



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

**LOCAL RULES  
OF  
PRACTICE AND PROCEDURE**

**These Rules Current as of February 20, 2002.**

**October 1, 1997 Edition**

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA

In re:

LOCAL RULES

ORDER AMENDING LOCAL RULES

The Local Rules Committee for the Eastern District of North Carolina has recommended that the Local Rules be amended. On December 13, 2001, the amendments were posted on the court's web page with comments by January 15, 2002. The bankruptcy judges considered all of the comments, and pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and pursuant to the authority granted by the order of the United States District Court for the Eastern District of North Carolina dated October 8, 1987, the Local Rules for the Eastern District of North Carolina are amended as follows:

Local Rule 5005-4 shall be read in conjunction with the Administrative Guide for Electronic Filing. The guide is available from the Office of 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](http://www.nceb.uscourts.gov). In the event of a conflict between the Local Rules and the Administrative Guide, the Local Rules shall control.

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

(a) ASSIGNMENT: All opened 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 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 Electronic Filing 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 Rule 5004-4(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 subsections (c)(1) and (2) 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 log-in and password. Filing Users agree to protect the security of their log-in information and passwords and to immediately notify the clerk if they learn that their log-in 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 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, 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**

(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 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.

#### **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 Rule 5005-3.
- (b) Filing Users must submit, in electronic form, all documents referenced as exhibits or attachments as provided in Local Rule 5005-1(d), unless the court permits conventional filing.

**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 log-in 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 Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the log-in and password also shall constitute certification by the Filing User, and by any agent authorized by the Filing User to use the log-in and password, that: (1) all persons indicated to have signed the document have actually executed 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 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.
- (d) **IMAGED SIGNATURES:** An electronic image of signatures shall be required as an attachment of the filed document for all documents executed under oath or under penalty of perjury; however, bankruptcy petitions, schedules, statements of financial affairs, exemptions, and creditor matrix verifications shall be accompanied by an imaged signature page in the form prescribed by the Administrative Guide. The signatures on imaged attachments shall have the same legal effect as the original signatures.

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

## CALCULATION OF RESPONSE TIME

- (a) NOTICE OF ELECTRONIC FILING TO FILING USERS: A Filing User who electronically files a pleading or other document in a case assigned to the ECF System may transmit or cause to be transmitted a "Notice of Electronic Filing" to other Filing Users entitled to notice or service of the document under the Federal Rules of Bankruptcy Procedure or the Local Rules.
- (b) TRANSMISSION OF NOTICE OF ELECTRONIC FILING: The Notice of Electronic Filing may be transmitted by e-mail, hand, facsimile, or by the U.S. Mail, first-class postage prepaid. Transmission of the Notice of Electronic Filing to Filing Users constitutes service or notice of the filed document on Filing Users.
- (c) CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES: Parties who have not consented to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document.
- (d) CALCULATION OF RESPONSE TIME: Rule 9006(f) of the Federal Rules of Bankruptcy Procedure shall apply 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 that 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.

## OTHER RULES REVISIONS RELATING TO ELECTRONIC FILING

### **Rule 5005-1 FILING AND TRANSMITTAL OF PAPERS**

- (d) EXHIBITS OR ATTACHMENTS CONTAINING EXCERPTED MATERIAL: Any exhibit or attachment to any document or paper 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 by the court.

**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.

SO ORDERED.

Dated: February 20, 2002

-

s/J. Rich Leonard

J. Rich Leonard  
Chief Judge

s/A. Thomas Small

A. Thomas Small  
Judge

United States Bankruptcy Court  
for the Eastern District of North Carolina

IN RE:

ORDER

LOCAL BANKRUPTCY RULES

It appearing that local bankruptcy rules would facilitate the administration of bankruptcy cases in this district, and would assist the court in the management of contested matters and adversary proceedings; and

It further appearing that Bankruptcy Rule 9029 permits the United States District Court to authorize the bankruptcy judges to make rules of practice and procedure not inconsistent with the Official Bankruptcy Rules; and

It further appearing that by order of Chief United States District Judge W. Earl Britt, dated October 8, 1987, the bankruptcy judges of this district are authorized, subject to the requirements of Rule 83 of the Federal Rules of Civil Procedure, to make rules of practice and procedure not inconsistent with the Bankruptcy Rules, consistent with the authority of the district court to modify or abrogate any rules so adopted as appears appropriate. It further appearing that appropriate notice was given with an opportunity to comment; now

therefore,

IT IS ORDERED that the bankruptcy rules attached hereto are hereby adopted and shall be referred to as Local Bankruptcy Rules, Eastern District of North Carolina, and shall be numbered in such a way as to refer to the Official Bankruptcy Rules.

Entered this 1st day of September, 1988.

s/Thomas M. Moore  
Chief Judge

s/A. Thomas Small  
Judge

## Preface

The Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of North Carolina are adopted to facilitate the administration of bankruptcy cases, to assist the court in the management of contested matters and adversary proceedings and to provide for variations in the local practice in this court.

The numbering system for the Local Bankruptcy Rules is patterned after the uniform numbering system for local bankruptcy rules approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States. The numbering of the local rules generally corresponds to the numbering of the Federal Rules of Bankruptcy Procedure.

The Local Bankruptcy Rules will be cited as:

"E.D.N.C. LBR \_\_\_\_-\_\_\_\_."  
(Example: "E.D.N.C. LBR 1007-1.")

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(Forms are included only in paper form as part of local rules package)

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

Rule 1002-1

**PETITION - GENERAL**

The required number of copies of petitions requesting relief under the Code is as follows:

- (1) Chapter 7 - original and one
- (2) Chapter 11 - original and five
- (3) Chapter 12 - original and two
- (4) Chapter 13 - original and one

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;
- (4) 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. Should the application be denied, the debtor shall have ten (10) days from the date of the order to pay the full fee. If the full fee is not paid within ten (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 ten (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 will be provided from the court of the due date. 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 the instance of an accelerated chapter 11 case when the schedules and statements are not filed with the voluntary petition, a copy of the schedules and statements shall be filed within fifteen (15) days thereafter and served directly upon the bankruptcy administrator and the Internal Revenue Service. If the debtor is a corporation or limited partnership, then a copy of the schedules and statements shall be filed also within fifteen (15) days upon the following:

- (1) Securities & Exchange Commission  
Branch of Reorganization  
Suite 1000  
3475 Lennox Road, N.E.  
Atlanta, Georgia 30327-1323

or at the most current address on file with the clerk, and

- (2) Secretary of the Treasury  
Washington, D. C. 20220

A certificate of service shall be attached to the original schedules and statements filed with the court reflecting that service has been made on each party.

(b) **TWENTY (20) 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 fifteen (15) days thereafter, unless a motion to extend the time for filing the schedules and statements is filed prior to the expiration of the fifteen (15) days. If the schedules and statements are not filed within fifteen (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 fifteen (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 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:

- (a) all creditors listed in the petition, alphabetically arranged;
- (b) Bankruptcy Administrator, Post Office Box 3758, Wilson, NC 27895-3758 or most current address, in chapters 7 and 11;
- (c) Internal Revenue Service, 320 Federal Place, ATTN: Special Procedures Staff, Greensboro, NC 27402 or the most current address on file with the clerk --except in chapters 7, 12 and 13 when the IRS is not listed as a creditor;
- (d) North Carolina Department of Revenue, Office Services Division, Bankruptcy Unit, Post Office Box 1168, Raleigh, NC 27602-1168 or the most current address on file with the clerk --except in chapters 7, 12 and 13 when the Department of Revenue is not listed as a creditor; and
- (e) Employment Security Commission, Post Office Box 26504, Raleigh, NC 27611 or the most current address on file with the clerk --except in chapters 7, 12 and 13 when the ESC is not listed as a creditor.
- (f) If the United States is a party, other than for taxes, the matrix should include the United States Attorney, 310 New Bern Avenue, Suite 800, Federal Building, Raleigh, NC 27601-1461 or the most current address on file with the clerk (EXAMPLE: FHA, FmHA, VA, SBA).
- (g) If the debtor is a corporation, list the name, current mailing address, and title of each officer, director, insider, and managing executive.
- (h) If the debtor is a partnership, list the name and current mailing address of each member of the partnership.

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.

#### 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 certified as correct by the person making the service.

## Rule 1071-1

## DIVISIONS - BANKRUPTCY COURT

There shall be six divisions of the court. The headquarters of each division and the counties comprising each division are as follows:

Name of Division	Headquarters		Counties
Elizabeth City	Wilson	Bertie	Hertford
		Camden	Pasquotank
		Chowan	Perquimans
		Currituck	Tyrrell
		Dare	Washington
		Gates	
Fayetteville	Wilson	Cumberland Robeson	Sampson
New Bern	Wilson	Beaufort	Lenoir
		Carteret	Martin
		Craven	Onslow
		Hyde	Pamlico
		Jones	Pitt
Raleigh	Raleigh	Franklin	Vance
		Granville	Wake
		Harnett	Warren
		Johnston	
Wilmington	Wilson	Bladen	Duplin
		Brunswick	New Hanover
		Columbus	Pender
Wilson	Wilson	Edgecombe	Northampton
		Greene	Wayne
		Halifax	Wilson
		Nash	

## Rule 1073-1

## ASSIGNMENT OF CASES

In accordance with the divisions established in 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.

In adversary proceedings when there is no pending bankruptcy case in this district, the division will be assigned at the discretion of the clerk.

## 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 schedules being filed after notice has been given or through amendments to the schedules, the debtor shall serve the § 341 notice on the creditors and file a certificate of service with the clerk of court within three (3) days after notice.

(b) NOTICE FEE: The notice fee required pursuant to 28 U.S.C. § 1930 shall be collected by the clerk for each notice mailed by the office of the clerk of court only as required under Rule 2002 (a), (b), (d), (e), (f) and (n), Federal Rules of Bankruptcy Procedure, in chapter 7 and 13 cases filed prior to December 1, 1992. In a chapter 7 case, the fee shall be payable from the estate and only to the extent there is an estate. In chapter 11, 12 and 13 cases, the fee shall be payable at confirmation pursuant to 11 U.S.C. § 1129 (a)(12), 11 U.S.C. § 1225(a)(2), and 11 U.S.C. § 1325(a)(2).

In the event a debtor files a request for conversion to another chapter or a voluntary dismissal, payment of the fee shall be a condition of the conversion or dismissal.

(c) GUIDE TO SERVICE AND NOTICE REQUIREMENTS: The chart attached to these rules 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 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 2015-1

## TRUSTEES - GENERAL

In addition to the requirements of Local Bankruptcy [Rule 6004-1](#), the chapter 7 and 11

trustee shall prepare and mail notices required under Rule 2002(a)(2), (3), (4), (7) and Rule 2002(f)(3) and (9), Federal Rules of Bankruptcy 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 (3) days of the date of the mailing:

- (1) notice of the meeting of creditors;
- (2) notice of the hearing on disclosure statement;
- (3) the plan, approved disclosure statement and the notice regarding balloting and date for hearing on confirmation;
- (4) confirmation order; and
- (5) any other notices as the court or clerk of court shall direct in a particular matter.

#### Rule 2015-5

### TRUSTEES - CHAPTER 13 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 ATTORNEYS IN CHAPTER 13 CASES

(a) AMOUNT OF STANDARD BASE FEE: The standard base fee in a Chapter 13 case is \$1,400.00.

(b) 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 twelve (12) months after filing the case.

(c) 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 sixty (60) days after the conclusion of the creditor's meeting under Section 341 of the Bankruptcy Code.

(d) 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 (f).
- (E) Any other service that, in the discretion of the court, reasonably warrants additional compensation.

(e) APPROVAL OF NON-BASE FEES: Except as specified in subsection (f), 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 \$1000.00 must be sent to each debtor, the Trustee, and the Bankruptcy Administrator. Notice of each application for fees and expenses of \$1000.00 and above must be given to all parties in interest.

(f) PRESUMPTIVE NON-BASE FEES/APPROVAL/ NOTICE: The following fees for non-base fee services are presumptively reasonable. Applications for these fees 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 will automatically be approved by the Court.

- (A) Motion to use interrogatories, and interrogatories. \$150.00
- (B) Motion for turnover. \$250.00
- (C) Adversary proceeding for turnover. \$500.00
- (D) Uncontested lien avoidance. \$500.00
- (E) Motion to avoid judicial lien. \$200.00
- (F) Motion to modify plan post-confirmation. \$250.00
- (G) Motion to substitute collateral. \$350.00
- (H) Motion for authority to sell property. \$250.00
- (I) Application to incur debt. \$200.00
- (J) Defense of motion for relief from stay and/or co-debtor stay. \$350.00
- (K) Handling of an insurance inquiry received more than twelve (12) months after the Chapter 13 case is filed. \$50.00
- (L) Defense of motion to dismiss. \$200.00
- (M) Motion for hardship discharge. \$350.00
- (N) Objection to claims. \$200.00
- (O) Notice to abandon property. \$100.00

Alternatively, the debtor's attorney may apply to the Court for approval of non-base fees on a "time and expense" basis pursuant to Bankruptcy Rule 2016, 11 U.S.C. § 330, and subsection (c) above.

(g) 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.

(h) INTERIM APPROVAL OF PARTIAL BASE FEE: An attorney fee of \$400.00 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 \$400.00 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.

(i) **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 of \$100.00 per month 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.

#### Rule 2070-1

### ESTATE ADMINISTRATION

#### DEPOSIT OF ESTATE FUNDS PURSUANT TO 11 U.S.C § 345: REPORTING REQUIREMENTS AND COLLATERALIZATION OF DEPOSITS EXCEEDING \$100,000.00

(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 percent 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 - GENERAL

(a) WHERE TO FILE A CLAIM:

(1) 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 and Local Bankruptcy [Rule 5001-2](#).

(2) In chapter 12 and 13 cases, all claims shall be filed with the appropriate standing trustee as provided in Local Bankruptcy [Rule No. 5005-1](#).

(b) TIME FOR FILING CLAIMS IN A CHAPTER 11 CASE: In a chapter 11 case, a proof of claim shall be filed within ninety (90) days after the date first set for the meeting of creditors pursuant to 11 U.S.C. § 341(a), except as provided in Rule 3002(c)(1) of the Federal Rules of Bankruptcy Procedure or otherwise extended by the court.

(c) DEBTORS' NOTICE OF DISPUTED, CONTINGENT OR UNLIQUIDATED CLAIMS: In addition to the duties set forth in Local Bankruptcy [Rule 4002-1\(b\)](#), the debtor shall notify each creditor whose claim is scheduled as contingent, disputed, or unliquidated of that fact within fifteen (15) days after filing the schedule of assets and liabilities or within fifteen (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 (3) days after service has been made.

(d) FILING OF CLAIMS BY DEBTOR OR TRUSTEE: In Chapter 13 cases, if a creditor fails to file a proof of claim on or before the first date set for the § 341(a) meeting of creditors, 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 on behalf of a creditor, the creditor may file an amended proof pursuant to Rule 3002 or Rule 3003(c), which shall supercede the proof filed by the debtor or trustee.

#### 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 \$15.00 without waiting until that creditor's dividends accumulate to \$15.00. 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 COLLATERAL

**TRUSTEE'S RECOMMENDATION OF VALUE:** After notice, a chapter 13 trustee may recommend the value of a creditor's security at the § 341 meeting and, unless an objection is filed within twenty (20) days after notice of the recommendation, the court may accept the recommendation of value for the purpose of distribution under the plan.

## PART IV

### THE DEBTOR: DUTIES AND BENEFITS

#### Rule 4001-1

### AUTOMATIC STAY - RELIEF FROM

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

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

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

(2) if there are direct payments to creditors, contact the debtor about any payment in default.

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

(b) 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.

(c) In chapters 7 and 13 cases, the Internal Revenue Service is authorized:

(1) to 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;

(2) to offset against any refund due a debtor any taxes due the United States government;

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

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

(d) In chapter 13 cases, 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.

#### Rule 4001-2

### SECURED CREDITOR DUTIES

A secured creditor must respond promptly to a chapter 13 debtor's reasonable requests for account information.

#### Rule 4002-1

### DEBTOR DUTIES

(a) **DUTIES OF CHAPTER 7 DEBTOR:** The debtor filing a petition requesting relief under chapter 7 of the Code shall comply with the following:

(1) **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 (3) days of the filing of the statement.

(2) **FAILURE TO PERFORM STATEMENT OF INTENTION:** If a chapter 7 debtor should fail to perform the intention as required by 11 U.S.C. § 521(2)(B), the court may, upon motion of the affected creditor, ex parte order the lifting of the stay of 11 U.S.C. § 362 (a) and order the debtor to turn over the property to such creditor.

(b) **DUTIES OF CHAPTER 11 DEBTOR IN POSSESSION:**

(1) The debtor shall:

(A) **MONTHLY REPORT:** file with the bankruptcy administrator monthly accountings, the first report being due within thirty (30) days after the filing of the petition and subsequent reports on or before the fifteenth day of each month thereafter. The debtor shall serve a copy of all monthly reports on the attorney and the chairman for the unsecured creditors committee. Such report shall be in a format prescribed by the bankruptcy administrator.

(B) **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 shall 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).

(C) **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 (5) days of the filing of the petition, the debtor shall file with the bankruptcy administrator a verified statement or written evidence that worker's 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.

(D) **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.

(E) **BANKING INSTITUTION:** advise the bankruptcy administrator, within ten (10) days of the filing of the petition, of the name of the bank to be used as the debtor's depository.

(F) **FILING OF PLAN AND DISCLOSURE STATEMENT:** file a plan or reorganization and a disclosure statement within one hundred twenty (120) days of the date of the filing of the petition commencing the case.

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

(H) **PROJECTED OPERATING STATEMENT:** file with the bankruptcy administrator, within ten (10) business days of the filing of the petition commencing the case, a projected operating statement for the next thirty (30) days of operation under chapter 11. The statement must contain:

(i) the estimated costs of operation for the next succeeding thirty (30) days;  
(ii) the estimated profit or loss for the period;  
(iii) the amount of cash available for the operation;  
(iv) how the debtor intends to fund the cost of operation for the next thirty (30) days; and

(v) any other and additional information that is pertinent to determine the desirability of continuing the debtor's business.

(I) **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.

(2) The debtor shall not:

(A) **PAYMENT TO PRINCIPALS:** prior to confirmation of a plan of reorganization, compensate or remunerate itself, or any of its partners, officers, directors or shareholders in any manner without prior approval of the court. Any application for approval of compensation should set forth 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 each week the individual will devote to those duties and the reasons why the employment of the individual is necessary to the successful reorganization of the debtor. Also, the application should set forth the amount of compensation sought on a weekly or monthly basis and disclose 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. The salary history of the individual for the year immediately preceding the filing of the petition shall be disclosed. The application shall be signed under oath. The court may reconsider applications to compensate principals sua sponte or at the request of the bankruptcy administrator, any creditor or other party in interest.

(B) **PAYMENT OF PREPETITION DEBT:** pay prepetition unsecured debt without

approval of the court.

(c) DUTIES OF CHAPTER 12 DEBTOR.

(1) The debtor shall:

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

- (i) monthly receipts from every source;
- (ii) monthly disbursements by accounting classification;
- (iii) expenses charged and not paid;
- (iv) crop inventory (if applicable);
- (v) livestock inventory (if applicable);
- (vi) tax deposit statement (if applicable).

(B) 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 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.

(C) 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.

(D) 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.

(E) BANKING INSTITUTION: advise the bankruptcy administrator within ten (10) days of the filing of the petition commencing the case under chapter 12 the name of the bank to be used as the debtor's depository.

(F) FILING OF PLAN: file a plan of reorganization within ninety (90) days of the filing of the petition pursuant to 11 U.S.C. § 1221.

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

(2) The debtor shall not:

(A) PAYMENTS TO PRINCIPALS: prior to confirmation of a plan of reorganization, compensate or remunerate itself or any of its partners, officers, directors or shareholders in any manner without prior approval of the court. Any application for approval of compensation should set forth 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 each week the individual will devote to those duties and the reasons why employment of the individual is necessary to the successful reorganization of the debtor. Also, the application should set forth the amount of compensation sought on a weekly or monthly basis and disclose 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. The salary history of the individual for the year immediately preceding the filing of the petition shall be disclosed. The application shall be signed under oath.

(B) PAYMENT OF PREPETITION DEBT: pay prepetition unsecured debt without approval of the court.

(d) DUTIES OF CHAPTER 13 DEBTOR. The debtor filing a petition requesting relief under chapter 13 of the Code shall comply with the following:

(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 property 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 for more than FIVE THOUSAND DOLLARS (\$5,000.00) 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 (5) 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 the chapter 13 trustee to 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 Local Form No. 2. The debtor's filing of Local Form No. 2 must be referenced in 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 shall 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/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

In addition to the authority given in Local Bankruptcy [Rule 9007-1](#), the clerk of court is authorized to enter the orders and judgments listed below without further direction of the court. However, such 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 Rule 55(a) and 55(b)(1), Federal Rules of Civil Procedure; and
- (7) orders canceling liability on bonds.

## Rule 5005-1

## FILING PAPERS - 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 proper 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 transferred 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) PAPERS FILED WITH THE CLERK: All pleadings (including but not limited to complaints, answers, motions and applications) and all proposed orders shall be tendered by the party submitting the documents 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) EXHIBITS OR ATTACHMENTS CONTAINING EXCERPTED MATERIAL: Any exhibit or attachment to any document or paper 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 by the court.

#### Rule 5005-2

##### FILING PAPERS - NUMBER OF COPIES

In addition the number of copies of petitions in Rule 1002-1, the number of documents required to be filed with the clerk of court other than those provided for in the rules of bankruptcy procedure or local bankruptcy rules is as follows:

- (1) any person requesting filed copies of documents must submit copies, in addition to those called for in the rules of bankruptcy procedure or local bankruptcy rules, 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 PAPERS - SIZE OF PAPERS, TWO SIDED DOCUMENTS

(a) PAPER SIZE: The Judicial Conference of the United States has adopted 8 ½ 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 Rule 5005-4 shall be read in conjunction with the Administrative Guide for Electronic Filing. The guide is available from the Office of 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](http://www.nceb.uscourts.gov). In the event of a conflict between the Local Rules and the Administrative Guide, the Local Rules shall control.

#### Rule 5005-4(1)

##### ASSIGNMENT TO SYSTEM AND FILING REQUIREMENTS

(a) ASSIGNMENT: All opened 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 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 Electronic Filing 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 Rule 5004-4(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 subsections (c)(1) and (2) 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 log-in and password. Filing Users agree to protect the security of their log-in information and passwords and to immediately notify the clerk if they learn that their log-in 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 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, 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

(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 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.

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 Rule 5005-3.

(b) Filing Users must submit, in electronic form, all documents referenced as exhibits or attachments as provided in Local Rule 5005-1(d), unless the court permits conventional filing.

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 log-in 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 Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the log-in and password also shall constitute certification by the Filing User, and by any agent authorized by the Filing User to use the log-in and password, that: (1) all persons indicated to have signed the document have actually executed 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 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.

(d) **IMAGED SIGNATURES:** An electronic image of signatures shall be required as an attachment of the filed document for all documents executed under oath or under penalty of perjury; however, bankruptcy petitions, schedules, statements of financial affairs, exemptions, and creditor matrix verifications shall be accompanied by an imaged signature page in the form prescribed by the Administrative Guide. The signatures on imaged attachments shall have the same legal effect as the original signatures.

#### Rule 5005-4(9)

### SERVICE OF DOCUMENTS BY ELECTRONIC OR CONVENTIONAL MEANS; CALCULATION OF RESPONSE TIME

(a) **NOTICE OF ELECTRONIC FILING TO FILING USERS:** A Filing User who electronically files a pleading or other document in a case assigned to the ECF System may transmit or cause to be transmitted a "Notice of Electronic Filing" to other Filing Users entitled to notice or service of the document under the Federal Rules of Bankruptcy Procedure or the Local Rules.

(b) **TRANSMISSION OF NOTICE OF ELECTRONIC FILING:** The Notice of Electronic Filing may be transmitted by e-mail, hand, facsimile, or by the U.S. Mail, first-class postage prepaid. Transmission of the Notice of Electronic Filing to Filing Users constitutes service or notice of the filed document on Filing Users.

(c) **CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES:** Parties who have not consented to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document.

(d) **CALCULATION OF RESPONSE TIME:** Rule 9006(f) of the Federal Rules of Bankruptcy Procedure shall apply 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 that 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 6004-1

SALE OF ESTATE PROPERTY

NOTICE OF PROPOSED USE, SALE OR LEASE OF ESTATE PROPERTY: The trustee shall provide fifteen (15) days notice to creditors and other parties in interest within which to object to any proposed use, sale or lease of property under Rule 6004(b), Federal Rules of Bankruptcy Procedure. The trustee shall prepare and file with the clerk of court

within three (3) days thereafter a certificate of service showing when and to whom the notices were mailed.

#### 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 fifteen percent (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 application 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 (a) above must have been employed in a chapter 7 case in this district as an auctioneer by order of this court within the prior twelve months;

(2) the auctioneer must be licensed and in good standing with the North Carolina Auctioneer's Commission consistent with North Carolina General Statute Section 85-B-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 (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 includes a report of such fees paid to the auctioneer, and shall be accompanied by the auctioneer's affidavit. The trustee shall file such 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 shall file a report of sale following the conclusion of any sale within the time and in the format as prescribed by the bankruptcy administrator.

#### PART VII

### ADVERSARY PROCEEDINGS

#### Rule 7003-1

### COVER SHEET

All complaints initiating adversary proceedings in bankruptcy cases shall be accompanied by an Adversary Proceeding Cover Sheet (Form B 104), conforming substantially to Form No. 4 contained in these rules, which has been completed fully by the plaintiff.

## 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 twenty (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 twenty (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 a noncore 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 Bankruptcy Rule 7026(a)(1), including a statement of when disclosures under (a)(1) 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 Bankruptcy Rule 7026(a)(2) should be required.

(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 (see paragraph (b) of this rule).

(4) **DISCLOSURES:** Unless counsel agree to disclosures at an earlier date, disclosures required to be made by Rule 7026(a) and (b) 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 thirty (30) days notice of the conference.

(2) PREPARATION BY COUNSEL FOR FINAL PRETRIAL CONFERENCE: At least ten (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 ten (10) days prior to the scheduled trial. It shall be the duty of the counsel for the plaintiff to arrange for this conference. The conference of attorneys shall be held in a mutually agreeable location or may be conducted by telephone conference. Each counsel shall 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 7026(a)(3), Federal Rules of Bankruptcy Procedure.

(3) 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:

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

(B) 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.

(C) 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 Rule 7016.2(b). 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.

(D) IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS: The designation of all portions of pleadings and discovery materials, including depositions, interrogatories and request for admissions that each party may offer at trial by reference to document, volume, page number, and line. Objection by opposing counsel shall be noted by document, volume, page number and line, and reasons for such objections shall be stated.

(E) 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.

(4) PRETRIAL CONFERENCE:

(A) PURPOSE: To resolve any disputes concerning the contents of the pretrial order.

(B) DOCUMENTATION: Counsel shall be prepared to present to the court all necessary information and documentation necessary for completion of the pretrial order. Failure to do so shall result in the sanctions provided by this rule.

(C) SANCTIONS: 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.

(D) FORM OF PRETRIAL ORDER: A pretrial order should be submitted in detail sufficient to comply with these rules. A sample pretrial order is shown as Exhibit A of these rules.

## 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 which 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 premarked with stickers obtained from the office of the clerk of court with the 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 photostatic image 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. The exhibit shall not be handed to opposing counsel. Should opposing counsel contend that a copy has not been provided or that the exhibit has been lost or misplaced, it shall be brought to the attention of the court.

(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 upon oral examination and interrogatories, requests for production of documents, requests for admissions, and answers and responses thereto 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 7041-1

## DISMISSAL OF ACTIONS FOR LACK OF PROSECUTION

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 thirty (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 thirty (30) days after the time for filing responsive pleadings has expired.

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

## 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 noninterest bearing U. S. Treasury accounts as necessary to arrange for their deposit in interest-bearing accounts.

## EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
\_\_\_\_\_DIVISION

IN RE:

CASE NO.

JOE SMITH,  
Debtor

99-02272-5-ATS

ABC CORP., )

Plaintiff )

)

ADVERSARY PROCEEDING

v. )

)

NO.: S-99-00070-5-AP

JOE SMITH, )

Defendant )

## FINAL PRETRIAL ORDER

DATE OF CONFERENCE: May 5, 1999

Appearance: John Y. Lawyer, Raleigh, North Carolina, for plaintiff; Sam X. Attorney, Fayetteville, North Carolina, for defendant.

## I. STIPULATIONS

- A. All parties are properly before the court.
- B. The court has jurisdiction of the parties and of the subject matter.
- C. This is a core proceeding, or in the alternative, both parties have consented to

hearing by the bankruptcy court.

D. All parties have been correctly designated.

E. There is no question as to misjoinder or nonjoinder of parties.

F. Facts:

1. Plaintiff is a New York corporation, licensed to do business and doing business in the State of North Carolina.

2. Defendant is a citizen of Wake County, North Carolina.

G. Legal Issues: The legal issue is whether the debt owed by the defendant to the plaintiff is nondischargeable under 11 U.S.C. § 523(a)(2)(B).

H. Factual Issues:

1. Did the defendant receive money, property, services, or an extension, renewal, or refinancing of credit through the use of a statement in writing that was materially false?

2. Did the written statement relate to the defendant's or an insider's financial condition?

3. Did the plaintiff reasonably rely on the written statement?

4. Did the defendant make or publish the written statement with the intent to deceive the plaintiff?

## II. CONTENTIONS

### A. Plaintiff

#### 1. Facts:

(a) Plaintiff loaned defendant \$XXX,XXX.XX based on written property appraisals that defendant had falsified materially.

(b) The written appraisals were on real property owned by the defendant.

(c) Plaintiff had no factual reason not to accept the appraisal and, therefore, reasonably relied on the appraisal.

(d) Defendant had the appraisal done simply for its use in obtaining the loan from plaintiff.

#### 2. Law:

(a) The falsified property appraisal used by the defendant in obtaining a loan from the plaintiff has created a nondischargeable debt under 11 U.S.C. § 523(A)(2)(B).

### B. Defendant

#### 1. Facts:

(a) Defendant did not falsify the property appraisals he used in obtaining the loan from the plaintiff.

(b) Plaintiff is experienced as a commercial lender in the area and has made loans on property appraisals for 50 years.

(c) Defendant had the appraisal done at the plaintiff's request.

#### 2. Law:

(a) The loan from plaintiff was not obtained through the use of a false appraisal and, therefore, the debt is dischargeable.

## III. EXHIBITS

### A. Plaintiff:

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Appraisal of Bob Hope	Hearsay
2	Deed of Trust dated 1/4/84	None
3	Promissory Note dated 1/4/84	None
4	Personal Financial Statement dated 12/3/83	None

B. Defendant:

<u>Number</u>	<u>Title</u>	<u>Objection</u>
1	Appraisal of Joe Smith	Hearsay
2	Debtor's Bankruptcy Petition	None

## IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS

A. Plaintiff:

<u>Document</u>	<u>Portion</u>	<u>Objection</u>	<u>Reason</u>
Plaintiff's first set of interrogatories	Nos. 1, 8 and 9	No. 8	Privilege
Deposition of Richard Roe	Vol. 1, line 6 p. 1, thru line 5, p. 6	Line 6, p. 1, thru line 2, p. 7	Hearsay

B. Defendant: None

## V. WITNESSES

A. Plaintiff:

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
Frank Flake	Selma, N. C.	Loan officer - facts surrounding the loan

B. Defendant:

All witnesses listed by plaintiff:

<u>Name</u>	<u>Address</u>	<u>Proposed Testimony</u>
Sam Smith	Apex, N. C.	Facts surrounding value of real property in the debtor's area

Trial Time estimate: \_\_\_\_\_ days.

\_\_\_\_\_  
John Y. Lawyer  
Counsel for Plaintiff

\_\_\_\_\_  
Sam X. Attorney  
Counsel for Defendant

APPROVED BY:

\_\_\_\_\_

U. S. Bankruptcy Judge

DATED: \_\_\_\_\_

PART VIII

APPEALS TO DISTRICT COURT OR  
BANKRUPTCY APPELLATE PANEL

RESERVED

PART IX

GENERAL PROVISIONS

Rule 9004-2

CAPTION - PAPERS, GENERAL

All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall state the court and division in which the action is pending.

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 rules of bankruptcy procedure and the local bankruptcy rules.

Rule 9010-1

ATTORNEYS - NOTICE OF APPEARANCE

Local Rule No. 2.00 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;
- (2) an entity may be represented at a meeting of creditors by its officers and agents; however, all courtroom appearances, except as previously indicated, 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. In the event additional fees are required, they must be applied for pursuant to Rule 2016, Federal Rules of Bankruptcy Procedure.

## Rule 9013-1

## MOTION PRACTICE

(a) **FORM:** All pleadings, motions, discovery procedures, memoranda and other papers filed with the clerk or the court shall contain the individual name, firm name, address, telephone number and State Bar identification number, where applicable, of all attorneys who appear for the filing party.

(b) **SERVICE ON TRUSTEE AND ATTORNEY FOR DEBTOR IN POSSESSION:** Any and all filings (except claims) in all proceedings and cases must be served on the trustee (including the standing chapter 12 and 13 trustee) for the debtor whether or not the trustee is a party to the proceeding. In chapter 11 cases, the attorney for the debtor in possession is to be served in like manner.

(c) **SERVICE ON BANKRUPTCY ADMINISTRATOR:** Any and all filings (except claims) in all chapter 7 and 11 cases must be served on the bankruptcy administrator.

(d) **CERTIFICATE OF SERVICE:** Each pleading or document to be served on any party indicated in paragraphs (a) and (b) above shall have attached a certificate reflecting that service has been made on that party.

## Rule 9014-1

## CONTESTED MATTERS

(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 certification of service. 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 Local Form No. 1 in these rules.

(b) **CONTENT OF MOTION:** Motions seeking relief other than as to the debtor or the trustee shall 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 fifteen (15) days from the date of the service of motion, unless otherwise ordered or provided in the rules of bankruptcy procedure or local bankruptcy rules.

(d) **SERVICE OF MOTION:** The moving party shall serve copies of the motion, together with all exhibits and attachments, accompanied by a notice of motion in the manner prescribed in Rule 7004, Federal Rules of Bankruptcy Procedure, contemporaneously with the filing of the original motion and notice with the clerk of court,

and shall attach a certificate of service to the original motion and notice to be filed with the clerk of court.

(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 and service shall be certified to the court.

(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) **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.

(i) **DISCLOSURE REQUIREMENTS INAPPLICABLE:** The disclosure requirements imposed by Bankruptcy Rule 7026(a) are inapplicable to contested matters.

## Rule 9019-2

### MEDIATED SETTLEMENT CONFERENCE

#### (a) ORDER FOR MEDIATED SETTLEMENT CONFERENCE:

(1) **ORDER BY COURT:** 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.

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

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

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

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

(C) state clearly that the parties have the right to select their own mediator as provided by section (b);

(D) 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 section (b); and

(E) 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.

(4) **MOTION TO DISPENSE WITH MEDIATED SETTLEMENT CONFERENCE:** A party may move the court, within ten (10) days after 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.

(5) **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 ten (10) days after the date of the service of the motion. Thereafter, the judge shall rule upon the motion without a hearing.

(6) **MOTION TO AUTHORIZE THE USE OF OTHER SETTLEMENT PROCEDURES:** Within ten (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.

(b) **SELECTION OF MEDIATOR:**

(1) **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 twenty-one (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.

(2) **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, in the opinion of the parties and the judge, is 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 twenty-one (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.

(3) **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 twenty-one (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 twenty-one (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.

(4) **MEDIATOR INFORMATION DIRECTORY:** To assist the parties in the selection of a mediator by agreement, a central directory of information on all certified mediators who wish to mediate cases in the Eastern District will be collected and maintained by the clerk of court.

(5) **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.

(c) THE MEDIATED SETTLEMENT CONFERENCE:

(1) WHERE CONFERENCE IS TO BE HELD: 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.

(2) WHEN CONFERENCE IS TO BE HELD: The court's order issued pursuant to section (a)(2) 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.

(3) 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.

(4) 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.

(5) 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.

(d) DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS:

(1) ATTENDANCE: The following persons shall physically attend the entire mediated settlement conference until an agreement is reduced to writing and signed as provided by section (d)(3) or an impasse has been declared, unless excused by the judge or by the mediator with approval of all parties and attorneys:

(A) PARTIES:

- (i) All individual parties;
- (ii) Any party that is not a natural person or a governmental entity shall be 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
- (iii) Any party that is a governmental entity shall be 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.

(B) 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.

(C) ATTORNEYS: At least one counsel of record for each party or other

participant whose counsel has appeared in the action.

(2) **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.

(3) **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 stenographi-cally recorded. A consent judgment or one or more voluntary dismissals shall be filed with the Court by such persons as the parties shall designate.

(4) **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 (7) days of the settlement. The mediator shall attach a copy of the written agreement to the Report of Mediator filed pursuant to section (f)(2)(D) 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.

(e) **SANCTIONS FOR FAILURE TO ATTEND:** If any person required to attend the conference pursuant to section (d) of these rules 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.

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.

(f) **AUTHORITY AND DUTIES OF MEDIATOR:**

(1) **AUTHORITY OF MEDIATOR:**

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

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

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

(2) **DUTIES OF MEDIATOR:**

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

- (i) the process of mediation;
- (ii) the differences between mediation and other forms of conflict resolution;
- (iii) the costs of the mediated settlement conference;
- (iv) 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;
- (v) the circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
- (vi) whether and under what conditions communications with the mediator will be held in confidence during the conference;
- (vii) the inadmissibility of conduct and settlements as provided by applicable Rules of Evidence.
- (viii) the duties and responsibilities of the mediator and the participants; and

- (ix) the fact that any agreement reached will be reached by mutual consent.
- (B) DISCLOSURE: The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
- (C) DECLARING IMPASSE: It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
- (D) 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 2 weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first.

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.

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

(E) 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.

(3) FAILURE OF MEDIATOR TO COMPLY WITH SECTION (f): The judge may withhold future appointments of any mediator who does not fully comply with the requirement of section (f).

(g) COMPENSATION OF THE 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.

(4) 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.

(h) COMMUNICATIONS WITH COURT: All communications concerning mediated settlement conferences should be addressed to the bankruptcy administrator.

## Rule 9029-1

### SANCTIONS

(a) FAILURE TO COMPLY WITH LOCAL RULES: If any attorney or party willfully fails to comply with any local 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 and gave the offending party an opportunity to cure the alleged violation.

## 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.

## GENERAL INFORMATION

## PUBLIC ACCESS TO INFORMATION

## P A C E R

(Public Access to Court Electronic Records)

The court is pleased to offer to the general public the PACER public information access service. The dial-in service allows a user to retrieve electronic docket information using a computer or terminal. Access is available to an electronic history of a case of interest virtually around the clock. Information may be searched by case name, case number, social security number, or tax identification number.

The cost for the service is \$ .60 per minute and access will be billed on a quarterly basis by the PACER Billing Center, San Antonio, Texas. To subscribe to this service, contact the Center at 1-800-676-6856.

To access the court's PACER systems by modem, the numbers are:

<u>WILSON</u>	<u>RALEIGH</u>
Local: 243-2538	Local: 856-4225
243-1766	856-4226
Long Distance:	Long Distance:
1-800-564-2104	1-800-565-2105

## VCIS

(Voice Case Information System)

The court is pleased to offer to the general public the VCIS public information access service. The system provides information about debtors by using the numbers or letters on the telephone keypad. A search may be performed by name, case number, social security number, or tax identification number.

To access the court's VCIS system by telephone, the numbers are:

WILSON

Local: 243-7655

Long Distance:

1-800-513-9765

RALEIGH

Local: 856-4618

Long Distance:

1-800-847-9138

## INTERNET

The court is pleased to offer to the general public access to court records through the Internet. The address to access court information is:

<a href="http://www.nceb.uscourts.gov">www.nceb.uscourts.gov</a>
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## LIST OF COUNTY CODES FOR NORTH CAROLINA

<b>North Carolina-Eastern</b>	<b>North Carolina-Middle</b>	<b>North Carolina-Western</b>
37013 Beaufort	37001 Alamance	37003 Alexander
37015 Bertie	37025 Cabarrus	37005 Alleghany
37017 Bladen	37033 Caswell	37007 Anson
37019 Brunswick	37037 Chatham	37009 Ashe
37029 Camden	37057 Davidson	37011 Avery
37031 Carteret	37059 Davie	37021 Buncombe
37041 Chowan	37063 Durham	37023 Burke
37047 Columbus	37067 Forsyth	37027 Caldwell
37049 Craven	37081 Guilford	37035 Catawba
37051 Cumberland	37093 Hoke	37039 Cherokee
37053 Currituck	37105 Lee	37043 Clay
37055 Dare	37123 Montgomery	37045 Cleveland
37061 Duplin	37125 Moore	37071 Gaston
37065 Edgecombe	37135 Orange	37075 Graham
37069 Franklin	37145 Person	37087 Haywood
37073 Gates	37151 Randolph	37089 Henderson
37077 Granville	37153 Richmond	37097 Iredell
37079 Greene	37157 Rockingham	37099 Jackson
37083 Halifax	37159 Rowan	37109 Lincoln
37085 Harnett	37165 Scotland	37111 McDowell
37091 Hertford	37167 Stanly	37113 Macon
37095 Hyde	37169 Stokes	37115 Madison
37101 Johnston	37171 Surry	37119 Mecklenburg
37103 Jones	37197 Yadkin	37121 Mitchell
37107 Lenoir		37149 Polk
37117 Martin		37161 Rutherford
37127 Nash		37173 Swain

37129 New Hanover  
 37131 Northampton  
 37133 Onslow  
 37137 Pamlico  
 37139 Pasquotank  
 37141 Pender  
 37143 Perquimans  
 37147 Pitt  
 37155 Robeson  
 37163 Sampson  
 37177 Tyrrell  
 37181 Vance  
 37183 Wake  
 37185 Warren  
 37187 Washington  
 37191 Wayne  
 37195 Wilson

37175 Transylvania  
 37179 Union  
 37189 Watuaga  
 37193 Wilkes  
 37199 Yancey

### GUIDE TO SERVICE AND NOTICE REQUIREMENTS

This chart is a guide to common service and notice requirements in this court. It should be used in conjunction with the following explanatory notes.

1. Bankruptcy Rule 9014 requires all contested matters to be served in the manner provided by Bankruptcy Rule 7004. This chart has no effect on the methods of service prescribed by that rule, including the special rules for service upon the United States federal officers and agencies, state or municipal governments, and insured depository institutions.

2. The bankruptcy administrator should be served in chapter 7 and 11 cases only. The bankruptcy administrator need not be served in chapter 12 and 13 cases.

3. In chapter 11 cases, a trustee appointed under 11 U.S.C. § 1104 should be served in lieu of the debtor in possession.

4. Filing fees referenced in the chart are authorized by 28 U.S.C. § 1930, and by the appendices thereto prescribed by the Judicial Conference of the United States.

5. This chart does not address filings by trustees in chapter 7 cases.

Codes for parties to serve:		
D = Debtor	T = Trustee	20 LUC = 20 Largest Unsecured Creditors
DA = Debtor's Attorney	BA = Bankruptcy Administrator (chapters 7 & 11)	UCC = Unsecured Creditor's Committee or its counsel
	All = All creditors on matrix	

## GUIDE TO SERVICE AND NOTICE REQUIREMENTS

Pleading	# of Notice Days	Chapter	Parties to Serve	Comments
11 U.S.C. § 506(c) Fees & Expenses, Application for	15	All	BA, AP	
Abandon, Motion to	15	All	All, BA, T, DA	\$60.00 fee required for creditor's motion
Accept/Reject Executory Contract, Motion to (1) Debtor's (2) Creditor's	15	11, 12, 13	(1) BA, AP, T, 20 LUC or UCC (2) D, DA, BA, T, 20 LUC or UCC	
Accept/Reject Lease, Motion to (1) Debtor's (2) Creditor's	15	11, 12, 13	(1) BA, AP, T, 20 LUC or UCC (2) D, DA, BA, T, 20 LUC or UCC	
Amendment to Schedules	None	(1) 7, 11, 12, (2) 13	(1) BA, AP, T (2) T, AP	\$20.00 fee may be required (See 28 U.S.C. § 1930)
Approval of Consent Order under BR 4001(d), Motion for	15	11	D, DA, BA, 20 LUC or UCC	
Avoid a Lien under 11 U.S.C. § 522(f), Motion to	15	All	AP, BA, T	
Cash Collateral (1) Debtor's Motion to Use (2) Creditor's Motion to Prohibit	15	11, 12	(1) BA, T, AP, 20 LUC or UCC (2) D, DA, T, BA, 20 LUC or UCC	For emergency situations, see BR 4001(b)
Compensation and Expenses, Application for	20	All	All, T, BA, D, DA	If total compensation is less than \$500.00, see BR 2002(a)(6)
Compromise, Motion to	20	All	All, T, BA, D, DA	
Contempt/Sanctions, Motion for	15	All	D, DA, T, BA, AP	See BR 9020 for pleading requirements
				(1) DA WILL be directed to serve all creditors with the order

Continue 341 Meeting of Creditors, Motion to	None	(1) 11 (2) 7, 12, 13	(1) BA (2) T, BA	continuing the 341 meeting (2) DA MAY be directed to serve all creditors with the notice or order continuing the 341 meeting
Continue Hearing/Conference, Motion to	None	All	D, DA, T, BA, AP	Motion to be filed as soon as the need for a continuance arises
Convert from Chapter 7 to 12, Motion to (1) Debtor's	None	7	(1) T, BA	If the case was previously converted, see 11 U.S.C. § 706
Convert from Chapter 7 to 11, Motion to (1) Debtor's (2) Creditor's	(1) None (2) 20	7	(1) T, BA (2) All, T, D, DA, BA	(1) \$400.00 filing fee required from debtor (2) No fee required for creditor's motion
Convert from Chapter 11 to 7, Motion to (1) Debtor In Possession's (2) Creditor's or Debtor Not In Possession's	(1) None (2) 20	11	(1) BA (2) All, D, DA, BA	\$15.00 fee required for all motions Serve trustee if one has been appointed For exceptions, see 11 U.S.C. § 1112(a)
Convert from Chapter 13 to 11, Motion to (1) Debtor's (2) Creditor's	15	13	(1) All, BA, T (2) All, BA, T, D, DA	(1) \$400.00 fee required (2) No fee required (2) If the debtor is a farmer, see 11 U.S.C. § 1307(e)
Convert from Chapter 12 to 7, Notice of (1) Debtor's	None	12	T	Motion to convert by party in interest, see 11 U.S.C. §1208 (d) \$15.00 fee is required
Convert from Chapter 7 to 13, Motion to	None	7	T, BA	If the case previously converted, see

(1) Debtor's				11 U.S.C. § 706
Convert from Chapter 11 to 13, Motion to (1) Debtor's	20	11	All, DA, D, BA	
Convert from Chapter 13 to 7 (1) Debtor's (Notice) (2) Creditor's (Motion)	(1) None (2) 15	13	(1) T (2) D, DA, T	\$15.00 fee required
Dismiss, Motion to (1) Debtor's (2) Creditor's (3) Debtor's (4) Creditor's	(1) None (2) 15 (3) 20 (4) 20	(1) 13 (2) 13 (3) 7, 11, 12 (4) 7, 11, 12	(1) T (2) D, DA, T (3) All, T, BA (4) All, D, DA, T, BA	
Employ Professional Person, Application to	None	7, 11, 12	BA, T	
Employ Officer(s) and Approval of Compensation, Application to	None	11	BA	See LBR <a href="#">4002-1(b)(2)(A)</a>
Employ Debtor's Attorney Under a Flat Fee Arrangement, Application to	20	11	All, BA	<i>In re Pineloch</i> , 192 BR 675 (Bankr. E.D.N.C. 1996)
Examination Under 2004, Application for	None	All	D, DA, AP, T, BA	Motion should be filed at least 10 days prior to the examination date
Examination by Interrogatories in lieu of attendance at the 341 meeting, Motion for	None	All	T, BA	If request is due to medical reasons, the motion should be accompanied by a doctor's statement
Extend Filing Deadline for 11 U.S.C. § 523 and/or § 727 Complaint, Motion to	None	7, 11	D, DA, T, BA	
Hardship Discharge, Motion for	None	12, 13	T	DA will be directed to serve the notice on all creditors
Incur Debt, Motion to; or Obtain Credit,			(1) T	See LBR <a href="#">4002-1(d)(4)</a>

Motion to; or Post-Petition Financing, Motion for	(1) None (2) 15	(1) 12, 13 (2) 11	(2) 20 LUC or UCC, BA, AP	For emergency situations see BR 4001(c)
Modify Plan, Motion to (1) Plan Proponent's (2) Debtor's (3) Creditor's	20	(1) 11 (2) 12, 13 (3) 12, 13	(1) All, T, BA, D, DA (2) All, T (3) All, T, D, DA	
Objection to Claim	30	All	D, DA, AP, T, BA	
Objection to Claim of Exemptions	15	All	D, DA, T, BA	This applies to individual debtors only
Objection to Disclosure Statement	None	11	D, DA, BA, T	
Objection to Plan	None	11, 12, 13	D, DA, BA, T	
Re-Open Case, Motion to	None	All	D, DA, T, BA	Court approval may require payment of filing fee and retrieval fee
Reconsider or Vacate Order, Motion to	15	All	D, DA, T, BA, AP	See BR 9023 and BR 9024
Relief from Automatic Stay, Motion for	15	(1) 7, 12, 13 (2) 11	(1) D, DA, T, BA (2) D, DA, BA, T, 20 LUC or UCC	Fee required, see 11 U.S.C. § 1930(b)
Relief from Co-debtor Stay, Motion for	15	13	D, DA, T, BA, Co-debtor	No fee is required
Sales (1) Private and Public, Notice of (2) Real Property, Application for	20	7, 11, 12, 13	All, D, DA, BA	15-day response time required in all chapters See BR 6004 regarding a hearing date
Sell Free and Clear of Liens, Motion to	15	7, 11, 12	D, DA, BA, AP	
Turnover Order, Motion for	15	All	D, DA, T, BA, AP	
Valuation of Collateral, Motion for	15	All	D, DA, T, BA, AP	
Withdraw as Counsel, Motion to	15	All	D, T, BA	
Withdraw Motion/Response	None	All	D, DA, T, AP, BA	

Thanks for visiting the U.S. Bankruptcy Court for the Eastern District of North Carolina's website. We hope you find the information on our web page useful. If you have any questions, comments or suggestions, please [E-mail us!](#) **PLEASE NOTE:** Send all case specific inquiries to the party handling the case.