall not be filed with the court except in connection with a motion to compel, for a protective order, or for discovery sanctions.

(2) Certificates of service of discovery requests and responses thereto and of notices of depositions shall be filed with the court within a reasonable time after service is made.

RULE 7030-1 DEPOSITIONS

(a) **Notice of Deposition.** Counsel 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 shall be made at least ten days before the scheduled deposition. The time for serving notice may be shortened by agreement of all parties or by court order.

(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 three days before the scheduled deposition. 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.

RULE 7054-1 COSTS – TAXATION

(a) Motion to Tax Costs; Bill of 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 shall include a bill of costs 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.

(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 authorized by the court before transcription.

(2) Deposition. 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. 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. Witness fees, mileage, and subsistence costs are taxable if the witness testifies at trial or at a deposition found reasonably necessary to the litigation. 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 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) Photographs and 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 allowances for subsistence 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.

RULE 7056-1 SUMMARY JUDGMENT

(a) Memoranda. The movant shall file with the motion a memorandum containing a concise statement in support of the motion with a list of authorities. A motion for summary judgment filed without a memorandum may be summarily denied. A party opposing the motion shall, within 21 days after service of the motion, file a memorandum containing a concise statement in opposition to the motion with a list of authorities. If no response is filed, the court may grant the motion. The movant may, within 14 days after the service of a response, file a

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 movant's statement that are properly supported shall be deemed admitted unless specifically controverted.

RULE 7067-1 DISBURSEMENT OF FUNDS DEPOSITED WITH THE COURT

The clerk shall not disburse funds deposited with the court without an order which:

- (1) sets forth the name and address of each payee; and
- (2) specifies the amount of principal and interest (if any) to which each payee is entitled, or a means 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.

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.

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).

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.

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. 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, 7010, and 9004(b).

RULE 9006-1 TIME PERIODS

(a) **In General.** A motion for enlargement of time shall recite grounds for the motion and the original 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.

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.

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>.

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, if any, 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.

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.

RULE 9011-2 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.

RULE 9011-4 SIGNATURES

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

Note: See *Fed. R. Evid. 1003*.

RULE 9013-1.1 MOTION PRACTICE; HEARINGS; BRIEFS

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

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

(b) **Concurrence of Affected Party.** Unless a motion requires notice to all creditors,

notice to creditors on a court-approved limited mailing list for the case, or notice to creditors on the list filed pursuant to Fed. R. Bankr. P. 1007(d), or the court for cause waives this requirement, the 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 the party's attorney may be submitted to the court. If the motion is opposed, it shall so state. If the movant has not obtained concurrence or opposition, the motion shall recite the attempts 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 movant shall secure a hearing or disposition without a hearing by one of the following procedures:

(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 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 are timely filed, the court may grant the relief requested without further notice or a hearing. If no objection is timely filed, the movant shall promptly submit to the court a proposed form of order, reciting the notice 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. 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; or

(B) Obtain 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 (d)(1) of this rule, such that the notice of hearing is included in the notice of deadline for filing objections.

(2) Obtain a Hearing Without a Notice of Deadline for Filing Objections. With the permission of the assigned judge, the 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) and (c)(2) of this rule are not applicable to motions in adversary proceedings.

(d) Motions Generally Set for Preliminary Hearing. All motions shall generally be set for preliminary hearing unless otherwise directed by the court. Except for preliminary hearings held pursuant to Fed. R. Bankr. P. 4001(b)(2), testimony and exhibits 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 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.

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

(a) Commencement of 30-day Period. Except as provided in subsection (c), before filing a motion to convert or dismiss a chapter 11 case pursuant to 11 U.S.C. section 1112(b), the movant shall contact the courtroom deputy for the assigned judge to request a 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 convert or dismiss 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 convert or dismiss a chapter 11 case pursuant to 11 U.S.C. section 1112(b).

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.

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 B 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.”

RULE 9019-1 SETTLEMENTS AND AGREED ORDERS

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

RULE 9021-1 JUDGMENTS AND ORDERS – ENTRY OF

(a) **Form of Judgments and Orders.** A judgment or order shall identify the motion or application upon which it is based and shall specifically set out the relief granted, 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.** 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. 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 be approved by all parties appearing in the matter unless for good cause shown the court directs that such approval is not necessary. It shall also list the names, addresses, 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) **Stipulated Orders.** An 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).

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.

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

RULE 9070-1 EXHIBITS

Unless the court orders otherwise, exhibits of such size or nature as to be unsuited for electronic storage shall be retained following hearing or trial by the party introducing the same in evidence. 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.

ADDENDUM A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF
REFERENCE TO BANKRUPTCY JUDGES
AND LOCAL BANKRUPTCY RULES Misc. No. 84-0324

ADMINISTRATIVE ORDER

Pursuant to the authority of Section 157, Title 28,
United States Code, and Rule 9029 of the Federal Rules of
Bankruptcy Procedure,

IT IS ORDERED that all cases under Title 11 and all
proceedings arising under Title 11 or arising in or related
to a case under Title 11 are referred to the bankruptcy
judges for the district to the extent permitted by law.

IT IS FURTHER ORDERED that the bankruptcy judges of the
district are authorized to make rules governing practice and
procedure in all cases and proceedings within the district
court's bankruptcy jurisdiction, whether heard by a district
judge or bankruptcy judge.

IT IS FURTHER ORDERED that the rules so adopted by the
bankruptcy judges shall be subject to review as may be
appropriate, and upon approval, shall supersede the
Bankruptcy Section of the local rules of this court.

s/ _____
JUAN G. BURCIAGA
Chief Judge

(Filed in the U. S. District Court, NM, on March 19, 1992)

ADDENDUM B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

IN THE MATTER OF THE AUTHORITY
OF THE BANKRUPTCY JUDGES TO
CONDUCT JURY TRIALS IN CIVIL
PROCEEDINGS,

Misc. No. 94-323

ADMINISTRATIVE ORDER

The United States District Court for the District of New Mexico, pursuant to 28 U.S.C. Section 157(e) hereby specially designates the Bankruptcy Judges of this District to conduct jury trials in those proceedings that may be heard by a Bankruptcy Judge.

s/ _____
John E. Conway
Chief United States District Judge

s/ _____
James A. Parker
United States District Judge

s/ _____
C. LeRoy Hansen
United States District Judge

s/ _____
Martha Vazquez
United States District Judge

(Filed in the U. S. District Court, NM, on December 1, 1994)

F:\RULES\local\adopted 08-02-10 with amendments through 08-29-11.wpd