

**UNITED STATES BANKRUPTCY COURT
for the
EASTERN DISTRICT OF NORTH CAROLINA**

**LOCAL RULES
OF
PRACTICE AND PROCEDURE**



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PART I
COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION
AND ORDER FOR RELIEF

Rule 1006-1
FEES - INSTALLMENT PAYMENTS

- (a) An application for permission to pay the filing fees in installments shall contain the following:
- (1) reasons why the debtor cannot pay the full fee at the time of filing;
 - (2) a statement that the debtor's attorney has received no payment for fees and will accept none until the filing fees are paid in full;
 - (3) a statement that the debtor does not owe any outstanding fees to the court on account of any other prior case; and
 - (4) the signature of both the debtor and the debtor's attorney.
- (b) Following the filing of a petition and an application, each application will be reviewed by the court and an order entered granting or denying the application. If the application is denied, the debtor shall have 10 days from the date of the order to pay the full fee. If the full fee is not paid within 10 days of the order, the petition may be dismissed by the court without any further prior notice.
- (c) Final installments of the filing fee shall be paid within 10 days following the date first set for the meeting of creditors pursuant to 11 U.S.C. § 341, unless otherwise ordered by the court upon appropriate motion for extension and for cause shown.
- (d) The debtor and the debtor's attorney are responsible for knowing the dates the payments are due. No reminders of the due date will be provided from the court. Upon failure to make any payment as scheduled, the petition is subject to dismissal after hearing on notice to the debtor and trustee.

Rule 1007-1
LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS

- (a) **SCHEDULES AND STATEMENTS REQUIRED:** In cases other than those filed under chapter 11, upon the filing of an accelerated case when the schedules and statements are not filed with the voluntary petition, the schedules and statements shall be filed within 15 days thereafter and a copy transmitted to the bankruptcy administrator and the trustee. In cases filed under chapter 11, upon the filing of an accelerated case when the schedules and statements are not filed with the voluntary petition, the schedules and statements shall be filed within 15 days thereafter and a copy transmitted to the bankruptcy administrator and the Internal Revenue Service. If the chapter 11 debtor is a corporation or limited partnership, then a copy of the schedules and statements shall also be served within 15 days upon the following:
- (1) Securities & Exchange Commission; and
 - (2) Secretary of the Treasury.
- Addresses for these agencies are contained in the Administrative Guide to Practice and

Procedure and are listed on the court's website at www.nceb.uscourts.gov. A certificate of service shall be filed reflecting that service has been made on each party.

(b) **TWENTY LARGEST UNSECURED CREDITORS:** The clerk of court is authorized to lodge for filing any voluntary chapter 11 reorganization petition that is not accompanied by the list of 20 largest unsecured creditors.

(c) **DISMISSAL OF CASE FOR FAILURE TO COMPLY WITH RULE 1007(c), FEDERAL RULES OF BANKRUPTCY PROCEDURE:** In the event the schedules and statements are not filed with the petition in a voluntary case, they shall be filed within 15 days thereafter, unless a motion to extend the time for filing the schedules and statements is filed prior to the expiration of the 15 days. If the schedules and statements are not filed within 15 days of the filing of the petition, and no motion to extend the time for filing is received by the clerk of court within the 15 days, then the clerk of court may summarily dismiss the petition. A copy of this local rule shall be served on the debtor and debtor's counsel at the time of the filing of a petition which is unaccompanied by the schedules and statements.

Rule 1007-2
MAILING - LIST OR MATRIX

(a) **PETITION ACCOMPANIED BY MATRIX:** A petition requesting relief under chapters 7, 11, 12, or 13 shall be accompanied by a mailing matrix containing the complete mailing address, including zip code, for the following:

(1) all creditors listed in the petition, alphabetically arranged;

(2) Internal Revenue Service, except in chapters 7, 12 and 13 when the Internal Revenue Service is not listed as a creditor;

(3) North Carolina Department of Revenue, except in chapters 7, 12 and 13 when the North Carolina Department of Revenue is not listed as a creditor; and

(4) Employment Security Commission, except in chapters 7, 12 and 13 when the Employment Security Commission is not listed as a creditor;

(5) United States Attorney, if the United States is a party, other than for taxes (EXAMPLE: Farm Service Agency, Federal Housing Administration, Veteran's Administration, Small Business Administration);

(6) if the debtor is a corporation, the name and title of the managing agent; and

(7) if the debtor is a partnership, each member of the partnership.

Addresses for the governmental agencies listed above are contained in the Administrative Guide to Practice and Procedure and are listed on the court's website at www.nceb.uscourts.gov.

(b) **PREPARATION OF MATRIX:** The matrix shall be prepared in the format approved by the clerk and its content shall be certified as accurate by the filing attorney or party. The party shall be responsible for any errors in or omissions from the listing. The preparation of the matrix for paper or electronic filing shall be in the format prescribed in the Administrative Guide to Practice and Procedure.

Rule 1007-3
STATEMENT OF INTENTION
IN A CHAPTER 7 CASE

- (a) STATEMENT OF INTENTION: A chapter 7 debtor who is required to file a statement of intention pursuant to 11 U.S.C. § 521(2)(A) shall serve a copy of the statement upon the creditor whose claim is secured by the property which is the subject of the statement. The debtor shall file a certificate of service with the clerk of court within three days of the filing of the statement.
- (b) FAILURE TO PERFORM STATEMENT OF INTENTION: If a chapter 7 debtor fails to perform the intention as required by 11 U.S.C. § 521(2)(B), the court may, upon motion of the affected creditor, enter an ex parte order lifting the stay of 11 U.S.C. § 362(a) and order the debtor to turn over the property to the creditor.

Rule 1009-1
AMENDMENTS TO LISTS AND SCHEDULES

Any amendment to a petition, list, schedule or statement shall be accompanied by a certificate of service in the form of a statement of the date and manner of service and of the names and addresses of the persons served, and must be certified as correct by the person making the service.

Rule 1071-1
BANKRUPTCY COURT DIVISIONS

There shall be six divisions of the court: Elizabeth City, Fayetteville, New Bern, Raleigh, Wilmington and Wilson. The headquarters of each division and the counties comprising each division are contained in the Administrative Guide to Practice and Procedure.

Rule 1073-1
ASSIGNMENT OF CASES

- (a) In accordance with Local Bankruptcy Rule 1071-1, the clerk shall assign all cases and proceedings to a division when the action is filed or removed. The place of filing shall be determined by the debtor's domicile, residence, principal place of business or location of the debtor's principal assets immediately preceding the filing of the bankruptcy case. In cases involving an affiliate, a general partner or partnership, related cases may be filed in the division where the original case was filed.
- (b) In adversary proceedings in which there is no bankruptcy case pending in this district, the division will be assigned at the discretion of the clerk. The decision of the clerk to assign a case or proceeding to a particular division may be reviewed by the court upon written request.

PART II
OFFICERS AND ADMINISTRATION;
NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS;
ATTORNEYS AND ACCOUNTANTS

Rule 2002-1
NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

- (a) AMENDED OR SUPPLEMENTAL SCHEDULES: The § 341 meeting will be scheduled and the clerk of court, or such other person as the clerk of court may designate, will notify the creditors listed on the matrix filed with the petition. If additional creditors are added either through filed schedules or amendments to schedules being filed after notice has been given, the debtor shall serve the notice of commencement of case, meeting of creditors, and deadlines on the added creditors and file a certificate of service with the clerk of court within three days after service.
- (b) PAYMENT OF FEE REQUIRED: If a debtor files a request for conversion to another chapter, payment of the fee shall be a condition of the conversion.
- (c) GUIDE TO SERVICE AND NOTICE REQUIREMENTS: The chart included in the Administrative Guide to Practice and Procedure shall serve as a guide for the giving of notice to creditors and other parties in interest.

Rule 2003-1
MEETING OF CREDITORS AND EQUITY SECURITY HOLDERS

- (a) The bankruptcy administrator shall retain and preserve the taped recordings of the meeting of creditors required by 11 U.S.C. § 341(a) for a period of two years from the date of the meeting. After the expiration of two years from the date of the meeting, the bankruptcy administrator is authorized to erase or otherwise destroy the taped recordings.
- (b) Upon the request of any entity, the bankruptcy administrator may certify and provide a copy of the recording of the meeting of creditors at the entity's expense.

Rule 2004-1
EXAMINATION

A motion for an examination under this rule shall be reviewed by the court and allowed ex parte. Upon filing of a motion to reconsider, the obligation to appear or produce documents is stayed pending a ruling on the motion to reconsider.

Rule 2014-1
EMPLOYMENT OF PROFESSIONAL PERSONS

The chapter 11 debtor may not employ any professional person, including but not limited to any attorney, accountant, appraiser, business consultant, broker, agent, or auctioneer, without first obtaining approval of the court.

Rule 2014-2
APPLICATION FOR APPROVAL OF MENTAL HEALTH EVALUATION

The debtor may apply to the court for approval of a pro bono mental health evaluation. The application shall be filed and a copy of the application shall be transmitted by the debtor to the bankruptcy administrator and any other interested party. The application shall substantially conform to the Application for Approval of Mental Health Evaluation contained in the Administrative Guide to Practice and Procedure.

Rule 2015-2
DEBTOR IN POSSESSION DUTIES - WITH RESPECT TO GIVING NOTICE

In addition to the duties set forth in Local Bankruptcy Rule 4002-1(b), the debtor in possession in a chapter 11 case shall be responsible for mailing the following notices and documents to creditors, after having their form and content approved by the clerk of court, and for filing a certificate of mailing with the clerk of court within three days of the date of the mailing:

- (1) the notice of the hearing on disclosure statement;
- (2) the plan, the approved or conditionally approved disclosure statement, and the notice regarding balloting and date for hearing on confirmation;
- (3) the confirmation order; and
- (4) any notices the court or clerk of court may direct.

Rule 2015-5
CHAPTER 13 TRUSTEES - SEARCH FEES

The standing chapter 13 trustees are authorized to charge a search fee when answering inquiries which require a search of the records for each name or item searched in the amount established under 28 U.S.C. § 1930(b), and to use the funds as a part of operating expenses. The trustees shall include in the chapter 13 trustee's annual report the amount of any search fees received.

Rule 2016-1
COMPENSATION OF PROFESSIONALS

(a) COMPENSATION OF ATTORNEY FOR DEBTOR IN CHAPTER 13 CASES:

(1) AMOUNT OF STANDARD BASE FEE: The standard base fee in a chapter 13 consumer case and a chapter 13 business case is as provided in the statement of approved compensation published annually by the clerk and included in the Administrative Guide to Practice and Procedure.

(2) SERVICES INCLUDED IN THE BASE FEE: The standard base fee includes the basic services reasonably necessary to properly represent the debtor before the bankruptcy court during the first 12 months after filing the case.

(3) APPLYING FOR A HIGHER BASE FEE: Applications for approval of a base fee higher than the standard base fee must be filed by the debtor's attorney within 60 days after the conclusion of the creditor's meeting under § 341 of the Bankruptcy Code.

(4) NON-BASE FEE SERVICES DEFINED: The following services are not covered by the standard base fee, and additional compensation for these services may be awarded by the court:

(A) motion for authority to sell real property;

(B) application to incur debt;

(C) prosecution or defense of adversary proceedings;

(D) filing of formal motions or responses pertaining to four or more matters arising during the first year of the case, including but not limited to the services listed below in subsection (6); and

(E) any other service that, in the discretion of the court, reasonably warrants additional compensation.

(5) APPROVAL OF NON-BASE FEES: Except as specified in subsection (6), applications for fees for any non-base fee services provided to a chapter 13 debtor must be approved by the court. Notice of each application for fees and expenses in any amount under \$1,000 must be sent to each debtor, the trustee, and the bankruptcy administrator. Notice of each application for fees and expenses of \$1,000 and above must be given to all parties in interest.

(6) PRESUMPTIVE NON-BASE FEES/APPROVAL/ NOTICE: The list of presumptively reasonable non-base fee services are contained in the statement of approved compensation published by the clerk and included in the Administrative Guide to Practice and Procedure. Applications for the presumptive non-base fee must be filed with a notice verifying completion of the service and a certificate of service evidencing service of the notice on each debtor, the trustee and the bankruptcy administrator. The applications for presumptive non-base fees will automatically be approved by the court. Alternatively, the debtor's attorney may apply to the court for approval of non-base fees on a "time and expense" basis pursuant to Rule 2016 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 330.

(7) DISCLOSURE OF FEE PROCEDURES: Every attorney for a chapter 13 debtor must disclose to the debtor the procedures applicable in this district to awards of attorneys' fees in chapter 13 cases.

(8) INTERIM APPROVAL OF PARTIAL BASE FEE: An attorney fee as specified in the Administrative Guide to Practice and Procedure for services provided to the debtor up to and including the petition date is authorized and shall be considered part of the base fee. Any amount in excess of the base fee collected by the attorney prior to filing the chapter 13 petition

must be held in the attorney's client trust account pending further order of the court or approval of the fees in accordance with this rule.

(9) PAYMENT OF ATTORNEY FEES/MODIFICATION OF PLAN: The following will be treated and paid as administrative expenses of the chapter 13 case:

(A) the standard base fee, less any partial base fee paid prior to filing the chapter 13 petition; and

(B) any additional amounts awarded in excess of the standard base fee or for non-base fee services.

These fees shall be paid by the trustee at the rate set in the Administrative Guide to Practice and Procedure unless the court directs otherwise. The trustee may, without application to the court, modify the chapter 13 plan to extend the duration of the plan and/or increase the monthly amount of the plan payment in order to provide the funds necessary to pay attorney fees. The trustee must notify the debtor and the debtor's attorney of the plan modification.

(b) COMPENSATION OF PROFESSIONALS IN CHAPTER 7, 11, AND 12 CASES: The bankruptcy administrator's Procedures for Preparing and Submitting Applications for Compensation by Professionals shall serve as a guide for applications for compensation to professionals. The Procedures for Preparing and Submitting Applications for Compensation by Professionals outline is available from the office of the bankruptcy administrator.

Rule 2070-1
ESTATE ADMINISTRATION;
DEPOSIT OF ESTATE FUNDS PURSUANT TO 11 U.S.C. § 345;
REPORTING REQUIREMENTS AND COLLATERALIZATION
OF DEPOSITS EXCEEDING \$100,000

(a) INITIAL DEPOSIT REPORTS: Promptly after making the initial deposit or investment of the estate's funds, the trustee or the debtor in possession shall file a report with the bankruptcy administrator that identifies the depository or describes the investment and states the amount of any deposit or investment.

(b) REPORTS REQUIRED FROM ENTITIES HOLDING ESTATE FUNDS:

(1) An entity with which estate funds have been deposited or invested shall file a monthly report with the bankruptcy administrator in a format prescribed by the bankruptcy administrator indicating the amount credited to each bankruptcy estate account as of the date of the report.

(2) Whenever the total of deposited or invested estate funds not insured or guaranteed by the United States or backed by the full faith and credit of the United States reaches 95% of the amount of the bond or securities posted, the entity with which such funds are deposited or invested shall file a written statement with the bankruptcy administrator setting forth the total amount of such deposits not so insured, guaranteed or backed by the full faith and credit of the United States and the amount of the existing bond or securities.

(3) In the event that an entity holding estate funds fails to comply with the reporting requirements set forth in this rule, the bankruptcy administrator may direct the debtor in possession or the trustee to immediately withdraw all funds on deposit or invested with the entity with all interest payable thereon.

(c) COLLATERALIZATION OF DEPOSITS:

(1) If the monies of an estate which are on deposit exceed \$100,000, or such other amount as may be insured by the Federal Deposit Insurance Corporation, the depository must post a bond or deposit securities of the kind specified in 31 U.S.C. § 9303 for any amount in excess of \$100,000 with the Federal Reserve Bank. Court approval of the bond or deposit of securities must be obtained for a deposit or investment for which a bond is required under § 345(b) of the Code.

(2) Securities accepted for deposit in lieu of a surety on a depository bond shall be deposited in the custody of the Federal Reserve Bank in Richmond or such other branch as may be approved by the bankruptcy administrator.

(3) Upon deposit of securities by the depository with the Federal Reserve Bank, a copy of the document evidencing the deposit shall be transmitted to the bankruptcy administrator.

(d) **DEFICIENCY IN AMOUNT OF BOND OR DEPOSITED SECURITIES:** Whenever the bond and any deposited securities do not or will not constitute adequate security because of existing and expected deposits or investments, the depository or entity with which an investment is made shall increase the amount of the bond or the deposited securities within a time fixed by the bankruptcy administrator. If, within the time fixed, the depository or entity with which an investment is made fails to increase the amount of the bond or the deposited securities to an amount adequate for existing and expected deposits or investments, the bankruptcy administrator may direct the trustee or debtor in possession to withdraw all funds on deposit or invested with the entity together with all interest payable thereon.

PART III
CLAIMS AND DISTRIBUTION
TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001-1
CLAIMS AND EQUITY SECURITY INTERESTS -
PLACE OF FILING PROOF OF CLAIM OR INTEREST

(a) PLACE OF FILING IN CHAPTER 7 AND 11 CASES: In chapter 7 and 11 cases, all claims shall be filed with the clerk of court in accordance with Rule 5005, Federal Rules of Bankruptcy Procedure.

(b) PLACE OF FILING IN CHAPTER 12 AND 13 CASES: In chapter 12 and 13 cases, all claims shall be filed with the appropriate standing trustee as provided in Local Bankruptcy Rule 5005-1.

Rule 3002-1
CHAPTER 11 DEBTOR'S NOTICE OF
DISPUTED, CONTINGENT OR UNLIQUIDATED CLAIMS

In addition to the duties set forth in Local Bankruptcy Rule 4002-1(b), the chapter 11 debtor shall notify each creditor whose claim is scheduled as contingent, disputed, or unliquidated of that fact within 15 days after filing the schedule of assets and liabilities or within 15 days after addition of any creditors to the petition. Failure to notify a creditor that its claim is listed as disputed, contingent, or unliquidated shall result in the creditor's claim being deemed filed in the amount listed as disputed, contingent, or unliquidated, as though a proof of claim had been filed by the creditor. The debtor shall file a certificate of service with the clerk of court within three days after service has been made.

Rule 3003-1
TIME FOR FILING PROOF OF CLAIM OR INTEREST IN A CHAPTER 11 CASE

In a chapter 11 case, a proof of claim or interest shall be filed within 90 days after the date first set for the meeting of creditors pursuant to 11 U.S.C. § 341(a), except as otherwise ordered by the court.

Rule 3004-1
FILING OF CLAIMS BY DEBTOR OR TRUSTEE

In chapter 13 cases, if a creditor fails to file a timely proof of claim, the debtor or trustee may do so in the name of the creditor within 30 days after service by the chapter 13 trustee of the List of Claims Filed in the debtor's case. If the debtor or trustee does file a proof of claim on behalf of a creditor, the creditor may file an amended proof of claim pursuant to Rules 3002 or 3003(c) of the Federal Rules of Bankruptcy Procedure.

Rule 3010-1
SMALL DIVIDENDS

Rule 3010(b), Federal Rules of Bankruptcy Procedure, is amended to the extent that standing chapter 13 trustees are authorized to make payments to creditors in amounts smaller than \$15 without waiting until that creditor's dividends accumulate to \$15. The decision as to whether to make smaller payments shall be solely in the discretion of the trustee as to what is in the best interest of the individual estate.

Rule 3012-1
VALUATION OF SECURITY

After the § 341 meeting, a chapter 13 trustee may recommend the value of a creditor's security pursuant to a motion. Unless an objection is filed within 25 days after notice of the motion, the court may accept the recommendation of value for the purpose of distribution under the plan.

Rule 3070-1
RETURN OF PLAN PAYMENTS TO DEBTOR

Upon conversion or dismissal of a chapter 13 case prior to confirmation, and unless the court orders otherwise, the standing trustee shall return to the debtor any payments made by the debtor under the proposed plan, less any claim under 11 U.S.C. 503(b).

PART IV
THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1
RELIEF FROM THE AUTOMATIC STAY

(a) **STANDING MODIFICATION:** The automatic stay provided in 11 U.S.C. § 362(a) is modified in bankruptcy cases as follows:

(1) In chapter 13 cases, affected secured creditors may:

(A) contact the debtor about the status of insurance coverage on property used as collateral;

(B) if there are direct payments to creditors, contact the debtor about any payment in default; and

(C) send to the debtor statements, payment coupons or other correspondence that the creditor sends to its non-debtor customers.

(2) In chapter 7 cases, the automatic stay shall also be modified as provided in Local Bankruptcy Rule 4001-2(a).

(3) In chapter 11 and 12 cases, the Internal Revenue Service and the North Carolina Department of Revenue may contact the debtor or the trustee and the debtor's depository to verify that all required tax deposits are being made and reported and that all tax returns are being filed and remittances paid in the manner prescribed by law. The debtor or trustee and the debtor's designated depository shall assist the Internal Revenue Service and the North Carolina Department of Revenue with the monitoring and verification of the provisions of this rule.

(4) In chapter 7 and 13 cases, the Internal Revenue Service is authorized to:

(A) make income tax refunds, in the ordinary course of business, directly to the chapter 7 and 13 debtors unless otherwise ordered by the court or otherwise instructed by the chapter 7 trustee or the standing chapter 13 trustee;

(B) offset against any refund due a debtor any taxes due the United States government pursuant to 11 U.S.C. § 553;

(C) assess any tax liability satisfied by offsetting any refunds, when such liability has not been assessed previously; and

(D) assess tax liabilities shown on voluntarily filed returns and other agreed-to liabilities.

(b) **RELIEF WITH RESPECT TO SURRENDERED PROPERTY IN CHAPTER 13 CASES:**

If a chapter 13 debtor's plan provides that property is to be surrendered to a secured creditor, the order confirming the plan may provide for the modification of the automatic stay with respect to the property.

(c) **CONTENT OF SECURED CREDITOR'S MOTION FOR RELIEF FROM AUTOMATIC STAY:** Secured creditors seeking relief from the automatic stay on grounds of post-petition default by the debtor must specify in a motion that they seek relief on grounds of the debtor's default and must set forth, with specificity, the payments alleged to be in default.

(d) **CONTENT OF RESPONSE TO MOTION FOR RELIEF FROM AUTOMATIC STAY:** If no response is filed, the motion may be granted without a hearing. If a response is filed, a debtor must comply with the requirements of Local Bankruptcy Rule 9014-1(f). When the debtor's response contests the default in payment by providing the precise factual basis of the objection, the creditor shall immediately transmit the debtor's payment history to counsel for the debtor (or to the pro se debtor) by electronic or facsimile transmission.

Rule 4001-2
SECURED CREDITOR DUTIES

- (a) A secured creditor may send all payment coupons or statements of account that the creditor provides to its non-bankruptcy debtors to chapter 7 debtors who have indicated, in their statement of intention, their intent to retain the secured creditor's collateral by complying with the terms of the contract. Such payment coupons or statements of account shall not be considered a violation of the automatic stay or the debtor's discharge injunction.
- (b) If a secured creditor does not provide payment coupons and statements of account referred to in paragraph (a) above, then upon request by the debtor, that secured creditor shall provide the debtor with a telephone number or other means to access account information that would normally be provided by the payment coupons or statements of account referred to in paragraph (a) above.
- (c) A secured creditor shall respond promptly to a trustee's or debtor's reasonable requests for account information.

Rule 4002-1
DEBTOR DUTIES

- (a) **DUTIES OF A CHAPTER 7 DEBTOR:** A debtor in a case under chapter 7 shall comply with the requirements of Local Bankruptcy Rule 1007-3 regarding statements of intention.
- (b) **DUTIES OF A CHAPTER 11 DEBTOR:** A debtor in a case under chapter 11 shall:
- (1) **NOTICE OF DISPUTED, CONTINGENT OR UNLIQUIDATED CLAIMS:** notify each creditor whose claim is scheduled as contingent, disputed or unliquidated in compliance with the requirements of Local Bankruptcy Rule 3002-1.
- (2) **MONTHLY REPORT:** file with the clerk monthly accountings, the first report being due within 30 days after the filing of the petition, or date of conversion from another chapter, and subsequent reports on or before the fifteenth day of each month thereafter. The debtor shall transmit a copy of all monthly reports to the bankruptcy administrator, attorney and the chairman for the unsecured creditors committee. That report shall be in a format prescribed by the bankruptcy administrator.
- (3) **BOOKS OF ACCOUNT:** close the present books of account as of the close of business on the date on which the petition is filed and open new books of account and a bank account in a court approved depository as of the opening of business on the next succeeding business day. In the new books of account, the debtor shall keep proper records of earnings, expenses, receipts and disbursements, and all obligations incurred and business transactions. The debtor shall preserve proper vouchers for all payments made on account of the disbursements. If the debtor is authorized to use cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. § 363(c)(4).
- (4) **PROOF OF INSURANCE COVERAGE:** keep the property of the debtor insured in a manner and to the extent as may be deemed necessary and prudent with loss payable clauses, in the case of pledged or mortgaged property, in favor of the appropriate secured creditors as their interests may appear. Within five days of the filing of the petition, or date of conversion from another chapter, the debtor shall file with the bankruptcy administrator a verified statement or written evidence that workers' compensation, general liability, fire, theft and motor vehicle insurance are in full force and effect, together with all other insurance coverage ordinarily used

in the debtor's operations.

(5) **TAX ACCOUNTS:** segregate and hold separate from all other funds, all monies withheld from employees or collected from others for taxes, including social security taxes, under any law of the United States or any state or subdivision thereof. The debtor shall deposit the funds so withheld or collected, together with the debtor's share of social security taxes, in a separate bank account simultaneously with the collection or withholding. The debtor shall pay from the bank account to the appropriate taxing authority the amounts due at the times and in the manner prescribed by law.

(6) **BANKING INSTITUTION:** advise the bankruptcy administrator of the name of the bank to be used as the debtor's depository within 10 days of the filing of the petition or date of conversion from another chapter.

(7) **FILING OF PLAN AND DISCLOSURE STATEMENT:** file a plan of reorganization and a disclosure statement within 120 days of the date of the filing of the petition commencing the case or date of conversion from another chapter, unless another deadline is set by the court.

(8) **PHYSICAL INVENTORY:** procure a physical inventory, if applicable, upon the filing of the petition and file the inventory with the bankruptcy administrator within 30 days of the filing of the petition, date of conversion from another chapter, or such other time as the court may direct.

(9) **PROJECTED OPERATING STATEMENT:** file with the bankruptcy administrator a projected operating statement for the next 30 days of operation under chapter 11 within 10 business days of the filing of the petition commencing the case or date of conversion from another chapter. The statement must contain:

(A) the estimated costs of operation for the next succeeding 30 days;
(B) the estimated profit or loss for the period;
(C) the amount of cash available for the operation;
(D) how the debtor intends to fund the cost of operation for the next 30 days; and
(E) any additional information that is pertinent to determine the desirability of continuing the debtor's business.

(10) **RELATIONSHIP WITH SECURED CREDITORS AND UNSECURED CREDITORS' COMMITTEE:** promptly respond to reasonable inquiries of secured creditors, the unsecured creditors' committee, and any court appointed consultant.

(11) **PAYMENT OF JUDICIAL CONFERENCE QUARTERLY FEE:** In all cases filed after April 1, 2002, promptly remit quarterly fees to the clerk, which fee shall be calculated on the graduated scale as prescribed by 28 U.S.C. §1930(a)(7), based upon the total sum of all disbursements made during a calendar quarter until the case is either converted to a case under another chapter or closed.

(c) a debtor in a case under Chapter 11 shall not:

(1) **PAYMENT TO PRINCIPALS:** compensate or remunerate any of its partners, officers, directors or shareholders in any manner, prior to confirmation of a plan of reorganization or prior to approval of the court, except as provided in the interim exception under subparagraph (c)(1)(B) herein.

(A) An application for approval of compensation must be signed under oath by an officer of the debtor and must set forth the following:

(i) the name and proposed position of the individual sought to be employed along with a detailed description of the duties the individual is to perform, the number of hours the individual will devote to those duties each week, and the reasons why the employment of the

individual is necessary to the successful reorganization of the debtor;

(ii) the amount of compensation sought on a weekly or monthly basis and details of all perquisites, benefits and consideration of any kind the individual is to receive; e.g., use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses; and

(iii) the salary history of the individual to be employed for the year immediately preceding the filing of the petition. Supporting documentary evidence thereof shall be provided directly to the bankruptcy administrator.

(B) If the debtor has filed an application for an interim payment for post-petition services which substantially conforms to the requirements of subsection (c)(1)(A) above, the debtor may make an interim payment in an amount not to exceed the ordinary pre-petition salary or wages for a 14 day period to those individuals who were employed on the date of the filing of the bankruptcy petition, or date of conversion from another chapter, and for whom approval is being sought.

(C) The court may reconsider orders to compensate principals *sua sponte* or at the request of the bankruptcy administrator, any creditor or other party in interest.

(2) PAYMENT OF PRE-PETITION DEBT: pay pre-petition unsecured debt including pre-petition wages without approval of the court.

(d) DUTIES OF A DEBTOR IN A CASE UNDER CHAPTER 12: A debtor in a case under chapter 12 shall:

(1) MONTHLY REPORTS: file with the chapter 12 trustee monthly reports, the first report being due within 30 days after the petition is filed or date of conversion from another chapter. Subsequent reports are due no later than the fifteenth day of each month thereafter. The reports shall contain:

- (A) monthly receipts from every source;
- (B) monthly disbursements by accounting classification;
- (C) expenses charged and not paid;
- (D) crop inventory (if applicable);
- (E) livestock inventory (if applicable);
- (F) tax deposit statement (if applicable).

(2) BOOKS OF ACCOUNT: close the present books of account as of the close of business on the date on which the petition is filed, or date of conversion from another chapter, and open new books of account and a bank account as of the opening of business on the next succeeding business day. In the new books of account, the debtor shall keep proper records of earnings, expenses, receipts, disbursements, and all obligations incurred and transactions had in the operation of the business. The debtor shall preserve proper vouchers for all payments made on account of the disbursements.

(3) PROOF OF INSURANCE COVERAGE: keep the property of the debtor insured in a manner and to the extent as may be deemed necessary with loss payable clauses, in the case of pledged or mortgaged property, in favor of the appropriate secured creditors as their interests may appear.

(4) TAX ACCOUNTS: segregate and hold separate and apart from all other funds, all monies withheld from employees or collected from others for taxes, including social security taxes, under any law of the United States or any state or subdivision thereof. The debtor shall deposit the funds so withheld or collected, together with the debtor's share of social security taxes, in a separate bank account simultaneously with the collection or withholding. The debtor

shall pay from the bank account to the appropriate taxing authorities the amounts due at the times and in the manner prescribed by law.

(5) **BANKING INSTITUTION:** advise the bankruptcy administrator of the name of the bank to be used as the debtor's depository within 10 days of the filing of the petition commencing the case under chapter 12 or date of conversion from another chapter.

(6) **FILING OF PLAN:** file a plan of reorganization within 90 days of the order for relief pursuant to 11 U.S.C. § 1221.

(7) **RELATIONSHIP WITH CREDITORS:** promptly respond to reasonable inquiries of creditors.

(e) A debtor in a case under chapter 12 shall not:

(1) **PAYMENTS TO PRINCIPALS:** compensate or remunerate any of its partners, officers, directors or shareholders in any manner, prior to confirmation of a plan of reorganization or prior approval of the court, except as provided in the interim exception under subparagraph (e)(1)(B) herein.

(A) An application for approval of compensation must be signed under oath by an officer of the debtor and must set forth the following:

(i) the name and proposed position of the individual sought to be employed along with a detailed description of the duties the individual is to perform, the number of hours the individual will devote to those duties each week, and the reasons why the employment of the individual is necessary to the successful reorganization of the debtor;

(ii) the amount of compensation sought on a weekly or monthly basis and details of all perquisites, benefits and consideration of any kind the individual is to receive; e.g., use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses; and

(iii) the salary history of the individual to be employed for the year immediately preceding the filing of the petition. Supporting documentary evidence thereof shall be provided directly to the bankruptcy administrator.

(B) If the debtor has filed an application for an interim payment for post-petition services which substantially conforms to the requirements of subsection (e)(1)(A) above, the debtor may make an interim payment in an amount not to exceed the ordinary pre-petition salary or wages for a 14 day period to those individuals who were employed on the date of the filing of the bankruptcy petition, or date of conversion from another chapter, and for whom approval is being sought.

(C) The court may reconsider orders to compensate principals *sua sponte* or at the request of the bankruptcy administrator, any creditor or other party in interest.

(2) **PAYMENT OF PRE-PETITION DEBT:** pay pre-petition unsecured debt including pre-petition wages without approval of the court.

(f) A debtor in a case under chapter 13 shall:

(1) **PAYMENTS UNDER PLAN:** The debtor shall begin making the payments called for in the proposed plan on the first day of the first month following the month in which the chapter 13 case is filed. The payments shall be made directly to the standing chapter 13 trustee.

(2) **DIRECT PAYMENTS TO CREDITORS:** If secured claims are to be paid outside the plan, the debtor must continue to make the regular scheduled payments to the secured creditor prior to confirmation.

(3) **DISPOSITION OF PROPERTY:** The debtor shall not dispose of any non-exempt

property having a fair market value of more than \$5,000 by sale or otherwise without prior approval of the trustee and an order of the court.

(4) OBTAINING CREDIT: The debtor shall not purchase additional property or incur additional debt of \$5,000 or more without prior approval from the court. The debtor must give notice of the application to purchase additional property or to incur additional debt to the chapter 13 trustee, who must respond within five days of receipt of the notice. If no objection is filed, the court may approve the application without a hearing.

(5) ADEQUATE PROTECTION: When a case is dismissed prior to confirmation, the court may require the debtor to provide adequate protection to one or more secured creditors by directing that the chapter 13 trustee make adequate protection payments from funds received under paragraph (d)(1) of this rule.

(6) COLLISION INSURANCE: If the collision insurance coverage lapses on a vehicle subject to a secured claim, the debtor shall immediately refrain from driving the vehicle.

Rule 4003-1 EXEMPTIONS

(a) FORM: If the debtor is an individual and desires to claim exemptions, the debtor shall file a claim for exempt property pursuant to 11 U.S.C. § 522(b)(1) on the local form, Schedule C, Property Claimed as Exempt. The debtor's filing of the local form must be referenced in the bankruptcy petition on Schedule C, Property Claimed as Exempt.

(b) EXTENSION OF TIME FOR OBJECTIONS TO EXEMPTIONS: The court may grant any party in interest an extension of time for objecting to the debtor's claim of exempt property. The request for extension shall be by motion which must contain the reasons for requesting the extension. The motion must be filed before the time for objecting expires.

PART V
COURTS AND CLERKS

Rule 5001-2
CLERK - OFFICE LOCATION AND HOURS

The office of the clerk of court, with the clerk of court or a deputy clerk in attendance, shall be open to the public from 8:30 a.m. until 4:30 p.m. on all days except Saturdays, Sundays and the legal holidays listed in Rule 6(a), Federal Rules of Civil Procedure, or as otherwise ordered.

Rule 5003-1
CLERK - GENERAL AUTHORITY

The clerk of court is authorized to enter the orders and judgments listed below without further direction of the court. However, the action may be suspended, altered or rescinded by the court for cause shown:

- (1) consent orders for the substitution of attorneys;
- (2) orders setting status conferences and preliminary conferences;
- (3) orders extending for a reasonable amount of time the period within which to file a response or an answer to a complaint (first request only);
- (4) orders continuing trial with consent of all parties;
- (5) stipulations of dismissal or consent orders dismissing a proceeding;
- (6) judgments by default as provided for in Rules 55(a) and (b)(1) of the Federal Rules of Civil Procedure; and
- (7) orders canceling liability on bonds.

Rule 5003-4
REGISTER OF MAILING ADDRESSES OF
FEDERAL AND STATE GOVERNMENTAL UNITS

The Register of Mailing Addresses of Federal and State Governmental Units required by Rule 5003, Federal Rules of Bankruptcy Procedure, is contained in the Administrative Guide to Practice and Procedure and is posted on the court's website at www.nceb.uscourts.gov.

Rule 5005-1
FILING PAPER DOCUMENTS - REQUIREMENTS

(a) CLAIMS: In chapter 12 and 13 cases, proofs of claim shall be filed directly with the appropriate standing trustee to whom the case is assigned. The address of the standing trustee will be shown on the notice of the meeting of creditors. Claims will be dated and stamped as "received" as of the date they arrive in the office of the trustee, and the claim shall be deemed filed with the court as of that date. The staff of the standing chapter 12 and 13 trustee shall prepare a claims register for each case referred to that trustee and the claims register shall be

transmitted to the clerk of court and made a part of the permanent record at the closing of the case, together with the original claims.

(b) **PAPER DOCUMENTS FILED WITH THE CLERK:** All pleadings (including but not limited to complaints, answers, motions and applications) and all proposed orders shall be tendered to the clerk of court rather than directly to the judge, unless otherwise specifically directed. The clerk of court shall first accomplish any necessary processing of the document before the document is forwarded to any judge of this court for consideration.

(c) **FILING BY FACSIMILE:**

(1) **FILING:** The following documents may be filed by facsimile transmission to the clerk:

- (A) motions for a continuance stipulated to by all parties;
- (B) withdrawal of motions that are scheduled for hearing; and
- (C) any other filings allowed by the court.

(2) **FAXED DOCUMENT SERVES AS ORIGINAL:** A document filed by facsimile serves as an original, and subjects the signer to the same penalties as an original document, including penalties of Rule 9011, Federal Rules of Bankruptcy Procedure.

(d) **PAPER EXHIBITS OR ATTACHMENTS CONTAINING EXCERPTED MATERIAL:** Any exhibit or attachment to any paper document filed under these rules may contain only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. A party filing excerpts of documents as exhibits or attachments under this rule may supplement the excerpt without prejudice to timely file additional excerpts or the complete document.

Responding parties likewise may timely file excerpts or the complete document to the extent that the excerpts or document are directly germane to the matter under consideration. Upon request by any party in interest or the court, the complete document containing any such excerpt shall be made available to both the party making the request and the court, unless otherwise ordered.

Rule 5005-2 FILING PAPER DOCUMENTS - NUMBER OF COPIES

The number of copies of paper documents required to be filed with the clerk of court, other than those provided for in the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules, is as follows:

- (1) any person requesting file stamped copies of documents must submit copies, together with a stamped, self-addressed envelope;
- (2) any order or judgment that is tendered to the court for consideration - original plus one;
- (3) application for compensation - original plus one;
- (4) motions, applications, answers, responses and other general pleadings - original plus one.

Rule 5005-3 FILING PAPER DOCUMENTS - SIZE OF PAPERS, TWO-SIDED DOCUMENTS

(a) **PAPER SIZE:** The Judicial Conference of the United States has adopted 8½ x 11 inch letter size paper as the standard for use throughout the federal judiciary. All documents and other papers submitted to this court must conform to this standard.

(b) **ATTACHMENTS:** Any attachments to a document which are necessary to an understanding

of the matters set forth in the document must conform to the standard paper size unless advance permission is sought to submit oversized materials.

(c) **TWO-SIDED DOCUMENTS:** No original document submitted to the court shall have text on both sides of the paper. Copies of documents, other than originals, may be submitted with text appearing on both sides of the paper (i.e., duplexed).

Rule 5005-4
ELECTRONIC CASE FILING

Local Bankruptcy Rule 5005-4 shall be read in conjunction with the Administrative Guide to Practice and Procedure. The guide is available from the Office of the Clerk of the United States Bankruptcy Court for the Eastern District of North Carolina and is maintained on the court's web site at: www.nceb.uscourts.gov. In the event of a conflict between the Local Bankruptcy Rules and the Administrative Guide to Practice and Procedure, the Local Bankruptcy Rules shall control.

Rule 5005-4(1)
ASSIGNMENT TO SYSTEM AND FILING REQUIREMENTS

(a) **ASSIGNMENT:** All cases are assigned to the Electronic Case Filing System ("ECF System").

(b) **FILING:** All petitions, motions, memoranda of law, and other pleadings or documents required to be filed with the court in connection with the case must be electronically filed except as provided in these rules or in exceptional circumstances preventing a Filing User from filing electronically.

(c) **EXCEPTION TO FILING REQUIREMENT:** Notwithstanding the foregoing, attorneys and others who are not Filing Users as defined by Local Bankruptcy Rule 5005-4(2) are not required to electronically file pleadings and other documents in cases assigned to the ECF System.

Rule 5005-4(2)
ELIGIBILITY, REGISTRATION AND PASSWORDS

(a) **ELIGIBILITY AND REGISTRATION:** Attorneys admitted to the bar of this court (including those admitted pro hac vice), bankruptcy administrators and their assistants, private trustees, and others as the court deems appropriate, may register as Filing Users of the court's Electronic Case Filing System. Registration is in the form prescribed by and available from the clerk. The registration form also is contained in the Administrative Guide to Practice and Procedure maintained by the clerk and published on the court's web site.

(b) **NON-REPRESENTED PARTIES:** If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the ECF System solely for purposes of that action. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User effective upon the attorney's appearance in the case.

(c) **ELECTRONIC NOTICE AND SERVICE; WAIVERS:** As to all documents properly filed and served electronically, registration as a Filing User constitutes (1) a waiver of the right to

receive notice or service by first class mail or personal delivery; and (2) consent to electronic service pursuant to Local Bankruptcy Rule 5005-4(9), except with regard to service of a summons and complaint under Rule 7004 of the Federal Rules of Bankruptcy Procedure and any other applicable rule or statute pursuant to which service by mail is not permitted. Waiver and consent pursuant to this subsection (c) applies to notice of the entry of an order or judgment under Rule 9022 of the Federal Rules of Bankruptcy Procedure.

(d) **PASSWORDS:** Once registration is completed, the Filing User will receive notification of the Filing User login and password. Filing Users agree to protect the security of their login information and passwords and to immediately notify the clerk if they learn that their login information or password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

Rule 5005-4(3)

CONSEQUENCES OF ELECTRONIC FILING; DEADLINES

(a) **FILING:** Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the clerk, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this court, and constitutes entry of the document on the docket kept by the clerk under Rule 5003 of the Federal Rules of Bankruptcy Procedure.

(b) **OFFICIAL RECORD:** When a document has been filed electronically or imaged by the court, the official record is the electronic recording of the document as stored by the clerk, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

(c) **DEADLINES UNCHANGED BY ELECTRONIC FILING:** Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before 12:00 midnight, Eastern Time, in order to be considered timely filed that day.

Rule 5005-4(4)

ENTRY OF COURT ORDERS; ISSUANCE OF ELECTRONIC SUMMONS

(a) **FILING OF COURT ORDERS; EFFECT OF ELECTRONIC FILING ON COURT ORDERS:** All orders, decrees, judgments and proceedings of the court will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Rules 5003 and 9021 of the Federal Rules of Bankruptcy Procedure. All orders or other documents generated by the court and filed electronically, without the handwritten signature of a judge, shall have the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.

(b) **SUBMISSION OF DOCUMENTS FOR JUDGE'S SIGNATURE:** Any document submitted for a judge's signature in a case assigned to the ECF System must be submitted electronically to the clerk's office in the format specified by the Administrative Guide to Practice and Procedure.

(c) **ISSUANCE OF ELECTRONIC SUMMONS:** The clerk may sign, seal, and issue a summons electronically, although a summons may not be served electronically.

Rule 5005-4(5)
FORMAT; ATTACHMENTS AND EXHIBITS

(a) All documents filed electronically within the ECF System are subject to the same rules pertaining to format as documents filed in paper form, including but not limited to Local Bankruptcy Rule 5005-3, and in the Administrative Guide to Practice and Procedure.

(b) Filing Users must submit, in electronic form, all documents referenced as exhibits or attachments as provided in Local Bankruptcy Rule 5005-1(d), unless the court permits conventional filing. Excerpted material must be clearly and prominently identified as such.

Rule 5005-4(6)
SEALED DOCUMENTS

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. A court order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of any order authorizing the filing of documents under seal must be attached to the documents and delivered to the clerk.

Rule 5005-4(7)
ORIGINAL SIGNATURES AND RETENTION REQUIREMENTS

Electronically filed documents that require original signatures from any person other than the Filing User must be maintained by the Filing User in paper form, bearing the original signatures, for four years after the closing of the case or proceeding in which the documents were filed. Upon the court's request, the Filing User must provide the original signed documents for review.

Rule 5005-4(8)
SIGNATURES AND CERTIFICATION

(a) **ELECTRONIC FILING CONSTITUTES SIGNATURE AND CERTIFICATION:** The use of the login and password of the Filing User to electronically file any petition, pleading, motion, claim, or other document shall constitute the signature of that Filing User on the electronically filed document for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, the Local Bankruptcy Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the login and password also shall constitute certification by the Filing User, and by any agent authorized by the Filing User to use the login and password, that: (1) all persons indicated to have signed the document have actually executed the original or a copy of the original prior to electronic filing; and (2) the Filing User has authorized the electronic filing of the executed document.

(b) **USE OF LOGIN/PASSWORD:** No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such login and password.

(c) **FORM OF ELECTRONIC SIGNATURE:** Electronically filed documents requiring a

signature shall either: (1) show an image of such signature as it appears on the original document or as appended as an image file, in which case such document shall indicate that it has been filed electronically, or (2) bear the name of the signatory preceded by an "s/" typed in the space where the signature would otherwise appear, as follows: s/ Jane D. Doe.

Rule 5005-4(9)
SERVICE OF DOCUMENTS BY ELECTRONIC OR
CONVENTIONAL MEANS; CALCULATION OF RESPONSE TIME

- (a) **CERTIFICATE OF SERVICE REQUIRED:** A Filing User who electronically files a pleading or other document in a case assigned to the ECF System must include a certificate of service indicating how service was made.
- (b) **SERVICE OF NOTICE OF ELECTRONIC FILING TO FILING USERS:** The Filing User may effect service of an electronically filed document on other Filing Users by transmitting or causing transmission of a "Notice of Electronic Filing" to those other Filing Users. Electronic service of process is not effective for purposes of obtaining personal jurisdiction under Federal Rule of Bankruptcy Procedure 7004.
- (c) **CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES:** Parties who are entitled to service of a document but who have not consented to electronic service must be served with a paper copy of the document in compliance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules.
- (d) **CALCULATION OF RESPONSE TIME:** Rule 9006(f) of the Federal Rules of Bankruptcy Procedure applies to the calculation of deadlines for responses to electronically filed pleadings and other documents.

Rule 5005-4(10)
NOTICE AND SERVICE OF COURT ORDERS

- (a) **NOTICE AND SERVICE TO FILING USERS:** Immediately upon the entry of an order, judgment, decree or other document generated by the court in an action assigned to the ECF System, the clerk will electronically transmit a Notice of Electronic Filing to all Filing Users in the case. Electronic Transmission of the Notice of Electronic Filing constitutes the notice required by Rule 9022 of the Federal Rules of Bankruptcy Procedure, and constitutes service of the document to Filing Users.
- (b) **NOTICE AND SERVICE TO NON-CONSENTING PARTIES:** The clerk must give conventional notice and service of documents in accordance with the Federal Rules of Bankruptcy Procedure to any person who has not consented to electronic service.

Rule 5005-4(11)
TECHNICAL FAILURES

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Rule 5005-4(12)
LIMITATION ON PUBLIC ACCESS

(a) In connection with the filing of any material in an action assigned to the ECF System, any person may apply by motion for an order prohibiting the electronic filing of, or limiting the electronic access to, certain specifically-identified material on the ground that the material is subject to privacy interests, and electronic filing of the action or electronic access to the filed material is likely to prejudice those privacy interests.

(b) Material filed on the ECF System shall not be accessed or downloaded for any purpose inconsistent with the privacy concerns of any person.

PART VI
COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6005-1
APPRAISERS AND AUCTIONEERS

(a) **EMPLOYMENT OF AUCTIONEER WITHOUT APPLICATION TO THE COURT:** In a chapter 7 case where the gross sales proceeds of an auction conducted pursuant to this rule are reasonably anticipated by the trustee to be less than \$50,000, the trustee may elect to employ an auctioneer without application to the court and shall be authorized without application to the court to pay the auctioneer a commission of 15% of gross sales inclusive of all expenses of the auction, which are to be paid from the auctioneer's commission.

(b) **CONDITIONS PRECEDENT TO EMPLOYMENT:** The trustee may employ and compensate an auctioneer without applications to the court on the basis set out in (a) above only if the following conditions are satisfied in advance:

(1) the auctioneer to be employed under this subsection (a) above must have been employed as an auctioneer in a chapter 7 case in this district, by order of this court, within the prior 12 months;

(2) the auctioneer must be licensed and in good standing with the North Carolina Auctioneer's Commission consistent with North Carolina General Statute §§ 85B-3 and 4;

(3) the auctioneer must execute and deliver to the trustee the same affidavit that would be required in support of an application for employment of auctioneer otherwise filed with the court;

(4) the auctioneer must not have been censured or suspended by the bankruptcy administrator; and

(5) the affidavit executed by the auctioneer must affirmatively set out compliance with the conditions of subsections (2) and (4) above.

The trustee shall be entitled to rely on the truth and accuracy of the affidavit submitted by the auctioneer.

(c) **REPORT BY TRUSTEE:** The trustee shall prepare a report of sale that discloses fees paid to the auctioneer, and the report shall be accompanied by the auctioneer's affidavit. The trustee must file the report of sale with the clerk and serve copies on the bankruptcy administrator.

(d) **REPORT BY AUCTIONEER:** An auctioneer employed to conduct a sale on behalf of the bankruptcy estate must file a report of sale following the conclusion of any sale within the time and in the format as prescribed by the bankruptcy administrator.

Rule 6070-1
TAX RETURNS AND TAX REFUNDS

Tax returns and tax refunds, and their treatment in the context of the automatic stay provided in 11 U.S.C. § 362(a), are addressed in Local Bankruptcy Rule 4001-1(a).

PART VII
ADVERSARY PROCEEDINGS

Rule 7005-1
SERVING AND FILING PLEADINGS AND OTHER PAPERS

Electronic service through the court's transmission facilities is allowed as provided in Local Bankruptcy Rule 5005-4 or as the party served may otherwise consent in writing. If the party making service learns that the attempted electronic service did not reach the person to be served, the party making service shall cause the pleading to be re-served by electronic means or served by other acceptable means of service as provided in Rule 7005(b) of the Federal Rules of Bankruptcy Procedure.

Rule 7007-1
MOTION PRACTICE IN ADVERSARY PROCEEDINGS

- (a) **GENERAL REQUIREMENTS:** All motions shall state with particularity the facts supporting the motion and shall state the relief requested. All motions, except those seeking a shortening or extension of any time period, shall be filed with an accompanying memorandum.
- (b) **RESPONSES TO MOTIONS:** Any party may file a written response to any motion within 20 days after service of the motion in question unless otherwise ordered by the court or prescribed by the applicable rules of bankruptcy procedure. The response may be a memorandum and may be accompanied by affidavits or other supporting documents. When the response is not a memorandum, the written response shall be accompanied by a supporting memorandum. In the event no response is filed, the court may proceed to rule on the motion.
- (c) **HEARINGS ON MOTIONS:** Hearings on motions may be ordered by the court in its discretion.

Rule 7016-1
PRETRIAL PROCEDURES

- (a) **PRELIMINARY PRETRIAL CONFERENCE:**
- (1) **SCHEDULING AND NOTICE:** A preliminary pretrial conference may be scheduled at the discretion of the court. The clerk of court shall give at least 20 days notice of the conference.
- (2) **PREPARATION BY COUNSEL FOR PRELIMINARY PRETRIAL CONFERENCE:**
Counsel shall be prepared to discuss at the conference the following:
- (A) the issues raised by the pleadings;
 - (B) issues concerning jurisdiction, venue, or the authority of the bankruptcy court;
 - (C) whether the parties, if the proceeding is not a core proceeding, have consented to the bankruptcy judge hearing and determining the proceeding pursuant to 28 U.S.C. § 157(c)(2);
 - (D) the disposition of pending motions;
 - (E) the necessity, desirability, and timing of amendments to pleadings, joinder of additional parties, the filing of additional motions and discovery;
 - (F) the possibility of settlement;
 - (G) the need for additional pretrial conferences;

(H) the timing and form of disclosures under Rule 26(a)(1), Federal Rules of Civil Procedure, including a statement of when disclosures under the rule were made or should be made;

(I) changes that should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure; and

(J) whether use of expert witnesses is contemplated, and if so, whether and when the disclosure of expert information as required by Rule 26(a)(2), Federal Rules of Civil Procedure, should be made.

(3) **PRELIMINARY PRETRIAL CONFERENCE REPORT:** At least one week prior to the preliminary pretrial conference, counsel shall file with the clerk of court a joint report containing information concerning all the items to be discussed at the preliminary pretrial conference.

(4) **DISCLOSURES:** Unless counsel agree to disclosures at an earlier date, disclosures required to be made by Rule 26(a) and (b), Federal Rules of Civil Procedure, shall be made at the time and under the circumstances directed by the court in the scheduling order entered after receipt of the preliminary pretrial conference report.

(b) FINAL PRETRIAL CONFERENCE

(1) **SCHEDULING AND NOTICE:** A final pretrial conference may be scheduled at the discretion of the court. The clerk of court shall give at least 30 days notice of the conference.

(2) **PREPARATION BY COUNSEL FOR FINAL PRETRIAL CONFERENCE:** At least 10 days prior to the final pretrial conference, trial counsel for each of the parties shall confer and prepare a proposed final pretrial order. In the event no pretrial conference is scheduled, counsel shall confer, prepare and submit a proposed final pretrial order to the court no later than 10 days prior to the scheduled trial. It is the duty of counsel for the plaintiff to arrange this conference. The conference of attorneys shall be held in a mutually agreeable location or may be conducted by telephone conference. Each counsel must bring to the conference or be responsible for the exchange of copies of exhibits to be introduced into evidence, lists of witnesses to be called and designations of discovery material to be used at the trial. The disclosure of witnesses and exhibits under this section supersedes the requirements of timing and format otherwise required by Rule 26(a)(3), Federal Rules of Civil Procedure.

(c) **PRETRIAL ORDER:** The pretrial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in five separate sections, numbered by Roman numerals, as indicated:

(1) **I. STIPULATIONS:** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.

(2) **II. CONTENTIONS:** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pretrial order are deemed abandoned.

(3) **III. EXHIBITS:** A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Local Bankruptcy Rule 7016-1(b)(2). The court may excuse the copying of large maps or other exhibits. Except as otherwise indicated in the pretrial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pretrial order.

(4) **IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS:** The

designation of all portions of pleadings and discovery materials, including depositions, interrogatories and requests for admissions that each party may offer at trial by reference to document, volume, page, and line. Objections by opposing counsel must be noted by document, volume, page and line, and reasons for objections must be stated.

(5) V. WITNESSES: A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony. A pretrial order should be submitted in detail sufficient to comply with these rules. A sample pretrial order is in the Administrative Guide to Practice and Procedure.

(d) PRETRIAL CONFERENCE:

(1) The purpose of the pretrial conference is to resolve any disputes concerning the contents of the pretrial order. At the pretrial conference, counsel should be prepared to present to the court all information and documentation necessary for completion of the pretrial order. Failure to do so shall result in the sanctions provided by this rule.

(2) Rule 16(f) of the Federal Rules of Civil Procedure, which provides for sanctions if a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, is applicable to adversary proceedings pursuant to Rule 7016, Federal Rules of Bankruptcy Procedure.

Rule 7016-2
TRIALS

(a) OPENING STATEMENTS: At the beginning of the trial, each party (beginning with the party having the burden of proof on the first issue) may, without argument and in such reasonable time as the court allows, state to the court the following:

- (1) the substance of the claim, counterclaim, cross claim or defense; and
- (2) what counsel contends the evidence will show.

Parties not having the burden of proof on the first issue may elect to make an opening statement immediately prior to presenting evidence, rather than at the beginning of the trial.

(b) WITNESSES: Counsel may not release a person from a subpoena without notice to opposing counsel and leave of court. A party objecting to the release of a person shall bear all costs incident to the person that arise subsequent to the request for release. The court, in its discretion and in the interest of justice, may permit a party to call and examine a witness not listed in the final pretrial order.

(c) EXHIBITS:

(1) All exhibits shall be pre-marked with stickers with sequential numbers as listed in the pretrial order.

(2) Copies of all exhibits, properly bound, shall be provided to the court at the beginning of the trial.

(3) The original exhibit shall bear a sticker. After receipt into evidence, it shall remain in the custody of the courtroom deputy except when being used by a witness.

(4) Copies of all exhibits shall bear the photocopy of the sticker or a typed or printed reproduction thereof.

(5) Upon presentation of an exhibit to a witness, counsel shall announce to the court the

exhibit number.

(d) CLOSING ARGUMENT: The court will set the times for closing argument after consultation with parties. Unless otherwise ordered by the court, the party with the burden of proof shall open and close the arguments. The opening argument may not be waived.

Rule 7026-1
DISCOVERY - GENERAL

Transcripts of depositions, interrogatories, requests for production of documents, requests for admissions, answers and responses thereto, notices of deposition (unless filing is needed to obtain a subpoena in another district), or any subpoena or subpoena duces tecum, are not to be filed unless by order of the court or for use in the proceeding. All such papers must be served on other counsel or parties entitled to service of papers filed with the clerk of court. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered.

Rule 7055-1
DISMISSAL OF ACTIONS FOR LACK OF PROSECUTION

(a) Except where a complaint objecting to a discharge has been filed, an adversary proceeding may be dismissed by the court for lack of prosecution as follows:

(1) where no service of process has been made and certified to the court within 30 days after the filing of the complaint; or

(2) where no responsive pleadings have been filed and plaintiff has not moved for entry of default within 30 days after the time for filing responsive pleadings has expired.

(b) Dismissal under this local bankruptcy rule shall be without prejudice unless the delay has resulted in prejudice to an opposing party.

RULE 7065-1
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

(a) Prior to submitting a motion for a temporary restraining order or for a preliminary injunction, an adversary proceeding shall be filed seeking such relief.

(b) A motion for a temporary restraining order or for a preliminary injunction shall be made in a document separate from the complaint and shall be accompanied by:

(1) a proposed temporary restraining order or preliminary injunction; and

(2) a declaration or affidavit by the moving party or counsel for the moving party showing compliance with Rule 7065, Federal Rules of Bankruptcy Procedure, regarding notice to opposing parties.

Rule 7067-1
REGISTRY FUND

In the event a depository intended by the court to receive registry funds is not able, immediately upon the court's receipt of the registry funds, to pledge sufficient collateral for receipt of those funds, the funds may be retained temporarily in non-interest-bearing U. S. Treasury accounts as necessary to arrange for their deposit in interest-bearing accounts.

PART VIII
APPEALS TO DISTRICT COURT
[RESERVED]

PART IX
GENERAL PROVISIONS

Rule 9004-2
CAPTION - DOCUMENTS, GENERAL

Pursuant to Local Bankruptcy Rule 1071-1, all documents filed with the clerk or the court shall state in the caption the court and division in which the action is pending and the chapter under which the case is being administered.

Rule 9007-1
DESIGNATION OF PARTIES TO PROVIDE NOTICE

The clerk of court is authorized to designate the parties who shall provide the notice to creditors and parties in interest as required under the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.

RULE 9009-1
FORMS

Local forms are included in the Administrative Guide to Practice and Procedure and are on the court's website at www.nceb.uscourts.gov.

Rule 9010-1
ATTORNEYS - NOTICE OF APPEARANCE

(a) Local Rule No. 83.1 of the Local Rules of Court for the United States District Court, Eastern District of North Carolina, entitled, "Attorneys", is applicable in this court, with the following exceptions:

(1) an individual may represent himself; and

(2) an entity may be represented at a meeting of creditors by its officers and agents.

(b) Except as indicated above, all courtroom appearances, pleadings, motions, and objections must be by an attorney admitted to practice before this court.

Rule 9011-1
ATTORNEYS - DUTIES

Any attorney who files a bankruptcy petition for or on behalf of a debtor shall remain the attorney of record for all purposes, including the representation of the debtor in all matters that arise in conjunction with the proceeding, until the case is closed or the attorney is relieved upon application and court order. If additional fees are required, application must be made pursuant to Rule 2016, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 2016-1.

Rule 9011-3
SANCTIONS

(a) FAILURE TO COMPLY WITH LOCAL BANKRUPTCY RULES: If any attorney or party willfully fails to comply with any Local Bankruptcy Rule of this court, the court, in its discretion, may impose sanctions.

(b) SANCTIONS UNDER § 362(h): When determining sanctions under 11 U.S.C. § 362(h), the court shall consider whether the moving party notified the offending party and gave the party an opportunity to cure the alleged violation.

Rule 9011-4
SIGNATURES

All documents signed by an attorney pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure and filed with the court shall contain the individual name, firm name, address, telephone number, facsimile number and State Bar identification number, where applicable, of the signing attorney(s).

Rule 9013-1
SERVICE OF MOTIONS

(a) SERVICE ON TRUSTEE AND ATTORNEY FOR DEBTOR IN POSSESSION: In addition to the parties affected by the pleading, all filings (except claims) in all proceedings and cases must be served on the trustee whether or not the trustee is a party to the proceeding. In chapter 11 cases, the attorney for the debtor in possession must be served in like manner.

(b) SERVICE ON BANKRUPTCY ADMINISTRATOR: In chapter 11 cases, all filings (except claims) must be served on the bankruptcy administrator. In chapter 7 cases, all pleadings filed by the chapter 7 trustee, or filed in response to a pleading filed by the trustee, must be served on the bankruptcy administrator.

RULE 9013-2
BRIEFS AND MEMORANDA OF LAW

Except as provided in Local Bankruptcy Rule 7007-1, supporting briefs or memoranda of law are optional and are not required unless ordered by the court.

RULE 9013-3
CERTIFICATE OF SERVICE

Each pleading or document to be served on any party shall have attached a certificate reflecting that service has been made on that party and identifying the method of service.

Rule 9014-1
CONTESTED MATTERS – GENERAL

- (a) **REQUIREMENTS OF MOTION:** A motion shall be accompanied by all exhibits and attachments referred to in the motion, together with a notice of motion and certificate of service, and filed with a proposed order pursuant to Local Bankruptcy Rule 9072-1. The notice of motion shall give notice of the filing of the motion, allow for a specific response time to the motion and shall conform substantially to the notice of motion in the local forms. A response to a motion does not require a notice of motion or an accompanying proposed order.
- (b) **CONTENT OF MOTIONS:** Motions seeking relief other than as to the debtor or the trustee must recite the name and address of the party against whom relief is sought.
- (c) **TIME FOR RESPONSE:** A response and accompanying affidavits, if any, to any motion shall be filed within 15 days from the date of the service of the motion, unless otherwise ordered or provided in the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.
- (d) **SERVICE OF MOTION:** The moving party shall serve the notice of the motion together with the motion and all exhibits and attachments (unless service of the motion itself is not required) in the manner prescribed in Rule 9014, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013-1.
- (e) **RESPONSE:** Any party against whom relief is sought may file a written response to the motion. The response may be accompanied by affidavits and other supporting documents and shall be served on all interested parties.
- (f) **CONTENT OF RESPONSE:** All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. If a response is not in compliance with this provision, the court in its discretion may resolve the matter without a hearing.
- (g) **HEARING ON MOTION:** Unless a hearing is requested in the motion or in the response, motions may be determined without a hearing. A hearing on a motion may be ordered by the court in its discretion.
- (h) **EVIDENTIARY HEARINGS:** Evidentiary hearings, at which witnesses may testify, will be held in contested matters at the first appearance before the court, unless otherwise ordered.
- (i) **FRIVOLOUS OR DELAYING MOTIONS:** Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or counsel filing the motion. Any party filing a request for a hearing shall appear at the hearing set by the court in support of the request or costs may be assessed.

Rule 9014-2
CONTESTED MATTERS – EXPEDITED

- (a) **APPLICABILITY:** This rule is applicable to any motion in which a hearing or the entry of an order is requested with less than 15 days notice.
- (b) **PROCEDURE:** Any request for a shortened notice time and expedited hearing shall be included in the motion. This motion shall have a caption clearly indicating the relief sought and that a shortened notice time and expedited hearing are requested. The motion shall be accompanied by a notice of motion that conforms to the notice of motion in the local forms and a proposed order shortening the time with the date, time and place of the hearing left blank.

(c) SERVICE OF MOTION AND NOTICE OF HEARING:

(1) MOTION: The moving party shall immediately serve a copy of the motion requesting the expedited relief by hand delivery, overnight delivery, facsimile or electronic transmission.

(2) NOTICE OF HEARING: Immediately upon receipt of the order shortening time and setting the hearing, the movant shall serve the notice of hearing upon the parties in the manner prescribed in subparagraph (c)(1) above.

(3) In instances where service of the notice of hearing may not provide sufficient time for parties in interest to respond or appear, counsel shall telephonically provide notice.

(4) A certificate of service indicating the manner of service shall be filed prior to the hearing.

Rule 9019-1
SETTLEMENTS AND AGREED ORDERS

Unless additional time is granted by the court, parties to a settlement shall submit an agreed or consent order within 20 days of the notification to the court that the settlement has been reached. If the agreed or consent order is not timely submitted, the matter may be rescheduled for hearing or the matter may be dismissed.

Rule 9019-2
MEDIATED SETTLEMENT CONFERENCE

The court may, by written order, require parties and their representatives to attend a pretrial mediated settlement conference in any adversary proceeding pending in the court.

Rule 9019-2(1)
MEDIATED SETTLEMENT ORDER AND MOTIONS

(a) TIMING OF THE ORDER: The court may issue the order at any time after the time for the filing of answers has expired.

(b) CONTENT OF ORDER: The court's order shall:

(1) require that a mediated settlement conference be held in the case;

(2) establish a deadline for the completion of the conference;

(3) state clearly that the parties have the right to select their own mediator as provided by Local Bankruptcy Rule 9019-2(2);

(4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Local Bankruptcy Rule 9019-2(2); and

(5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court.

(c) MOTION TO DISPENSE WITH MEDIATED SETTLEMENT CONFERENCE: A party may move the court, within 10 days after entry of the court's order, to dispense with the conference. The motion shall state the reasons the relief is sought, and shall be filed with the clerk of court and served on all opposing parties. Any party may file a written objection specifically

stating his or her reasons for opposing the motion. The judge will rule upon such motion without a hearing.

(d) **MOTION FOR COURT ORDERED MEDIATED SETTLEMENT CONFERENCE:** In cases not ordered to mediated settlement conference, any party may move the court to order such a conference. The motion shall state the reasons why the order should be allowed and shall be served on nonmoving parties. Objections may be filed in writing with the court within 10 days after the date of the service of the motion. Thereafter, the judge shall rule upon the motion without a hearing.

(e) **MOTION TO AUTHORIZE THE USE OF OTHER SETTLEMENT PROCEDURES:** Within 10 days of the court's mediation order, any party may move the court to authorize the use of some other settlement procedure in lieu of a mediated settlement conference. The motion shall state the reasons the authorization is requested and that all parties consent to the motion. The court may order the use of any agreed upon settlement procedure. The deadline for completion of the authorized settlement procedure shall be as provided by rules authorizing the procedure or, if none, the deadline shall be as ordered for the mediated settlement conference.

Rule 9019-2(2) SELECTION OF MEDIATOR

(a) **SELECTION OF CERTIFIED MEDIATOR BY AGREEMENT OF PARTIES:** The parties appearing of record may select a mediator certified pursuant to the rules of the Supreme Court of North Carolina. The plaintiff shall file with the court an approved Designation for Mediator notice form indicating Selection of Certified Mediator by Agreement within 21 days of the court's order. This notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and the parties have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to the rules of the Supreme Court.

(b) **NOMINATION AND COURT APPROVAL OF NONCERTIFIED MEDIATOR:** The parties may select a mediator who does not meet the certification requirements of the Supreme Court but who is, in the opinion of the parties and the judge, otherwise qualified by training or experience to mediate the action. If the parties select a noncertified mediator, the plaintiff or plaintiff's attorney shall file with the judge an approved Designation of Mediator notice form indicating Nomination for Noncertified Mediator within 21 days of the court's order. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and the parties have agreed upon the selection and rate of compensation. The judge shall rule on the nomination without a hearing.

(c) **APPOINTMENT OF MEDIATOR BY THE COURT:** If the parties cannot agree upon the selection of a mediator, the plaintiff shall submit a Designation of Mediator form indicating a Motion for Court Appointment of Mediator to the judge on behalf of the parties. The motion must be filed within 21 days after the court's order and shall state that the parties and their attorneys have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The motion shall state whether any party prefers a certified attorney mediator, and if so, the judge shall appoint a certified attorney mediator. The motion may state that all parties prefer a certified, nonattorney mediator, and if so, the judge shall appoint a certified, nonattorney mediator if one is on the list of certified mediators desiring to mediate cases

in the district. If no preference is expressed, the judge may appoint a certified attorney mediator or a certified nonattorney mediator. Upon receipt of a Motion for Court Appointment of Mediator, or in the event the plaintiff has not filed a Notice of Selection of Certified Mediator or Nomination of Noncertified Mediator with the court within 21 days of the court's order, the judge shall appoint a mediator certified pursuant to these rules. Only mediators that have indicated their desire to mediate cases in the Eastern District shall be appointed.

(d) **MEDIATOR INFORMATION DIRECTORY:** To assist the parties in the selection of a mediator by agreement, a central directory of information on all certified mediators may be found on the website of the North Carolina Dispute Resolution Commission at www.nccourts.org.

(e) **DISQUALIFICATION OF MEDIATOR:** Any party may move for an order disqualifying the mediator. If the mediator is disqualified, a replacement mediator shall be selected or appointed pursuant to this rule. Nothing in this provision shall preclude mediators from disqualifying themselves upon written notice to the judge and the parties.

Rule 9019-2(3)

MEDIATED SETTLEMENT CONFERENCE LOCATION AND TIME

(a) **LOCATION OF CONFERENCE:** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the United States Bankruptcy Courthouse or other public or community building in the Eastern District. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

(b) **TIME OF CONFERENCE:** The court's order issued pursuant to Local Bankruptcy Rule 9019-2(1) shall state a date of completion for the conference. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.

(c) **REQUEST TO EXTEND DATE OF COMPLETION:** A party, or the mediator, may request the judge to extend the deadline for completion of the conference. The request shall state the reasons the continuance is sought and shall be served by the movant upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the judge. The judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to trial. The order shall be served on all parties and on the mediator by the person who sought the extension.

(d) **RECESSES:** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

(e) **MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS:** The mediated settlement conference shall not be cause for the delay of other proceedings in the case, including the completion of discovery, the filing or hearing of motions, or the trial of the case, except by order of the judge.

Rule 9019-2(4)

DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

(a) ATTENDANCE: The following persons shall physically attend the entire mediated settlement conference until an agreement is reduced to writing and signed as provided by subsection (c) of this rule or an impasse has been declared, unless excused by the judge or by the mediator with approval of all parties and attorneys:

(1) PARTIES:

(A) all individual parties;

(B) any party that is not a natural person or a governmental entity, represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action; and

(C) any party that is a governmental entity, represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.

(2) INSURANCE COMPANY REPRESENTATIVES: A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have decision-making authority.

(3) ATTORNEYS: At least one counsel of record for each party or other participant whose counsel has appeared in the action.

(b) NOTIFYING LIEN HOLDERS: Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify the lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request the lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.

(c) FINALIZING AGREEMENT: Upon reaching agreement, either before or during the mediation conference, the settlement shall be immediately reduced to writing and signed by the parties, their counsel, and others with settlement authority. By stipulation of the parties, the agreement may be electronically or stenographically recorded. A consent judgment or one or more voluntary dismissals shall be filed with the court by such persons as the parties shall designate.

(d) REPORTING SETTLEMENT: Upon reaching a settlement agreement before or during the conference, the parties and others with settlement authority, shall provide a copy of the executed written agreement to the mediator within seven days of the settlement. The mediator shall attach a copy of the written agreement to the Report of Mediator filed pursuant to Local Bankruptcy Rule 9019-2(6)(b)(4) of these rules. Failure of the parties to provide a copy of the written agreement to the mediator on a timely basis may result in sanctions.

Rule 9019-2(5)
SANCTIONS FOR FAILURE TO ATTEND

(a) If any person required to attend the conference pursuant to Local Bankruptcy Rule 9019-2(4) fails to attend without good cause, the judge may impose an appropriate monetary sanction, including but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and losses of earnings incurred by persons attending the conference.

(b) A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought. The motion shall be served upon all parties and on any person against whom sanctions are being sought. If the court imposes sanctions, it shall do so after notice and a hearing, and in a written order making findings of fact and conclusions of law.

Rule 9019-2(6)
AUTHORITY AND DUTIES OF MEDIATOR

(a) **AUTHORITY OF MEDIATOR:**

(1) **CONTROL OF CONFERENCE:** The mediator shall at all times be in control of the conference and the procedures to be followed.

(2) **PRIVATE CONSULTATION:** The mediator may meet and consult privately with any participant or counsel during the conference.

(3) **SCHEDULING THE CONFERENCE:** The mediator shall make a good faith effort to schedule the conference at a time that is convenient to the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) **DUTIES OF MEDIATOR:**

(1) **GENERALLY:** The mediator shall define and describe the following to the parties at the beginning of the conference:

(A) the process of mediation;

(B) the differences between mediation and other forms of conflict resolution;

(C) the costs of the mediated settlement conference;

(D) that the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their right to trial if they do not reach settlement;

(E) the circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;

(F) whether and under what conditions communications with the mediator will be held in confidence during the conference;

(G) the inadmissibility of conduct and settlements as provided by applicable Rules of Evidence.

(H) the duties and responsibilities of the mediator and the participants; and

(I) the fact that any agreement reached will be reached by mutual consent.

(2) **DISCLOSURE:** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.

(3) **DECLARING IMPASSE:** It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.

(4) **REPORTING RESULTS OF CONFERENCE:** The mediator shall submit a Report of Mediator to the judge which indicates the results of the conference. This report shall be filed

within two weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first.

(A) If an agreement was reached, the report shall state whether the action will be concluded by consent judgment or voluntary dismissal and shall identify the persons designated to file the consent judgment or dismissals. The mediator's report shall inform the court of the absence of any party, attorney, or insurance representative who was absent without permission from the conference.

(B) The mediator shall attach the written settlement agreement prepared by the parties to the Report of Mediator.

(5) SCHEDULING AND HOLDING THE CONFERENCE: It is the duty of the mediator to schedule the conference and to conduct and conclude the conference prior to the conference completion deadline set out in the court's order. Deadlines for completion of the conference shall be strictly observed by the mediator unless the time limit is changed by a written order of the judge.

(c) FAILURE OF MEDIATOR TO COMPLY WITH THIS RULE: The judge may withhold future appointments of any mediator who does not fully comply with the requirement of this Local Bankruptcy Rule.

Rule 9019-2(7) COMPENSATION OF MEDIATOR

(a) BY AGREEMENT: When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) BY COURT ORDER: When the mediator is appointed by the court, the mediator shall be compensated by the parties at an hourly rate set by the judge.

(c) PAYMENT OF COMPENSATION BY PARTIES: Unless otherwise agreed to by the parties or ordered by the court, costs of the mediated settlement conference shall be paid in equal shares by the parties. Multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally unless the court otherwise orders.

(d) SANCTIONS FOR FAILURE TO PAY MEDIATOR'S FEE: Except when excused by these rules or by order of the court, failure of a party to make timely payment of the party's share of a mediator's fee at the conclusion of the conference may result in the imposition of sanctions.

Rule 9019-2(8) COMMUNICATIONS WITH COURT

All communications concerning mediated settlement conferences should be addressed to the bankruptcy administrator.

Rule 9036-1
NOTICE BY ELECTRONIC TRANSMISSION

(a) Whenever the clerk or some other person as directed by the court is required to send notice by mail, and the entity or person entitled to receive the notice requests in writing that instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission.

(b) Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received, except where the recipient of the notice has agreed in writing that confirmation is not required, in which case notice is complete upon transmission.

Rule 9070-1
EXHIBITS

Exhibits filed in this district, in either paper or electronic form, and in the context of an adversary proceeding, contested matter, or any other proceeding, shall conform to the requirements of the Local Bankruptcy Rules, including Local Bankruptcy Rules 5005-1, 5005-4(5), 7016-1, 7016-2, and 9014-1, as they may apply.

Rule 9072-1
PROPOSED ORDERS

Except as may be otherwise provided in the Local Bankruptcy Rules, all pleadings requesting relief shall be filed with a proposed order granting the relief sought.

RULE 9074-1
TELEPHONE OR VIDEO CONFERENCES AND HEARINGS

(a) **CONFERENCES AND HEARINGS:** The court may schedule any matter in a bankruptcy case, contested matter or adversary proceeding to be heard by video or telephone conference. Any party in interest affected by or involved in a case, matter or proceeding may request the court to hear the matter by telephone or video conference.

(b) **EXCHANGE OF EXHIBIT AND WITNESS LISTS:** The parties involved in video conferences and hearings shall exchange proposed witness and exhibit lists and copies of all proposed exhibits, and file such lists and exhibits with the court, at least three business days prior to a hearing or trial unless otherwise ordered by the court. The moving party in a contested matter shall identify exhibits in numerical sequence. The responding party in a contested matter shall identify exhibits in alphabetical sequence. If multiple parties are involved, the parties prior to hearing or trial shall determine an identification sequence that eliminates any duplicative sequence. Failure to timely exchange and file proposed witness and exhibit lists and copies of proposed exhibits in accordance with this rule may result in the court barring any undisclosed witness testimony and denying the admission of any unexchanged exhibits.