

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

**LOCAL RULES
OF
PRACTICE AND PROCEDURE**



Revised as of June 1, 2018

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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 uniformity in local practice in this court. In a particular case, if justice requires, the court may modify or abrogate any local rule. In the event of a conflict between these local rules and the Administrative Guide to Local Practice and Procedure for the United States Bankruptcy Court for the Eastern District of North Carolina, these local rules shall control. Attorneys are instructed to notify the clerk if such a conflict is observed.

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

Rule 1002-1
PETITION

- (a) **PETITION FILED BY OR ON BEHALF OF A PRO SE DEBTOR.** Any bankruptcy petition filed with this court by or on behalf of a pro se debtor on or after April 1, 2017 shall be accompanied by a current government-issued photo identification.
- (1) **FILING IN PERSON.** When filing a petition with the court in person, the filing party must present a current government-issued photo identification for copying by the clerk's office.
- (2) **FILING BY MAIL.** When filing a petition with the court by mail, the petition must be accompanied by a legible black and white photocopy of the filing party's current government-issued photo identification.
- (3) **FILING BY PERSON OTHER THAN THE DEBTOR.** If a person other than the debtor files a petition on behalf of the debtor, the petition must be accompanied by a legible black and white photocopy of the document(s) giving the filing party the legal authority to file the petition on behalf of the debtor.
- (4) **RETENTION OF PHOTOCOPIES BY THE CLERK.** The clerk will convert photocopies of identification and documents authorizing filing by the filing party to pdf documents, which will be added to the docket as a restricted event, after which all paper copies will be destroyed.
- (b) **PETITION FILED BY OR ON BEHALF OF A MINOR OR INCOMPETENT PERSON.** Any bankruptcy petition filed with this court on behalf of a minor or incompetent person on or after April 1, 2017 must comply and be in conformance with Local Rule 1004.1-1. The petition shall be accompanied by a legible black and white photocopy of a current government-issued photo identification and all documents giving the filing party the legal authority to file the petition on behalf of the debtor. The clerk will convert photocopies of identification and documents authorizing filing by the filing party to pdf documents, which will be added to the docket as a restricted event, after which all paper copies will be destroyed.
- (c) **PETITION FILED BY A BUSINESS ENTITY.** When a business entity files a voluntary bankruptcy petition, an executed copy of the resolution of the debtor's board of directors, managers, general partners, or other governing body authorizing the filing of the bankruptcy petition shall be filed with the petition.

NOTE

North Carolina General Statutes § 20-30 provides:

It shall be unlawful for any person to commit any of the following acts:

...

- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the Commissioner. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card.

Rule 1004.1-1

PETITION - MINOR OR INCOMPETENT PERSON

- (a) PREPETITION APPOINTMENT OF REPRESENTATIVE. If, before the petition date, a representative has been appointed by a court under nonbankruptcy law for a debtor who is a minor or incompetent person, then a copy of the appointment instrument must be filed with a voluntary petition or with the alleged debtor's first pleading responding to an involuntary petition.
- (b) NO PREPETITION APPOINTMENT OF REPRESENTATIVE. If, before the petition date, no representative has been appointed by a court under nonbankruptcy law for a debtor who is a minor or incompetent person, then a motion, made upon information and belief, for the court to appoint a next friend or guardian ad litem ("movant") for the debtor must be filed with a voluntary petition or with the alleged debtor's first pleading responding to an involuntary petition.
- (1) The motion must be accompanied by the movant's shall file a declaration under penalty of perjury with the following information:
- (A) the movant's name, address, the relationship to the debtor (the movant's relationship to the debtor as spouse or other close relative who might have an interest in the debtor's financial affairs will not necessarily preclude granting the motion);
 - (B) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;
 - (C) why appointment of the movant as next friend or guardian ad litem is necessary;
 - (D) why appointment of the movant would be in the debtor's best interest;
 - (E) the flat fee or hourly rate, if any, that the movant would charge the debtor for serving as next friend or guardian ad litem;
 - (F) the movant's criminal and professional history (at movant's written request, to be sealed or redacted in the court's sole discretion);
 - (G) the movant's competence to handle the debtor's financial affairs, including the movant's knowledge of debtor's financial affairs;
 - (H) whether the movant has any current or potential future interest in the debtor's financial affairs; and

- (1) whether any of the debtor's debts were incurred for the benefit of the movant.
- (2) In cases where appointment is sought on behalf of an incompetent person, the declaration must be accompanied by the following documents:
 - (A) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs;
 - (B) a letter from the debtor's caregiver regarding the debtor's ability to conduct the debtor's own affairs; and
 - (C) a copy of any power of attorney or other document giving the movant authority to act for the debtor.
- (3) The motion and declaration must be served under Fed. R. Bank. Pr. 7004 on the debtor, and notice thereof must be provided to the trustee, all creditors, the Bankruptcy Administrator, any governmental entity from which the debtor is receiving funds, the debtor's closest relative, if known, and all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give notice.
- (4) The court will hear the motion before the meeting of creditors under 11 U.S.C. § 341(a), if possible. The movant must appear to testify at the hearing, either in person or by telephone.
- (c) In the event that the information required in subsections (b)(1) and (b)(2) above is unavailable at the time of the filing of the petition and motion, the movant shall have thirty days from the petition date within which to file the declaration and attachments. If the declaration and attachments are not filed within thirty days of the petition date, the case will be subject to dismissal.

CROSS REFERENCES

Local Bankruptcy Rule 1002-1(b), "Petition;" Local Bankruptcy Rule 1016-1, "Death & Incompetency."

Rule 1006-1

FEES - INSTALLMENT PAYMENTS

- (a) Following the filing of a petition and an application, each application will be reviewed by the court and an order entered granting or denying the application. If the application is denied, the debtor shall have 14 days from the date of the order to pay the full fee. If the full fee is not paid within 14 days of the order, the petition may be dismissed by the court without any further prior notice.
- (b) Final installments of the filing fee shall be paid within 14 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.
- (c) The debtor and the debtor's attorney are responsible for knowing the dates the payments are due. No reminders of the due date will be provided from the court. Upon failure to make

any payment as scheduled, the petition is subject to dismissal after hearing on notice to the debtor and trustee.

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

- (a) **ITEMS REQUIRED AT COMMENCEMENT OR WITHIN 5 DAYS THEREAFTER.** In all cases, the following schedules and statements shall be filed within 5 days after the commencement of the case:
- (1) CERTIFICATE OF THE CREDIT COUNSELING AGENCY (pursuant to 11 U.S.C. § 109(h)(1), or as otherwise allowed by statute, individual cases only)
 - (2) Part 5 of Form 101- Individual Debtor's Statement of Compliance with Credit Counseling Requirement
 - (3) FILING FEE/MOTION FOR WAIVER OF FILING FEE OR TO PAY FILING FEE IN INSTALLMENTS
 - (4) STATEMENT ABOUT YOUR SOCIAL SECURITY NUMBERS
 - (5) MAILING MATRIX
 - (6) VERIFICATION OF CREDITOR MATRIX
 - (7) LIST OF CREDITORS WHO HAVE THE 20 LARGEST UNSECURED CLAIMS AND ARE NOT INSIDERS (Chapter 11 only)
- (b) **FAILURE TO FILE ITEMS REQUIRED AT COMMENCEMENT OR WITHIN 5 DAYS THEREAFTER.** In those cases where all of the preceding schedules and statements listed in section (a) are not filed by the 5th day after the date of the filing of the petition, the clerk shall set the matter for a show cause hearing, which may result in the dismissal of the case.
- (c) **SCHEDULES AND STATEMENTS REQUIRED AT COMMENCEMENT OR WITHIN 14 DAYS THEREAFTER.** Upon the filing of an accelerated case, when the schedules and statements are not filed with the voluntary petition, the following schedules and statements shall be filed within 14 days after the commencement of the filing of the petition:
- (1) SUMMARY OF YOUR ASSETS AND LIABILITIES AND CERTAIN STATISTICAL INFORMATION (INDIVIDUAL)/SUMMARY OF ASSETS AND LIABILITIES (NON-INDIVIDUAL)
 - (2) DECLARATION ABOUT AN INDIVIDUAL DEBTOR'S SCHEDULES/DECLARATION UNDER PENALTY OF PERJURY FOR NON-INDIVIDUAL DEBTORS
 - (3) SCHEDULES:

Schedule A/B	Schedule G
Schedule D	Schedule H
Schedule E/F	Schedule I (individuals only)
Schedule J (individuals only)	Schedule J-2 (if applicable)
 - (4) STATEMENTS
 - Statement of Financial Affairs for Individuals Filing for Bankruptcy
 - Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy
 - Statement of Current Monthly Income (individuals only)
 - (A) Form 122A-1 Chapter 7 Statement of Your Current Monthly Income

- (B) Form 122A-1 Supp Statement of Exemption from Presumption of Abuse under § 707(b)(2) (if applicable)
- (C) Form 122A-2 Chapter 7 Means Test Calculation (if applicable)
- (D) Form 122C-1 Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period
- (E) Form 122C-2 Chapter 13 Calculation of Your Disposable Income (if applicable)
- (F) Form 122B Chapter 11 Statement of Your Current Monthly Income
- (5) Certification of attorney or bankruptcy petitioner, if applicable, pursuant to 11 U.S.C. § 521(a)(1)(B)(iii)(I).
- (d) **FAILURE TO FILE ITEMS REQUIRED AT COMMENCEMENT OR WITHIN 14 DAYS THEREAFTER IN ALL INDIVIDUAL CASES.** In those cases where all of the preceding schedules and statements listed in section (c), with the exception of (c)(4)(F), are not filed by the 45th day after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition pursuant to 11 U.S.C. § 521(i)(1), unless the time for filing is extended under 11 U.S.C. § 521(i)(3).
- (e) A debtor is not required to file copies of payment advices or other evidence of payment with the court. A chapter 7 debtor shall provide copies of payment advices or other evidence of payment to the bankruptcy administrator within 14 days after the date of the filing of the petition pursuant to Local Rule 4002-1(b)(2).
- (f) **IDENTIFICATION OF VALUATION METHOD.** If a value is stated for property listed in Schedule A/B of Official Form 106, the method of valuation used shall be identified.

NOTE

Section 521(a)(1)(B)(iv) of the Bankruptcy Code and Rule 1007(b)(1)(E) of the Federal Rules of Bankruptcy Procedure require a debtor to file copies of payment advices or other evidence of payment “unless the court orders otherwise.” The court has determined that payment advices and other evidence of payment should not be filed unless the court orders otherwise. Local Rule 4002-1(b)(2) addresses the duty of a chapter 7 debtor to provide payment advices to the bankruptcy administrator.

Rule 1007-2
MAILING - LIST OR MATRIX

- (a) **PETITION ACCOMPANIED BY MATRIX.** A petition requesting relief under chapters 7, 11, 12, or 13 shall be accompanied by a mailing matrix containing the complete mailing address, including zip code, for the following:
 - (1) all creditors listed in the petition, alphabetically arranged;
 - (2) Internal Revenue Service, except in chapters 7, 12 and 13 when the Internal Revenue Service is not listed as a creditor;
 - (3) North Carolina Department of Revenue, except in chapters 7, 12 and 13 when the North Carolina Department of Revenue is not listed as a creditor; and

- (4) Division of Employment Security, except in chapters 7, 12 and 13 when the Division of Employment Security is not listed as a creditor;
 - (5) United States Attorney, if the United States is a party, other than for taxes (EXAMPLE: Farm Service Agency, Federal Housing Administration, Veteran's Administration, Small Business Administration);
 - (6) if the debtor is a corporation, the name and title of the managing agent; and
 - (7) if the debtor is a partnership, each member of the partnership.
- Addresses for the governmental agencies listed above are contained in the Administrative Guide to Practice and Procedure and are listed on the court's website at www.nceb.uscourts.gov.
- (b) **PREPARATION OF MATRIX.** The matrix shall be prepared in the format approved by the clerk and its content shall be certified as accurate by the filing attorney or party. The party shall be responsible for any errors in or omissions from the listing. The preparation of the matrix for paper or electronic filing shall be in the format prescribed in the Administrative Guide to Practice and Procedure.

Rule 1007-3
STATEMENT OF INTENTION
FOR INDIVIDUALS FILING UNDER CHAPTER 7

- (a) **STATEMENT OF INTENTION.** A chapter 7 debtor who is required to file a statement of intention pursuant to 11 U.S.C. § 521(a)(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 seven days of the filing of the statement.
- (b) **FAILURE TO PERFORM STATEMENT OF INTENTION.** If a chapter 7 debtor fails to perform the intention as required by 11 U.S.C. § 521(a)(2)(B), the court may, upon motion of the affected creditor, enter an ex parte order lifting the stay of 11 U.S.C. § 362(a) and order the debtor to turn over the property to the creditor.

Rule 1007-5
STATEMENT OF SOCIAL SECURITY NUMBER - SUBMISSION & PRIVACY

- (a) **AMENDMENTS/CORRECTIONS TO SOCIAL SECURITY NUMBER.** If the petition was filed with a Statement About Your Social Security Number (Official Form 121) listing an incorrect social security number, another Official Form 121 shall be filed, by the debtor(s) or attorney for the debtor(s), with the corrected social security number using the event Statement of Social Security Number (Amended). The clerk shall make the correction to the social security number in the Electronic Case Filing System. A copy of the corrected Official Form 121 shall be mailed to all creditors listed on the matrix by the debtor(s) or attorney for the debtor(s). A certificate of mailing stating that corrected Official Form 121 was mailed to all creditors and the date it was mailed shall be filed separately from the corrected Official Form by the debtor(s) or attorney for the debtor(s). An Amendment to the

Petition listing the debtor's last four digits of the social security number is necessary only when the correction is being made to any of the last four listed digits.

- (b) NOTICE TO NATIONAL CREDIT REPORTING AGENCIES. The attorney shall also file Local Form 1007-5, Notice of Correction of Social Security Number. The Notice shall be mailed to the national credit reporting agencies. A certificate of mailing stating that the form was mailed to the three national credit reporting agencies at the addresses on their websites shall be filed separately by the debtor(s) or attorney for the debtor(s).

Rule 1009-1
AMENDMENTS TO LISTS AND SCHEDULES

Any amendment to a petition, list, schedule or statement shall be accompanied by a certificate of service in the form of a statement of the date and manner of service and of the names and addresses of the persons served, and must be certified as correct by the person making the service. An Amended Summary of Your Assets and Liabilities and Certain Statistical Information (Individuals) (Form 106Sum)/Summary of Your Assets and Liabilities (Non-Individuals) (Form 206Sum) and Declaration About an Individual Debtor's Schedules (Individuals only) (Form 106Dec) must be filed each time an amended schedule is filed.

Rule 1016-1
NOTIFICATION OF DEATH OR INCOMPETENCY

If a debtor dies or is adjudicated incompetent, the debtor's attorney, upon becoming aware of the death or adjudication, must file a statement of that fact.

Rule 1017-2
DISMISSAL OR SUSPENSION – CASE OR PROCEEDINGS

NOTICE TO TRUSTEE OF REQUEST FOR AUTOMATIC DISMISSAL. A party in interest requesting dismissal of a case pursuant to § 521(i)(2) of the Code shall, on the day that the request for dismissal is made to the court, deliver, by electronic means, by facsimile transmission, or by hand, a copy of the request to the trustee.

NOTE

Subsection 521(i)(2) of the Code provides that a party in interest may request that the court enter an order dismissing a case that has been automatically dismissed under § 521(i)(1), and that the court shall do so within seven days. This subsection is subject to the provisions of § 521(i)(4), which states that on motion of the trustee filed prior to the expiration of the seven day period, the court may, on specified grounds, decline to dismiss the case. Local Rule 1017-2 was added to ensure that the trustee is made aware of any request for automatic dismissal on the same day that the request for dismissal is made.

Rule 1020-1
CHAPTER 11 SMALL BUSINESS CASES – GENERAL

PROTECTION OF TAX INFORMATION. The federal income tax return to be appended to the petition or filed with the court pursuant to § 1116(1)(A) of the Code shall be subject to the restrictions and procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts pursuant to § 315(c)(1) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, except that the procedures for requesting and obtaining access to tax information contained in the procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts shall not apply to the bankruptcy administrator or to a trustee serving in the case.

NOTE

Local Rule 1020-1 was added to extend to Federal income tax returns filed under § 1116(1)(A), the protections developed by the Director of the Administrative Office of the United States Courts under § 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The bankruptcy administrator or trustee serving in the case is not subject to the restrictions and procedures established by the Director with respect to their access to those tax returns.

Rule 1071-1
BANKRUPTCY COURT DIVISIONS

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

Rule 1073-1
ASSIGNMENT OF CASES

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

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

Rule 2002-1

NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

- (a) **AMENDED OR SUPPLEMENTAL SCHEDULES.** The § 341 meeting will be scheduled and the clerk of court, or such other person as the clerk of court may designate, will notify the creditors listed on the matrix filed with the petition. If additional creditors are added either through filed schedules or amendments to schedules being filed after notice has been given, the debtor shall serve the notice of commencement of case, meeting of creditors, and deadlines, along with a proof of claim form if a notice to file a proof of claim has been given, on the added creditors and file a certificate of service with the clerk of court within seven days after service.
- (b) **PAYMENT OF FEE REQUIRED.** If a debtor files a request for conversion to another chapter, payment of the fee shall be a condition of the conversion.
- (c) **GUIDE TO SERVICE AND NOTICE REQUIREMENTS.** The chart included in the Administrative Guide to Practice and Procedure shall serve as a guide for the giving of notice to creditors and other parties in interest.
- (d) **RETURNED AND UNDELIVERABLE MAIL.** The procedure for returned and undeliverable mail is provided in the Administrative Guide.
- (e) **NOTICE OF PREFERRED ADDRESS**
 - (1) To file a notice of preferred address pursuant to 11 U.S.C. § 342(e), creditors may use the National Creditor Registration Service local forms found on the court's website, www.nceb.uscourts.gov.
 - (2) To file a notice of preferred address pursuant to 11 U.S.C. § 342(f), creditors may register with the National Creditor Registration Service offered through the Bankruptcy Noticing Center at ncrs.uscourts.gov.

Rule 2003-1

MEETING OF CREDITORS AND EQUITY SECURITY HOLDERS

- (a) The bankruptcy administrator shall retain and preserve the 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 destroy the recordings.
- (b) Upon the request of any entity, the bankruptcy administrator may certify and provide a copy of the recording of the meeting of creditors at the entity's expense.

Rule 2004-1
EXAMINATION

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

Rule 2014-1
EMPLOYMENT OF PROFESSIONAL PERSONS

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

Rule 2014-2
APPLICATION FOR APPROVAL OF MENTAL HEALTH EVALUATION

The debtor may apply to the court for approval of a pro bono mental health evaluation. The application shall be filed and a copy of the application shall be transmitted by the debtor to the bankruptcy administrator and any other interested party. The application shall substantially conform to the Application for Approval of Mental Health Evaluation located on the court's website at www.nceb.uscourts.gov. The application, orders approving or denying the application, orders appointing a mental health professional pursuant to the application, and the mental health professional's report(s) shall be restricted from public access.

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 serving the following notices and documents on creditors, after having their form and content approved by the clerk of court, and for filing a certificate of service with the clerk of court within seven days of the date of service:

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

Rule 2015-5
CHAPTER 13 TRUSTEES - SEARCH FEES

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

Rule 2016-1
COMPENSATION OF PROFESSIONALS

- (a) **COMPENSATION OF ATTORNEY FOR DEBTOR IN CHAPTER 13 CASES.**
- (1) **AMOUNT OF STANDARD BASE FEE.** The standard base fee in a chapter 13 case is as provided in the statement of approved compensation published annually by the clerk and included in the Administrative Guide to Practice and Procedure. Though the standard base fee will typically be approved by the court without hearing, the trustee may recommend, in appropriate cases, that a lower fee be allowed. In recommending a standard base fee in converted cases, the trustee shall take into consideration the compensation already received.
- (2) **SERVICES INCLUDED IN THE BASE FEE.** The standard base fee includes the basic services reasonably necessary to represent properly the debtor before the bankruptcy court through the earlier of confirmation or the first 12 months after filing the case. Those basic services should include, but not be limited to, the following:
- (A) interview with the debtor;
 - (B) analysis and recommendation of appropriate chapter of Title 11;
 - (C) reasonable inquiry into the debtor's assets, including efforts to confirm or verify ownership through search of a tax office, register of deeds office, other public records search, or document review;
 - (D) obtaining credit report, pay advices (if no wages or self-employed during the applicable period, an appropriate affidavit), and tax returns;
 - (E) preparation of all documents required under § 521 of the Bankruptcy Code, including, but not limited to, the schedules, Statement of Financial Affairs for Individuals Filing for Bankruptcy, Forms 122C-1 and 122C-2 (if applicable), and chapter 13 plan;
 - (F) representation at the creditors' meeting under § 341 of the Bankruptcy Code;
 - (G) preparation of any amendments to schedules or plan modifications prior to confirmation;
 - (H) attendance at plan confirmation hearings;
 - (I) preparation of motion to extend or impose automatic stay for repeat filers, if appropriate; and
 - (J) preparation of motions to dismiss.
- (3) **APPLYING FOR A HIGHER BASE FEE.** Applications for approval of a base fee higher than the standard base fee must be filed by the debtor's attorney within 60

days after the conclusion of the creditors' meeting under § 341 of the Bankruptcy Code.

- (4) **NON-BASE FEE SERVICES DEFINED.** The following services are not covered by the standard base fee, and additional compensation for these services may be awarded by the court:
 - (A) motion for authority to sell real property;
 - (B) application to incur debt;
 - (C) prosecution or defense of adversary proceedings;
 - (D) motion or adversary proceeding to value collateral and avoid mortgage;
 - (E) motion to avoid lien;
 - (F) services other than those included in the base fee as described in subsection(a)(2); and
 - (G) any other service that, in the discretion of the court, reasonably warrants additional compensation.
- (5) **APPROVAL OF NON-BASE FEES.** 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 the amount of \$1,000 or below must be sent to each debtor and the trustee. Notice of each application for fees and expenses in excess of \$1,000 and above must be given to all parties in interest.
- (6) **PRESUMPTIVE NON-BASE FEES/APPROVAL/ NOTICE.** The list of presumptively reasonable non-base fee services is contained in the statement of approved compensation published by the clerk and included in the Administrative Guide to Practice and Procedure. Applications for the presumptive non-base fee must be filed with a notice verifying completion of the services for which compensation is sought and a certificate of service evidencing service of the notice on each debtor and the trustee. After notice pursuant to subsection (5) above, the applications for presumptive non-base fees will be deemed approved by the court but is subject to modification by the court upon a timely objection.
- (7) **TIME AND EXPENSE ALTERNATIVE.** Alternatively, the debtor's attorney may apply to the court for approval of fees on a "time and expense" basis pursuant to Rule 2016 of the Federal Rules of Bankruptcy Procedure and 11 U.S.C. § 330.
- (8) **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.
- (9) **INTERIM APPROVAL OF PARTIAL BASE FEE.** An attorney fee incurred for services provided to the debtor in connection with the bankruptcy filing prior to the petition date is authorized and shall be considered part of the base fee. Any amount in excess of the base fee collected by the attorney prior to filing the chapter 13 petition must be held in the attorney's client trust account pending further order of the court or approval of the fees in accordance with this rule.
- (10) **PAYMENT OF ATTORNEY FEES/MODIFICATION OF PLAN.** The following will be treated and paid as administrative expenses of the chapter 13 case:
 - (A) the standard base fee, less any partial base fee paid prior to filing the chapter 13 petition; and

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

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

- (b) **COMPENSATION OF PROFESSIONALS IN CHAPTER 7, 11, AND 12 CASES.** The bankruptcy administrator's Procedures for Preparing and Submitting Applications for Compensation by Professionals shall serve as a guide for applications for compensation to professionals. Absent an order to the contrary, professionals may apply for compensation once every sixty (60) days. The Procedures for Preparing and Submitting Applications for Compensation by Professionals outline is available from the office of the bankruptcy administrator.
- (c) **REIMBURSEMENT OF FEES PAID TO THE COURT.** Unless otherwise ordered, an attorney for the debtor shall be allowed, without application, to receive payment or reimbursement from or on behalf of the debtor for court fees paid by the attorney to the court on behalf of the debtor.
- (d) **FLAT FEE COMPENSATION OF ATTORNEYS IN CHAPTER 11 CASES.** Counsel for a chapter 11 debtor may apply to be employed on a flat-fee basis, with flat-fee compensation not to exceed \$20,000, as follows:
 - (1) Notice of an application to employ counsel for the debtor on a flat-fee basis shall be provided to all creditors and the bankruptcy administrator.
 - (2) All retainer funds must be held in trust by counsel and may be withdrawn only according to the following schedule:
 - (A) One-fifth (1/5) for pre-petition services (full and complete petition including schedules and statements) to be withdrawn only after filing complete schedules and statements with the court;
 - (B) One-fifth (1/5) after the completed 341 meeting of creditors;
 - (C) One-fifth (1/5) after the filing of the plan and disclosure statement;
 - (D) One-fifth (1/5) after the hearing on confirmation of the plan and disclosure statement or, if the plan is not confirmed, upon conversion or dismissal of the case; and
 - (E) One-fifth (1/5) upon entry of the final decree.
 - (3) Upon proper application, the court will consider the award of reasonable fees for services performed after confirmation if a final decree is not obtained, or the case is converted or dismissed.
 - (4) Upon each withdrawal, counsel shall file a Rule 2016 Disclosure Statement that includes a detailed list of the services rendered, time expended (if available), expenses incurred, and amount paid from trust.
 - (5) Any party in interest, including the bankruptcy administrator, may review the fees upon completion of services or after the conclusion of such employment to determine whether the flat fee is reasonable in light of unanticipated developments at the time of the approval of the terms and conditions of employment pursuant to 11 U.S.C. § 328(a). If the flat fee exceeds the reasonable value of services, the court may require

the attorney to return the fee to the extent that it is excessive pursuant to § 329(b). If the attorney does not properly represent the debtor after approval of the flat fee, the approved fee would not be deemed reasonable under § 330(a)(3) and is subject to adjustment.

- (6) This rule does not preclude application for a flat fee higher than \$20,000 under appropriate circumstances.
- (7) The reimbursement of expenses may be addressed in the original application or by separate application.

Rule 2090-1
ATTORNEYS - ADMISSION TO PRACTICE

- (a) LOCAL CIVIL RULE 83.1(f), EDNC APPLICABLE. Except as otherwise provided in this rule, Local Civil Rule 83.1 of the Local Rules of Practice and Procedure 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) A corporate entity may be represented at a meeting of creditors by its officers and agents;
 - (3) The following documents may be filed by a corporate entity or an attorney not admitted to practice before this court on behalf of a client: (i) a proof of claim, (ii) a reaffirmation agreement; (iii) an assignment/transfer of claim, and (iv) a notice of appearance and request for notices. Corporate entities not represented by an attorney and attorneys not admitted to practice before this court may obtain a limited password for access to the court’s CM/ECF system for the purpose of filing the above documents.
- (b) ADMISSION. Only those persons who are admitted to the bar of the United States District Court for the Eastern District of North Carolina are admitted to practice before this court. Except as permitted herein, all courtroom appearances, pretrial conferences, discovery procedures, pleadings, motions, objections, and other documents filed with this court, aside from certificates of service, must be by an attorney admitted to practice before this court.
- (c) PRO HAC VICE APPEARANCE. Local Rule 83.1(e)-(f) of the Local Rules of Practice and Procedure for the United States District Court, Eastern District of North Carolina, addresses attorneys appearing pro hac vice.
- (d) LOCAL CIVIL RULE 83.2, EDNC APPLICABLE. Local Civil Rule 83.2 of the Local Rules of Practice and Procedure of the United States District Court, Eastern District of North Carolina, entitled “Student Practice Rule,” is applicable in this court.

Rule 2090-2
ATTORNEYS - DISCIPLINE AND DISBARMENT

- (a) STANDARDS OF CONDUCT. Acts or omissions by an attorney practicing before this court (that violate the Rules of Professional Conduct adopted by this court) shall constitute

misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this court are the Rules of Professional Conduct of the North Carolina State Bar adopted by the Supreme Court of North Carolina, as amended from time to time by that state court, except as otherwise provided by a specific rule of this court.

- (b) **DISCIPLINARY ENFORCEMENT.** For misconduct as defined in these Local Rules, and after notice and an opportunity to be heard, any attorney practicing before this court may be disbarred, suspended from practice, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.
- (c) **DUTY TO INFORM THE CLERK.** Any attorney practicing before this court shall, upon being subjected to public discipline by any court or by the state bar of any state, within 14 days of notification, inform the clerk of such action.
- (d) **REFERRAL OF COMPLAINTS TO COUNSEL OR TO A STATE BAR.** When allegations of misconduct by an attorney practicing before this court come to the attention of a judge of this court, whether by complaint or otherwise, the judge may refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Alternatively, the judge may refer the matter to the appropriate state bar. The court is not restricted from taking such other disciplinary action as is within the inherent authority of the court.
- (e) **REFERRAL TO COUNSEL.** Should the judge decide to refer a disciplinary matter to counsel for investigation and the prosecution of a formal disciplinary proceeding, the proceeding shall be referred and shall proceed and be conducted as set forth in Rule 83.7e of the Local Rules of the United States District Court for this judicial district.
- (f) **ATTORNEYS SPECIALLY APPEARING.** Whenever an attorney appears in this court for purposes of a particular proceeding, the attorney shall be deemed to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.
- (g) **JURISDICTION.** Nothing contained in these Local Rules shall be construed to deny to this court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt or other sanctions under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, these Local Rules or other applicable law.

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

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

All claims shall be filed with the clerk of court in accordance with Rule 5005, Federal Rules of Bankruptcy Procedure. All creditors not represented by an attorney who file more than ten proofs of claim in any 12-month period shall file the proofs of claim, including all transfers, assignments, amendments and withdrawals of proofs of claim, electronically according to the procedures established by the court.

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

In addition to the duties set forth in Local Bankruptcy Rule 4002-1(b), the chapter 11 debtor shall notify each creditor whose claim is scheduled as contingent, disputed, or unliquidated of that fact within 14 days after filing the schedule of assets and liabilities or within 14 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 seven days after service has been made.

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

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

Rule 3004-1
FILING OF CLAIMS BY DEBTOR OR TRUSTEE

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

Rule 3010-1
SMALL DIVIDENDS

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

Rule 3011-1
DISBURSEMENT OF UNCLAIMED FUNDS

- (a) DEPOSIT OF UNCLAIMED FUNDS INTO THE COURT. Funds deposited into the court as unclaimed funds pursuant to 11 U.S.C. § 347(a) shall be deposited via ACH through pay.gov.
- (b) PROCEDURE FOR COLLECTING UNCLAIMED FUNDS. The following shall apply to the deposit and release of unclaimed funds:
 - (1) DEPOSIT OF UNCLAIMED FUNDS INTO UNITED STATES TREASURY. All unclaimed funds collected by the court shall be deposited into the United States Treasury.
 - (2) MOTION TO RELEASE FUNDS. A Motion to Release Funds shall be filed with the Clerk. A form for the Motion to Release Funds can be found in the Administrative Guide to Practice and Procedure.
 - (A) The motion must include:
 - (i) the name, address, telephone number, and a brief history of the creditor who originally filed the proof of claim including the information from the date of the filing of the claim to the present explaining the reasons why the funds were not deliverable at the time of the original distribution;
 - (ii) whether the movant is (a) the owner of record of the claim (the entity shown in the court's records as the holder of the claim), or (b) a successor claimant (an entity other than the owner of record of the claim that has become legally entitled to the funds by assignment or otherwise). If the movant is a successor claimant, copies of all documents evidencing the claimant's right to the funds by assignment or otherwise must be attached to the motion;
 - (iii) whether or not the claimant believes that any other entity may claim an entitlement to the unclaimed funds; and
 - (iv) proof of the claimant's identity and right to funds – see below.
 - (B) The motion shall be served upon the United States Attorney for the Eastern District of North Carolina, 310 New Bern Ave., Suite 800, Federal Building, Raleigh, NC 27601, and upon any other entity believed to claim an entitlement to the unclaimed funds.
 - (C) A certificate of service must be attached to the original motion filed with the court.

- (3) **PROOF OF IDENTITY AND RIGHT TO FUNDS.** The claimant's identity and right to funds must be shown through at least one of the following methods:
- (A) All claimants must provide with the motion:
 - (i) an affidavit explaining the claimant's entitlement to the requested funds and bearing the seal and certificate of a notary public;
 - (ii) a copy of an unexpired passport or valid driver's license to establish identity of an individual claimant;
 - (iii) the last four digits of the social security number or tax identification number of the claimant; and
 - (iv) any additional documentation that establishes the claimant's right to the unclaimed funds and evidences its identity (e.g., a copy of a proof of claim or a copy of a utility bill from an old address).
 - (B) Successor claimants (those other than the owner of record of the claim who have become legally entitled to the funds) must specifically provide with the motion the following additional information:
 - (i) Proof of identity of the owner of record, proof of identity of the successor claimant, and documentation evidencing the transfer of claim and the successor's entitlement to collect the funds; or
 - (ii) Representatives of estates must provide proof of identity of the owner of record, proof of identity of the estate's representative and certified copies of documents establishing the representative's right to act on behalf of the estate.
- (c) **CLAIMANT REPRESENTATIVES.**
- (1) A motion to release funds must be filed on behalf of claimant representatives by an attorney who is a member in good standing of the North Carolina State Bar and who has been admitted to practice before the United States District Court for the Eastern District of North Carolina.
 - (2) In addition to compliance with subparagraph (b)(2) and (3) above, claimant representatives must provide to their attorney who shall file with the court:
 - (A) proof of the identity of the owner of record and any successor claimant;
 - (B) a notarized original power of attorney signed by the claimant on whose behalf the representative is acting, acknowledging the representative's authorization to seek funds on behalf of the claimant and acknowledging that the claimant is aware of the right to seek collection of the funds without the assistance of the representative;
 - (C) proof of identity of the representative; and
 - (D) a copy of the letter of engagement with the claimant, or other documentation of the agreement between the claimant and the claimant representative, disclosing the fee to be collected by the claimant representative and/or the attorney for the claimant representative.
 - (3) Unclaimed funds requested by claimant representatives will be paid by check made payable jointly to the claimant and the attorney for the claimant representative.
- (d) **W-9 REQUIRED.** Pursuant to the Vendor Administration and 1099 Issuance Procedures, the court requires the claimant to complete a W-9 form that includes the claimant's social security or tax identification number and signature. This form may be found on the court's website and must be provided to the court (in person, by email, or by fax) at the

time of the filing of the motion to release funds. Failure to complete, sign, and return this form may result in non-payment.

Rule 3012-1
VALUATION OF SECURITY

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

Rule 3015-1
SERVICE OF PROPOSED AND AMENDED, UNCONFIRMED CHAPTER 13 PLANS

A full copy of the debtor's chapter 13 plan, as filed or as amended and restated, shall be attached to and served with any motion filed requesting confirmation of the plan.

Rule 3070-1
CHAPTER 13 - PAYMENTS

- (a) **RETURN OF PLAN PAYMENTS TO DEBTOR.** Subject to subsections (b) and (d) below, upon conversion or dismissal of a chapter 13 case prior to confirmation, and unless the court orders otherwise, the standing trustee shall return to the debtor any payments made by the debtor under the proposed plan.
- (b) **ATTORNEYS FEES IN A DISMISSED UNCONFIRMED CHAPTER 13 CASE.**
 - (1) Upon the entry of an order of dismissal in a chapter 13 case prior to a plan being confirmed, and unless other arrangements are made with the debtor for compensation, counsel for the debtor shall have 14 days from the entry of the order of dismissal within which to file an application for attorney fees ("Application"). The Application shall be served upon the debtor and the chapter 13 trustee, and those parties-in-interest shall have 14 days to respond.
 - (2) The chapter 13 trustee shall not make any disbursement until the 14 day period for filing the Application has expired. If an Application is timely filed, the trustee shall continue to hold the funds in trust and shall not make final disbursement until the court rules on the Application.
- (c) **ADEQUATE PROTECTION PAYMENTS TO SECURED CREDITORS AND DIRECT PAYMENTS TO LESSORS.**
 - (1) The debtor shall pay directly to the lessor all payments scheduled in a lease of personal property for that portion of the obligation that becomes due after the order for relief.
 - (2) Unless the chapter 13 plan provides that the entire secured claim is to be paid directly by the debtor to the creditor, the debtor shall pay to a creditor, who holds an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of the property by the debtor, pre-confirmation adequate protection

payments through the chapter 13 trustee; however, the court may order payments to be made by any other method.

- (3) The presumptive adequate protection payment to be paid pursuant to Section 1326(a)(1) shall be at least one percent (1%) of the value of the subject collateral at the discretion of the chapter 13 trustee as of the petition date. The valuation of the collateral shall be made solely by the chapter 13 trustee, subject to further court consideration.
 - (4) All adequate protection payments paid through the chapter 13 trustee shall be subject to an administrative fee in favor of the trustee equal to the trustee's statutory percentage commission then in effect, and the trustee shall collect the fee at the time of the distribution of the adequate protection payment to the claimant.
 - (5) The chapter 13 trustee shall make adequate protection payments to the creditor at the address duly noted on the proof of claim. The use of the address shall be deemed proper notice of the creditors for purpose of the adequate protection payments.
 - (6) The chapter 13 trustee shall not be required to make pre-confirmation adequate protection payments on account of any claim for which the secured value of the claim is less than \$2,000.00.
 - (7) All adequate protection payments made through the chapter 13 trustee shall be disbursed in the ordinary course of the trustee's business, according to the trustee's standard monthly distribution schedule, from funds in the case as they become available for distribution to claimants prior to or after entry of the Order Confirming Plan.
 - (8) Subsections (c)(2) and (c)(3) of this rule shall not apply if the adequate protection is provided by means other than by direct payments to the holder of the secured claim.
- (d) **CHAPTER 13 TRUSTEE'S ADMINISTRATIVE FEE IN CHAPTER 13 CASES DISMISSED PRIOR TO CONFIRMATION.**
- (1) An administrative fee is authorized for the chapter 13 trustee in cases dismissed prior to confirmation in the amount set forth in the Administrative Guide.
 - (2) The fee shall be payable from payments made by the debtor(s) and held by the trustee at the time of case dismissal.
 - (3) The trustee who has incurred actual costs and expenses in excess of the standard administrative fee may apply under 11 U.S.C. § 503(a) for reimbursement of these additional costs and expenses from funds paid by the debtor to the trustee.

RULE 3070-2

CHAPTER 13 – RESIDENTIAL MORTGAGE PAYMENTS

- (a) **DEFINITIONS.** As used in this Local Rule, the following definitions shall apply:
- (1) "Administrative Arrearage" is the total amount of two full post-petition Mortgage Payments and shall be in addition to any Pre-Petition Arrearage claim.
 - (2) "Conduit Payment" means a Mortgage Payment that is paid by a Debtor through the Chapter 13 Trustee. The amount of a Conduit Payment shall be equal to the amount of the petition-date monthly contractual Mortgage Payment due pursuant to the note or contract subject to any subsequent change in such Mortgage Payment effectuated in compliance with this rule.
 - (3) "Debtor" includes both Debtors in a joint case.

- (4) “Mortgage Loan” is a mortgage, deed of trust or other consensual lien on the real property of the Debtor that is the principal residence of the Debtor, unless the confirmed plan or other order of the court provides for the surrender of the residence, the avoidance of the lien purportedly securing such loan, or such other treatment that is expressly inconsistent with the application of this rule.
 - (5) “Mortgage Payment” means a regular, periodic payment that is owed by a Debtor on a Mortgage Loan as set forth in the documents evidencing the loan that is the basis of the Real Property Creditor’s claim.
 - (6) “Plan Payment” means the total amount that the Debtor is required to pay to the Chapter 13 Trustee each month under the chapter 13 plan, which amount includes an amount sufficient to cover the Conduit Payments.
 - (7) “Pre-Petition Arrearage” is the total amount past due on a Real Property Creditor’s claim as of the petition date.
 - (8) “Real Property Creditor” is any entity holding or owning a secured claim on account of a Mortgage Loan, and including but not limited to any assignees, agents, servicers or successor as to such creditor.
- (b) **DISBURSEMENT OF REQUIRED CONDUIT PAYMENTS.**
- (1) Chapter 13 Debtors shall remit all Mortgage Payments owed by them to the Chapter 13 Trustee for disbursement to the Real Property Creditor.
 - (2) A debtor may be excused from the requirement of subparagraph (b)(1) in the discretion of the chapter 13 trustee or by order of the court. Confirmation of a plan providing for direct payments to a mortgage creditor excuses the debtor from the requirements of subparagraph (b)(1), in which case the provisions of paragraph (c) shall not apply.
- (c) **DUTIES OF THE DEBTOR AND OF THE CHAPTER 13 TRUSTEE.**
- (1) If the amount of the Mortgage Payment changes and results in the necessity for a modification of the Plan Payment, the Chapter 13 Trustee shall notify the Debtor and the attorney for the Debtor of the change and the extent to which it is necessary to modify the Plan Payment as a result of the Mortgage Payment change. If it is necessary to modify the Plan Payment as a result of a change in the Mortgage Payment, the Debtor must make any increased Plan Payment to the Chapter 13 Trustee beginning with the Plan Payment next due after the later of (i) the Trustee’s notification to the Debtor and counsel or (ii) the effective date of the Mortgage Payment change. Such a modification of the Plan Payment may be accomplished by consent order prepared and signed by counsel for the Debtor(s) and signed by the Chapter 13 Trustee, provided that no other creditor or party in interest is adversely affected by such modification.¹

¹ **EXPLANATORY NOTE:**

With regard to DECREASES in the Mortgage Payments:

(a) Due to the operation of the disposable income requirement of § 1325(b)(1)(B) under some plans, a decrease in the Mortgage Payment might not necessitate a decrease in the debtor’s Plan Payments – in such a case the Plan Payments would stay the same and more money would be disbursed to unsecured creditors. Thus, in the event of a decrease in the Mortgage Payment under such a plan, the Chapter 13 Trustee would notify the debtor of the change but would not need to give notice that a plan modification was necessary.

(b) Alternatively, if the confirmed plan specifically provides that 0% is to be distributed to general unsecured claims, such as in attorney fee only chapter 13 plans for example, a decrease in the Mortgage Payment might result in no increase in distribution to unsecured creditors but would instead result in the termination of the confirmed plan by its terms earlier than originally anticipated.

Conversely, with regard to INCREASES in the Mortgage Payments: Unless the liquidation test of § 1325(a)(4) requires a minimum amount to be paid to unsecured creditors, or the Plan Payments after any increase in Mortgage Payments would not be enough to satisfy secured/priority/arrearage/administrative claims, an increase in the Mortgage Payment would not necessitate an increase in the debtor’s Plan Payments

- (2) A claim in the amount of the Administrative Arrearage shall be allowed and paid by the Chapter 13 Trustee under the chapter 13 plan for each Mortgage Loan for which the Trustee disburses Conduit Payments. This amount shall be paid on a pro-rata basis with other allowed secured claims being paid through the chapter 13 plan, subject to the provisions of paragraph (c)(4) below.
 - (3) The Chapter 13 Trustee shall not disburse any amounts to a Real Property Creditor on any claim until such time as the Real Property Creditor, the Debtor, or the Chapter 13 Trustee has filed a Proof of Claim including all necessary documentation and the chapter 13 plan has been confirmed, except as may otherwise be provided by order of the court.
 - (4) Unless otherwise ordered by the court, if during any month of the chapter 13 plan the Debtor remits payments to the Chapter 13 Trustee in an amount that is insufficient to provide for all required disbursements to claimants, the Chapter 13 Trustee shall disburse all funds received from the Debtor first toward payment of the Conduit Payment(s) due and unpaid for the current month and any prior month(s) before making disbursements to any other claimants. Such actions by the Chapter 13 Trustee shall not impair the rights of the other claimants to take any lawful action as a result of the failure to receive disbursements on their claims.
 - (5) The Chapter 13 Trustee shall continue to disburse Conduit Payments notwithstanding the filing or allowance of a motion for relief from stay filed by a Real Property Creditor, unless notified in writing by the Debtor that Conduit Payments are to be terminated in which case the Chapter 13 Trustee shall serve notice of such termination upon the Debtor and the Real Property Creditor.
- (d) DUTIES OF THE REAL PROPERTY CREDITOR.
- (1) Each Real Property Creditor shall file a Proof of Claim as to each Mortgage Loan held or owned by it as to the Debtor. The Proof of Claim must comply with Fed. R. Bank. P. 3001(c) and clearly specify the amount of the Mortgage Payment of the petition date; and the amount and effective date of any then known and anticipated change of such Mortgage Payment.
 - (2) Unless otherwise ordered by the court, pursuant to Fed. R. Bank. P. 3002.1(b) and (d) the Real Property Creditor shall file and serve on the Chapter 13 Trustee, the Debtor, and the attorney for the Debtor a notice of any change in the amount of the Mortgage Payment at least 21 days before a payment in the new amount is due. No change in the Mortgage Payment amount shall be effective unless and until notification of such change is served upon the Chapter 13 Trustee, the Debtor, and the attorney for the Debtor in accordance with this rule and Fed. R. Bankr. P. 3002.1(b) and (d). The effective date of such change in the Mortgage Payment shall be the later of: (i) the effective date specified in the notice of change provided by the Real Property Creditor, or (ii) 21 days after the filing and service of the notice of change by the Real Property Creditor.
 - (3) At least 21 days prior to the effective date of any change in the name or identity of the Real Property Creditor or the entity servicing a Real Property Creditor's claim (herein "Servicer") and/or the disbursement mailing address of a Real Property Creditor or Servicer, the Real Property Creditor or the Servicer shall file with the court a notice setting forth the requested changes with a copy served on the Trustee, the Debtor, and the attorney for the Debtor.

– rather the Plan Payments would stay the same and less money would be disbursed to unsecured creditors. Thus, in the event of an increase in the Mortgage Payment, the Chapter 13 Trustee would notify the Debtor of the change but may not need to give notice that a plan modification was necessary.

- (4) All payments made to a Real Property Creditor or Servicer shall be applied as provided under and subject to the provisions of 11 U.S.C. § 524(i).
- (e) **EFFECT OF AND PROCEDURE UPON PLAN COMPLETION.**
- (1) **FOR CONDUIT MORTGAGE PAYMENTS.** If post-petition Mortgage Payments have been made by the Chapter 13 Trustee by means of Conduit Payments, and if the plan has paid all required Mortgage/Conduit Payments, allowed Pre-petition Arrearage claims, and other allowed claims related to a Mortgage Loan, then:
- (A) all pre-petition and post-petition defaults shall be deemed cured, the Mortgage Loan shall be deemed at least current as of the date of the disbursement by the Chapter 13 Trustee of the final plan payment to the Real Property Creditor, and any right of the Real Property Creditor to recover any amount alleged to have been incurred or become due since the petition-date, or to declare a default under the note, mortgage, deed of trust; or other loan documents based upon any and all events prior to the date of the disbursement by the chapter 13 Trustee of the final plan payment to the Real Property Creditor shall be extinguished; and
- (B) the Chapter 13 Trustee shall file and serve the notice referred to under Fed. R. Bank. P. 3002.1(f), which notice also shall set forth the total amount due on the Mortgage Loan as of a specific date identified in the notice.
- (2) **FOR DIRECT MORTGAGE PAYMENTS.** If post-petition Mortgage Payments have been made directly by the Debtor pursuant to the confirmed chapter 13 plan, the Debtor shall be responsible for filing and serving any notice permitted under Fed. R. Bank. P. 3002.1(f). In the event the Debtor files and serves this notice, it shall contain a statement that all Mortgage Payments and other permissible fees, expenses or charges accruing on the Mortgage Loan from the petition date through the date of the notice or other date specified therein have been made, set forth the total amount due on the Mortgage Loan as of a specific date identified in the notice, and be verified by the Debtor.
- (3) **FAILURE BY HOLDER TO PROVIDE RESPONSE PURSUANT TO FED. R. BANK. P. 3002.1(g).** In addition to the provisions of Fed. R. Bank. P. 3002.1(i), upon the failure by a Real Property Creditor to timely file and serve the response required by Fed. R. Bankr. P. 3002.1(g), the Real Property Creditor shall be deemed to have admitted that the Mortgage Loan is current, and the court shall enter an order providing that the Mortgage Loan is current (with no arrearage, escrow balance, late charges, costs, expenses or attorney fees owing) as of date of the disbursement by the Chapter 13 Trustee of the final plan payment to the Real Property Creditor and stating the total amount due on the Mortgage Loan as of a specific date identified in the notice.
- (4) **MOTIONS TO DEEM CURRENT OR FOR DETERMINATION OF FINAL CURE.** All motions to deem a Mortgage Loan to be current or for a determination of final cure pursuant to Fed. R. Bankr. P. 3002.1(h) must contain a statement that all Mortgage Payments and other permissible fees, expenses or charges accruing on the Mortgage Loan from the petition date through the date of the motion or other date specified therein have been made, set forth the total amount due on the Mortgage Loan as of a specific date identified in the motion, and be verified by the Debtor, as appropriate.
- (f) **SERVICE.** All notices, documents and motions required to be given or served under this rule shall be served by first class mail, sufficient postage pre-paid, on all interested parties at the last mailing address of record filed in the case, and any service required to be made upon the Chapter 13 Trustee pursuant to subparagraph (d) of this rule must also include in the address line: "Attn: Mortgage Claim Administrator."
- (g) **OTHER APPLICABLE LAWS.** Nothing in this rule shall relieve any party from complying with any obligation under the United States Bankruptcy Code, the Federal Rules of Bankruptcy

Procedure, the Local Rules of Practice and Procedure of the District and Bankruptcy Courts of the Eastern District of North Carolina, the Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, the North Carolina Mortgage Servicing Act, any other applicable standing or administrative orders of the court, or any other applicable non-bankruptcy law or rule.

PART IV
THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1
RELIEF FROM THE AUTOMATIC STAY

- (a) **STANDING MODIFICATION.** The automatic stay provided in 11 U.S.C. § 362(a) is modified as follows:
- (1) Chapter 7.
 - (A) **Secured Creditors.** The automatic stay shall be modified as provided in Local Bankruptcy Rule 4001-2(a).
 - (B) **Internal Revenue Service.** The Internal Revenue Service is authorized to:
 - (i) make income tax refunds, in the ordinary course of business, directly to the debtors unless otherwise ordered by the court or otherwise instructed by the chapter 7 trustee;
 - (ii) offset against any refund due a debtor any taxes due the United States government pursuant to 11 U.S.C. § 553;
 - (iii) assess any tax liability satisfied by offsetting any refunds, when such liability has not been assessed previously; and
 - (iv) assess tax liabilities shown on voluntarily filed returns and other agreed-to liabilities.
 - (2) Chapter 11.
 - (A) **Internal Revenue Service.**
 - (i) The Internal Revenue Service 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.
 - (ii) The debtor or trustee and the debtor's designated depository shall assist the Internal Revenue Service with the monitoring and verification of the provisions of this rule.
 - (B) **North Carolina Department of Revenue.**
 - (i) 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.
 - (ii) The debtor or trustee and the debtor's designated depository shall assist the North Carolina Department of Revenue with the monitoring and verification of the provisions of this rule.
 - (3) Chapter 12.
 - (A) **Internal Revenue Service.**
 - (i) The Internal Revenue Service 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.
 - (ii) The debtor or trustee and the debtor's designated depository shall assist the Internal Revenue Service with the monitoring and verification of the provisions of this rule.
 - (B) **North Carolina Department of Revenue.**
 - (i) 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.

- (ii) The debtor or trustee and the debtor's designated depository shall assist the North Carolina Department of Revenue with the monitoring and verification of the provisions of this rule.
- (4) Chapter 13.
- (A) Secured Creditors. Secured creditors may:
 - (i) contact the debtor about the status of insurance coverage on property securing a claim; and
 - (ii) contact the debtor about any post confirmation payment in default if a confirmed plan provides for direct payments by the debtor to creditors.
 - (B) Internal Revenue Service. The Internal Revenue Service is authorized to:
 - (i) make income tax refunds, in the ordinary course of business, directly to the debtors unless otherwise ordered by the court or otherwise instructed by the standing chapter 13 trustee;
 - (ii) offset against any refund due a debtor any taxes due the United States government pursuant to 11 U.S.C. § 553;
 - (iii) assess any tax liability satisfied by offsetting any refunds, when such liability has not been assessed previously; and
 - (iv) assess tax liabilities shown on voluntarily filed returns and other agreed-to liabilities.
- (b) **RELIEF WITH RESPECT TO SURRENDERED PROPERTY IN CHAPTER 13 CASES.** If a chapter 13 debtor's plan provides that property is to be surrendered to a secured creditor, the order confirming the plan may provide for the modification of the automatic stay and co-debtor stay with respect to the property.
- (c) **MOTION FOR RELIEF FROM AUTOMATIC STAY.**
- (1) 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 itemize, with specificity, all amounts alleged to be past due.
 - (2) If no response is filed, the motion may be granted without a hearing. If a response is filed, a debtor must comply with the requirements of Local Bankruptcy Rule 9014-1(f). Upon the debtor's request, the creditor shall immediately transmit the debtor's payment history to counsel for the debtor (or to the pro se debtor) by electronic or facsimile transmission or other expedited means.
- (d) **MOTION FOR CONTINUANCE OR IMPOSITION OF AUTOMATIC STAY.** The court may, in its discretion, rule on a motion for continuation or imposition of the automatic stay under 11 U.S.C. § 362(c)(3)(B) and § 362(c)(4)(B) without hearing if:
- (1) the debtor files a motion for continuation of the automatic stay within 5 days of the petition date;
 - (2) no objection is filed by a party in interest;
 - (3) the motion is accompanied by a notice of motion and the debtor's affidavit or unsworn declaration under 28 U.S.C. § 1746 with sufficient facts to support the motion; and
 - (4) the motion and accompanying documents are timely served on all creditors and the trustee, if one has been appointed, contemporaneous with the filing of the motion.
- (e) **STAY OF EVICTION, UNLAWFUL DETAINER OR SIMILAR ACTION**
- (1) **INITIAL CERTIFICATION.** The certification required by 11 U.S.C. § 362(l)(1)(A) shall be made and designated on Form 101A, Initial Statement About an Eviction Judgment Against You, and filed with the clerk of court.
 - (2) **FILING OF JUDGMENT.** The debtor must file a copy of the pre-petition judgment for possession of the debtor's residence together with Form 101A.

- (3) **CERTIFICATION.** The certification required by 11 U.S.C. § 362(l)(1)(B)(2) shall be made and designated on Form 101B, Statement About Payment of an Eviction Judgment Against You, and filed with the clerk of court if, within the 30-day period after filing of the petition, the debtor has complied with the requirements of 11 U.S.C. § 362 (l)(1)(A).
- (4) **DEPOSIT.** Any deposit of rent made by or on behalf of a debtor, pursuant to 11 U.S.C. § 362(l)(1)(B), shall be made in the form of a certified check or money order payable to the order of the lessor, and delivered to the clerk of court upon filing of a petition.
- (5) **TRANSMISSION TO LESSOR.** Upon the clerk's receipt of the deposit and certification tendered pursuant to 11 U.S.C. § 362(l)(1), the clerk shall transmit the certified check or money order promptly to the lessor, by certified mail, return receipt requested, to the address listed on the petition.

Rule 4001-2
SECURED CREDITOR DUTIES

- (a) A secured creditor may send all payment coupons or statements of account that the creditor provides to its non-bankruptcy customers as follows:
 - (1) To chapter 7 debtors who have indicated, in their statement of intention, their intent to retain the secured creditor's collateral by complying with the terms of the contract.
 - (2) To chapter 13 debtors who have indicated in their proposed chapter 13 plan their intent to retain the secured creditor's collateral by complying with the terms of the contract.
- (b) The transmission of the payment coupons or statements of account shall not violate the automatic stay or the debtor's discharge injunction.
- (c) If a secured creditor, in its ordinary course of business, does not provide payment coupons and statements of account, then upon request by the debtor, that secured creditor shall provide the debtor with a telephone number or other means to access account information that would normally be provided by the payment coupons or statements of account
- (d) A secured creditor shall respond promptly to a trustee or debtor's reasonable requests for account information.

Rule 4002-1
DEBTOR DUTIES

- (a) The following shall apply to individual debtors in all cases.
 - (1) **FINANCIAL INFORMATION.** Every individual debtor shall bring to the meeting of creditors under § 341 and make available to the trustee evidence of current income, including copies of all payment advices or other evidence of payment, if any, with all but the last four digits of the debtor's social security number redacted, received by the debtor from an employer within 60 days before the filing of the petition.
 - (2) **TAX RETURN.** At the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's Federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.
 - (3) The debtor's obligation to provide tax returns under Federal Bankruptcy Rules 4002(b)(3) and 4002(b)(4), and Local Bankruptcy Rule 4002-1(a)(2) and (b)(2) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts, except that with respect

to tax returns provided by the debtor under Local Bankruptcy Rule 4002-1(a)(2) and (b)(2), the trustee and bankruptcy administrator are not subject to the procedures for requesting and obtaining access to tax information established by the Director of the Administrative Office of the United States Courts.

- (b) **CHAPTER 7 DEBTOR - DUTIES.** The following shall apply in chapter 7 cases.
- (1) The chapter 7 debtor shall comply with the requirements of Local Bankruptcy Rules 1007-1 and 1007-3. regarding statements of intention.
 - (2) **TAX RETURNS AND PAYMENT ADVICES PROVIDED TO BANKRUPTCY ADMINISTRATOR.**
 - (A) No later than 14 days after the date of the filing of the petition, an individual debtor in a case under chapter 7 shall provide in electronic format to the bankruptcy administrator:
 - (i) the debtor's Federal income tax return for the most recent tax year ending immediately before the commencement of the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist; and
 - (ii) evidence of current income including copies of all payment advices or other evidence of payment, if any, with all but the last four digits of the debtor's social security number redacted, received by the debtor from an employer within 60 days before filing of the petition.
 - (B) If a debtor is proceeding without the assistance of counsel and is unable to provide in electronic format the documents required in (A) of this subsection, the debtor may provide the documents to the bankruptcy administrator by other means.
- (c) **CHAPTER 11 DEBTOR - DUTIES.** The following shall apply in chapter 11 cases.
- (1) **NOTICE OF DISPUTED, CONTINGENT OR UNLIQUIDATED CLAIMS.** The debtor shall notify each creditor whose claim is scheduled as contingent, disputed or unliquidated in compliance with the requirements of Local Bankruptcy Rule 3002-1.
 - (2) **MONTHLY REPORT.**
 - (A) Except as provided in small business cases, Federal Rules of Bankruptcy Procedure 2015(a)(6), effective December 1, 2008, the debtor shall file with the clerk monthly accountings, the first report being due within 30 days, following the end of the month in which the petition was filed or date of conversion from another chapter, and subsequent reports on or before the thirtieth day of each month thereafter.
 - (B) The debtor shall transmit a copy of all monthly reports to the bankruptcy administrator, attorney and the chair for the unsecured creditors committee. That report shall be in a format prescribed by the bankruptcy administrator.
 - (C) Monthly bank statements shall be transmitted to the bankruptcy administrator at the time the monthly report is filed with the court. However, the monthly bank statements shall not be filed with the court.
 - (3) **BOOKS OF ACCOUNT.**
 - (A) The debtor shall close the present books of account as of the close of business on the date on which the petition is filed and open new books of account and a bank account in a depository acceptable to the bankruptcy administrator and meeting the requirements of 11 U.S.C. § 345(b) with respect to amounts on deposit exceeding \$100,000.00 as of the opening of business on the next succeeding business day.
 - (B) 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.
- (C) If the debtor is authorized to use cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. § 363(c)(4).
- (4) **PROOF OF INSURANCE COVERAGE.**
- (A) The debtor shall keep the property of the debtor and the bankruptcy estate 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.
- (B) Within seven days of the filing of the petition, or date of conversion from another chapter, the debtor shall file with the bankruptcy administrator a verified statement or written evidence that workers' compensation, general liability, fire, theft and motor vehicle insurance are in full force and effect, together with all other insurance coverage ordinarily used in the debtor's operations.
- (5) **TAX ACCOUNTS.**
- (A) The debtor shall 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.
- (B) The debtor shall deposit the funds withheld or collected, together with the debtor's share of social security taxes, in a separate bank account simultaneously with the collection or withholding. The debtor shall pay from the bank account to the appropriate taxing authority the amounts due at the times and in the manner prescribed by law.
- (6) **BANKING INSTITUTION.** The debtor shall advise the bankruptcy administrator of the name of the bank to be used as the debtor's depository within 14 days of the filing of the petition or date of conversion from another chapter.
- (7) **FILING OF PLAN AND DISCLOSURE STATEMENT.** The debtor shall file a plan of reorganization and a disclosure statement within 120 days of the date of the filing of the petition commencing the case or date of conversion from another chapter, unless another deadline is set by the court.
- (8) **PHYSICAL INVENTORY.** The debtor shall procure a physical inventory, if applicable, upon the filing of the petition and file the inventory with the bankruptcy administrator within 30 days of the filing of the petition, date of conversion from another chapter, or such other time as the court may direct.
- (9) **PROJECTED OPERATING STATEMENT.** The debtor shall file with the bankruptcy administrator a projected operating statement for the next 30 days of operation under chapter 11 within 14 days of the filing of the petition commencing the case or date of conversion from another chapter. The statement must contain:
- (A) the estimated costs of operation for the next succeeding 30 days;
- (B) the estimated profit or loss for the period;
- (C) the amount of cash available for the operation;
- (D) how the debtor intends to fund the cost of operation for the next 30 days; and
- (E) any additional information that is pertinent to determine the desirability of continuing the debtor's business.
- (10) **RELATIONSHIP WITH SECURED CREDITORS AND UNSECURED CREDITORS' COMMITTEE.** The debtor shall promptly respond to reasonable inquiries of secured creditors, the unsecured creditors' committee, and any court appointed consultant.
- (11) **PAYMENT OF JUDICIAL CONFERENCE QUARTERLY FEE.** In all cases filed after April 1, 2002, the debtor shall promptly remit quarterly fees to the clerk, which fee

shall be calculated on the graduated scale as prescribed by 28 U.S.C. §1930(a)(7), based upon the total sum of all disbursements made during a calendar quarter until the case is either converted to a case under another chapter or closed. In cases in which the debtor is represented by counsel, the payment of quarterly fees shall be pursuant to General Order dated August 28, 2013 and effective September 3, 2013, entitled "Payment of Quarterly Fees via Electronic Means," which states that "attorneys representing chapter 11 debtors are required to remit quarterly fees to the clerk through pay.gov upon receipt of certified funds from the chapter 11 debtor for the purpose of paying quarterly fees."

- (12) **FILING OF AMENDED PLANS OR MODIFICATIONS TO PLANS.** The filing of an amended plan or modification to plan shall be accompanied by either a redlined copy of the plan, illustrating changes made to the last submitted plan, or by a summary or description of changes that the amended plan or modification to plan makes to the last submitted plan.
 - (13) **FILING OF FINAL INTEGRATED PLAN UPON CONFIRMATION.** Upon confirmation, the debtor shall submit with the order confirming plan a final, integrated copy of the confirmed plan, including all amendments or modifications adopted at the time of confirmation.
- (d) **CHAPTER 11 - DEBTOR PROHIBITIONS.**
- (1) **PAYMENT TO PRINCIPALS.** The chapter 11 debtor shall not compensate or remunerate any of its partners, officers, directors or shareholders in any manner, prior to confirmation of a plan of reorganization or prior to approval of the court, except as provided in the interim exception under subparagraph (d)(1)(B) herein.
 - (A) An application for approval of compensation must be signed under oath by an officer of the debtor and must set forth the following:
 - (i) the name and proposed position of the individual sought to be employed along with a detailed description of the duties the individual is to perform, the number of hours the individual will devote to those duties each week, and the reasons why the employment of the individual is necessary to the successful reorganization of the debtor;
 - (ii) the amount of compensation sought on a weekly or monthly basis and details of all perquisites, benefits and consideration of any kind the individual is to receive. Examples include use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses; and
 - (iii) the salary history of the individual to be employed for the year immediately preceding the filing of the petition. Supporting documentary evidence thereof shall be provided directly to the bankruptcy administrator.
 - (B) If the debtor has filed an application for an interim payment for post-petition services which substantially conforms to the requirements of subsection (d)(1)(A) above, the debtor may make an interim payment in an amount not to exceed the ordinary pre-petition salary or wages for a 14 day period to those individuals who were employed on the date of the filing of the bankruptcy petition, or date of conversion from another chapter, and for whom approval is being sought.
 - (C) The court may reconsider orders to compensate principals *sua sponte* or at the request of the bankruptcy administrator, any creditor or other party in interest.
 - (2) **PAYMENT OF PRE-PETITION DEBT.** The debtor shall not pay pre-petition unsecured debt including pre-petition wages without approval of the court.
- (e) **CHAPTER 12 - DEBTOR DUTIES.** The following shall apply in chapter 12 cases.

- (1) **SCHEDULES AND STATEMENTS REQUIRED.** The debtor shall comply with the requirements of Local Bankruptcy Rule 1007-1.
- (2) **MONTHLY REPORTS.** The debtor shall file with the chapter 12 trustee monthly reports, the first report being due within 30 days following the end of the month in which the petition is filed or date of conversion from another chapter. Subsequent reports are due no later than the fifteenth day of each month thereafter. The reports shall contain:
 - (A) monthly receipts from every source;
 - (B) monthly disbursements by accounting classification;
 - (C) expenses charged and not paid;
 - (D) crop inventory (if applicable);
 - (E) livestock inventory (if applicable);
 - (F) tax deposit statement (if applicable).
- (3) **BOOKS OF ACCOUNT.**
 - (A) The debtor shall close the present books of account as of the close of business on the date on which the petition is filed, or date of conversion from another chapter, and open new books of account and a bank account as of the opening of business on the next succeeding business day.
 - (B) 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.
- (4) **INSURANCE COVERAGE.** The debtor shall keep the property of the debtor and the bankruptcy estate 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.
- (5) **TAX ACCOUNTS.**
 - (A) The debtor shall 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.
 - (B) 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.
- (6) **BANKING INSTITUTION.** The debtor shall advise the of the name of the bank to be used as the debtor's depository within 14 days of the filing of the petition commencing the case under chapter 12 or date of conversion from another chapter.
- (7) **FILING OF PLAN.** The debtor shall file a plan of reorganization within 90 days of the order for relief pursuant to 11 U.S.C. § 1221.
- (8) **RELATIONSHIP WITH CREDITORS.** The debtor shall promptly respond to reasonable inquiries of creditors.
- (9) **FILING OF AMENDED PLANS OR MODIFICATIONS TO PLANS.** The filing of an amended plan or modification to plan shall be accompanied by either a redlined copy of the plan, illustrating changes made to the last submitted plan, or by a summary or description of changes that the amended plan or modification to plan makes to the last submitted plan.
- (10) **FILING OF FINAL INTEGRATED PLAN UPON CONFIRMATION.** Upon confirmation, the debtor shall submit with the order confirming plan a final, integrated

copy of the confirmed plan, including all amendments or modifications adopted at the time of confirmation.

(f) CHAPTER 12 - DEBTOR PROHIBITIONS.

(1) PAYMENTS TO PRINCIPALS. The debtor shall not compensate or remunerate any of its partners, officers, directors or shareholders in any manner, prior to confirmation of a plan of reorganization or prior approval of the court, except as provided in the interim exception under subparagraph (e)(1)(B) herein.

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

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

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

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

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

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

(2) PAYMENT OF PRE-PETITION DEBT. The debtor shall not pay pre-petition unsecured debt including pre-petition wages without approval of the court.

(g) CHAPTER 13 - DEBTOR DUTIES. The following shall apply in chapter 13 cases.

(1) SCHEDULES AND STATEMENTS REQUIRED. A debtor in a case under chapter 13 shall comply with the requirements of Local Bankruptcy Rule 1007-1.

(2) 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 as directed by the standing chapter 13 trustee.

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

(4) DISPOSITION OF PROPERTY. The debtor shall not dispose of any non-exempt property having a fair market value of more than \$5,000 by sale or otherwise without prior approval of the trustee and an order of the court.

(5) OBTAINING CREDIT. The debtor shall not purchase additional property or incur additional debt of \$7,500 or more without prior approval from the court. The debtor must give notice of the application to purchase additional property or to incur additional debt

to the chapter 13 trustee, who must respond within fourteen days of receipt of the notice. If no objection is filed, the court may approve the application without a hearing.

- (6) **ADEQUATE PROTECTION.** When a case is dismissed prior to confirmation, the court may require the debtor to provide adequate protection to one or more secured creditors by directing that the chapter 13 trustee make adequate protection payments from funds received under paragraph (g)(2) (Payments Under Plan) of this rule.
- (7) **INSURANCE COVERAGE.**
 - (A) The debtor shall keep the property of the debtor and the bankruptcy estate 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.
 - (B) The debtor shall ensure that any vehicle, if it is property of the debtor or property of the estate and is required by a security agreement, lease or other similar agreement to be covered by collision insurance, is not driven, unless the vehicle is so covered.

NOTE

Local Bankruptcy Rule 4002-1(a)(1) is consistent with Rule 4002(b)(2)(A) of the Federal Rules of Bankruptcy Procedure and reflects the preference of the district's trustees to receive payment advices and other evidence of payment at the section 341 meeting of creditors.

The requirements of Local Bankruptcy Rule 4002-1(a)(2) are different from Bankruptcy Code section 521(e)(2)(A) and Rule 4002(b)(3) of the Federal Rules of Bankruptcy Procedure. Local Bankruptcy Rule 4002-1(a)(2)(B) is consistent with the preference of the district's trustees to receive tax returns at the section 341 meeting.

Local Bankruptcy Rule 4002-1(a)(3) provides an exception, with respect to the procedures for requesting and obtaining tax information by the trustee and bankruptcy administrator, to the procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States.

Local Bankruptcy Rule 4002-1(b)(2) requires that no later than 14 days after the filing of the petition, an individual debtor in a case under chapter 7 must provide, in electronic format, the debtor's Federal income tax return and payment advices or other evidence of payment. A pro se debtor may provide the information by any other reasonable means. The Rule is consistent with the preference of the bankruptcy administrator.

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). If the debtor is entitled to claim exemptions under North Carolina law the debtor shall use the local form, Schedule C-1, Property Claimed as Exempt. If the debtor is entitled to claim exemptions under Federal bankruptcy law or the law of a State other than North Carolina the debtor shall use the local form, Schedule C-2, Property Claimed as Exempt.
- (b) **EXTENSION OF TIME FOR OBJECTIONS TO EXEMPTIONS.** The court may grant any party in interest an extension of time for objecting to the debtor's claim of exempt property. The

request for extension shall be by motion which must contain the reasons for requesting the extension. The motion must be filed before the time for objecting expires.

- (c) **CLAIMING EXEMPTIONS UNDER LAW OTHER THAN THAT OF NORTH CAROLINA.** Any claim of exemptions under Federal bankruptcy law or the law of a State other than North Carolina requires the debtor to use the local form, Schedule C-2, Property Claimed as Exempt. As required by that local form, the debtor shall provide the specific constitutional, statutory, or case law citation supporting each claim of exemption and shall specify the exact dates and addresses of the debtor's domicile(s) during the 730 days preceding the date of the filing of the bankruptcy petition.

RULE 4008-1 REAFFIRMATION AGREEMENTS

(a) **OBLIGATIONS OF COUNSEL.**

- (1) Counsel of record for the debtor is required to provide the following services to the debtor with respect to a reaffirmation agreement:
- (A) counseling the debtor with regard to 11 U.S.C. §§ 521(a)(2) and 524(c); and
 - (B) working with the debtor to complete the reaffirmation agreement.
- (2) Counsel of record for the debtor should exercise professional judgment with respect to:
- (A) the form of assistance of any negotiations with the creditor;
 - (B) which Part C certifications counsel will make; and
 - (C) whether to appear at any hearing on the reaffirmation agreement.

(b) **CERTIFICATIONS SET FORTH IN PART C OF THE REAFFIRMATION AGREEMENT.**

- (1) Counsel is expected in all cases to make the following certification: "I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement."
- (2) Counsel may cross out or alter any of the other certifications set forth in Part C consistent with counsel's professional judgment.

(c) **HEARINGS ON REAFFIRMATION AGREEMENTS.**

- (1) If the debtor is not represented by counsel, a hearing on the reaffirmation agreement will be held.
- (2) If the debtor is represented by counsel, the following will apply:
- (A) If the creditor is a credit union, and counsel for the debtor executes Part C of the reaffirmation agreement as required by subsection (b) above and certifies that the agreement represents a fully informed and voluntary agreement by the debtor, the court will not hold a hearing.
 - (B) If the creditor is not a credit union, and counsel for the debtor executes Part C of the reaffirmation agreement and makes all of the certifications set forth in 11 U.S.C. § 524(c)(3), the court will review the agreement pursuant to 11 U.S.C. § 524(m) and will hold a hearing if the court determines that a hearing is appropriate.
 - (C) If the creditor is not a credit union, and counsel for the debtor executes Part C of the reaffirmation agreement but does not make all of the certifications set forth in 11 U.S.C. § 524(c)(3), the court will not hold a hearing on approval of the reaffirmation agreement.

- (d) **OTHER DEFICIENCIES.** If the reaffirmation agreement is not signed by both the creditor and the debtor, the reaffirmation agreement is entered into after the discharge, or material information

is omitted from any section other than Part C of the reaffirmation agreement, the court may enter an order denying approval of the reaffirmation agreement without notice or a hearing.

- (e) For purposes of this local rule and for this court's interpretation of reaffirmation agreements, the following Parts of Director's Procedural Form 2400A are determined to correspond with Parts A, B, C, and D as set forth in 11 U.S.C. § 524(k) as follows:

Part I	Part A
Part II	Part D
Part III	Part B
Part IV	Part C
Part V	Part A

Director's Procedural Form 2400B directly corresponds with Part E as set forth in 11 U.S.C. § 524(k).

PART V
COURTS AND CLERKS

Rule 5001-2
CLERK - OFFICE LOCATION AND HOURS

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

Rule 5003-1
CLERK - GENERAL AUTHORITY

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

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

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

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

Rule 5005-1
FILING PAPER DOCUMENTS - REQUIREMENTS

- (a) **PAPER DOCUMENTS FILED WITH THE CLERK.** All paper documents filed by pro se individuals and attorneys who have been granted an exemption from electronic filing, including proofs of claim, pleadings, and proposed orders shall be tendered to the clerk of court rather than directly to the judge, unless otherwise specifically directed.
 - (1) The clerk may require filing by facsimile pursuant to Rule 5005-1(b) in lieu of paper filing if the clerk deems it appropriate for the safety or security of the court. The clerk will maintain a record of any attempted paper filings and, if the facsimile filing is received within 24 hours of the attempted paper filing, the filing will be effective as of the date and time of the attempted paper filing.

- (b) **FILING BY FACSIMILE.**
 - (1) **FILING.** Pro se individuals and attorneys who have been granted an exemption from electronic filing may file the following paper documents 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 paper 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.
- (c) **PAPER EXHIBITS OR ATTACHMENTS CONTAINING EXCERPTED MATERIAL.** Any exhibit or attachment to any paper document filed under these rules must contain only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. A party filing excerpts of documents as exhibits or attachments under this rule may supplement the excerpt without prejudice to timely file additional excerpts or the complete document. Responding parties likewise may timely file excerpts or the complete document to the extent that the excerpts or document are directly germane to the matter under consideration. Upon request by any party in interest or the court, the complete document containing any such excerpt shall be made available to both the party making the request and the court, unless otherwise ordered.

Rule 5005-2
FILING PAPER DOCUMENTS - NUMBER OF COPIES

Any person requesting file stamped copies of paper documents filed in accordance with Local Bankruptcy Rule 5005-1 above must submit a copy, together with a stamped, self-addressed envelope.

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

- (a) **PAPER SIZE.** The Judicial Conference of the United States has adopted 8½ x 11 inch letter size paper as the standard for use throughout the federal judiciary. All documents and other papers submitted to this court must conform to this standard.
- (b) **ATTACHMENTS.** Any attachments to a document which are necessary to an understanding of the matters set forth in the document must conform to the standard paper size unless advance permission is sought to submit oversized materials.
- (c) **TWO-SIDED DOCUMENTS.** No document submitted to the court shall have text on both sides of the paper.

Rule 5005-4
ELECTRONIC CASE FILING

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

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

- (a) ASSIGNMENT. All cases are assigned to the Electronic Case Filing System ("ECF System").
- (b) FILING. All petitions, motions, memoranda of law, and other pleadings or documents required to be filed with the court in connection with the case must be electronically filed.
- (c) APPLICATION FOR EXCEPTION/EXEMPTION. Any document required to be filed electronically, but presented in paper form, shall be accompanied by an application for an exception or exemption from this rule and a proposed order granting the relief sought. The application shall state the reason(s) why electronic filing would impose an extreme hardship on the applicant.
- (d) EXEMPTION FROM ELECTRONIC FILING REQUIREMENT. Notwithstanding the foregoing, pro se individuals and other parties who have been granted an exception or exemption from electronic filing are not required to electronically file pleadings and other documents in cases assigned to the ECF System, but are required to comply with Local Bankruptcy Rules 5005-2 and 5005-3 above.

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

- (a) ELIGIBILITY AND REGISTRATION. Attorneys admitted to the bar of this court, the bankruptcy administrator, private trustees, and others as the court deems appropriate, may register as Filing Users or Filing Agents of the court's Electronic Case Filing System. Registration is in the form prescribed by and available from the clerk. The registration forms are published on the court's web site www.nceb.uscourts.gov.
- (b) FILING AGENT. All references within these rules to filings made by the Filing User shall likewise refer to filings made by a Filing Agent on behalf of the Filing User.
- (c) ELECTRONIC NOTICE AND SERVICE; WAIVERS. As to all documents properly filed and served electronically, registration as a Filing User constitutes (1) a waiver of the right to receive notice or service by first class mail or personal delivery; and (2) consent to electronic service pursuant to Local Bankruptcy Rule 5005-4(9), except with regard to service of a summons and complaint under Rule 7004 of the Federal Rules of Bankruptcy Procedure, a motion initiating a contested matter under Rule 9014 of the Federal Rules of Bankruptcy Procedure, and with regard to any other applicable rule or statute pursuant to which service by mail is not permitted. Waiver and consent pursuant to this subsection (c) applies to notice of the entry of an order or judgment under Rule 9022 of the Federal Rules of Bankruptcy Procedure.

Rule 5005-4(3)
CONSEQUENCES OF ELECTRONIC FILING; DEADLINES

- (a) FILING. Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the clerk, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this court, and constitutes entry of the document on the docket kept by the clerk under Rule 5003 of the Federal Rules of Bankruptcy Procedure.
- (b) OFFICIAL RECORD. When a document has been filed electronically or imaged by the court, the official record is the electronic recording of the document as stored by the clerk, and the filing

party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.

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

Rule 5005-4(4)
ENTRY OF COURT ORDERS;
ISSUANCE OF ELECTRONIC SUMMONS

- (a) **FILING OF COURT ORDERS; EFFECT OF ELECTRONIC FILING ON COURT ORDERS.** All orders or other documents generated by the court and filed electronically, with the electronic 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.
- (b) **SUBMISSION OF DOCUMENTS FOR JUDGE'S SIGNATURE.** Any document submitted for a judge's signature in a case assigned to the ECF System must be submitted electronically to the clerk's office in the format specified by the Administrative Guide to Practice and Procedure.
- (c) **ISSUANCE OF ELECTRONIC SUMMONS.** The clerk may sign, seal, and issue a summons electronically, although a summons may not be served electronically.

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

- (a) All documents filed electronically within the ECF System are subject to the same rules pertaining to format as documents filed in paper form, including but not limited to Local Bankruptcy Rule 5005-3, and in the Administrative Guide to Practice and Procedure.
- (b) Filing Users must submit, in electronic form, all documents referenced as exhibits or attachments as provided in Local Bankruptcy Rule 5005-1(c), unless the court permits paper filing pursuant to Local Bankruptcy Rules 5005-1, 5005-2 and 5005-3. Excerpted material must be clearly and prominently identified as such.

Rule 5005-4(6)
SEALED DOCUMENTS

- (a) Prior to the filing of any document in an action assigned to the ECF system, any person may apply by motion for an order allowing the filing of such document under seal, or limiting the electronic access to, any specifically-identified document, as provided by 11 U.S.C. § 107 or as authorized by law.
- (b) A motion to file a document under seal or subject to restricted access may be filed electronically. Contemporaneously with the filing of such a motion, a proposed order authorizing the filing of a document under seal or subject to restricted access shall also be uploaded electronically. A copy of the document requested to be filed under seal or subject to restricted access shall be attached to the uploaded order unless the document was previously filed with the court.
- (c) After entry of an order authorizing the filing of the document under seal or subject to restricted access, the clerk's office shall then proceed to electronically file the document in question such that the clerk's office may immediately remove it from public access.

Rule 5005-4(7)

ORIGINAL SIGNATURES AND RETENTION REQUIREMENTS

- (a) A Filing User must obtain original signatures prior to filing on all electronically filed documents that require original signatures from any person other than the Filing User (e.g., petitions, lists, schedules, statements, amendments, affidavits, verifications, and other documents that require verification under Fed. R. Bankr. P. 1008 or an unsworn declaration as provided in 28 U.S.C. § 1746), which documents 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.
- (b) Except as provided above when original signatures are required on a document, a Filing User may electronically file documents (including the submission of proposed consent orders) signed by persons other than the Filing User without obtaining the original signature of such persons on the document, provided that the Filing User first has confirmed that the content of the document is acceptable to all persons required to sign the document and has obtained in writing proof that the document has been signed, or that each signature is authorized, by all persons (e.g., a faxed signature, scanned signature, or e-mail authorized signature). The Filing User shall retain the writing evidencing or authorizing each signature on the document 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 writing(s) evidencing or authorizing the signature(s) on the document for review.

Rule 5005-4(8)

SIGNATURES AND CERTIFICATION

- (a) **ELECTRONIC FILING CONSTITUTES SIGNATURE AND CERTIFICATION.** The use of the login and password of the Filing User, or of a Filing Agent registered to file on behalf of the Filing User, to electronically file any petition, pleading, motion, claim, or other document shall constitute the signature of that Filing User on the electronically filed document for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, the Local Bankruptcy Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the login and password of the Filing User, or of a Filing Agent registered to file on behalf of the Filing User, also shall constitute certification by the Filing User that: (1) all persons indicated to have signed the document have actually executed the original or a copy of the original, or have approved the content of and authorized their signature on the document, 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 or a Filing Agent's password to be used by anyone other than an agent of the Filing User authorized to use such login and password.

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

- (a) CERTIFICATE OF SERVICE REQUIRED. A Filing User who electronically files a pleading or other document in a case assigned to the ECF System must include a certificate of service indicating how service was made.
- (b) SERVICE OF NOTICE OF ELECTRONIC FILING TO FILING USERS. Service of an electronically filed document on other Filing Users may be made by transmitting or causing transmission of a "Notice of Electronic Filing" to those other Filing Users. Electronic service of process is not effective for purposes of obtaining service of process under Rules 7001 or 9014, Federal Rules of Bankruptcy Procedure.
- (c) CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES. Parties who are entitled to service of a document but who have not consented to electronic service must be served with a paper copy of the document in compliance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules.
- (d) CALCULATION OF RESPONSE TIME. Rule 9006(f) of the Federal Rules of Bankruptcy Procedure applies to the calculation of deadlines for responses to electronically filed pleadings and other documents.

Rule 5005-4(10)
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(11)
LIMITATION ON PUBLIC ACCESS

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

Rule 5005-4(12)
FILING PAPERS AFTER HOURS

- (a) AFTER HOURS FILINGS. Except as otherwise authorized by the Court, non-ECF filers may file petitions and other papers outside of normal business hours by email or facsimile pursuant to the provisions of this Local Rule.
- (b) TIME AND MANNER OF FILING. Papers may be filed by email to NCEBml_EmergencyFiling@nceb.uscourts.gov or by facsimile to 919-334-3855 when the clerk's office is not open. The email or facsimile shall contain only the first page and the signature page of the document.
- (c) FILING OF ORIGINAL DOCUMENT. The entire original paper document, together with any required filing fee, must be filed in person and time-stamped by the clerk no later than 4:30 p.m. Eastern Time on the next business day that the clerk's office is open after the email or facsimile filing.

- (d) **CLERK’S OFFICE PROCEDURES CONCERNING EMAILED DOCUMENTS.** If the original document is not timely filed after the email or facsimile transmittal pursuant to subsection (c) above, the clerk will note that fact on the docket and the emailed or faxed document will have no force or effect. The clerk’s office will not acknowledge the filing of a document or assign a case number or adversary proceeding number to a document unless the original is timely filed pursuant to the provisions of subsection (c) of this rule. Upon timely receipt of the original document and any required fee, the clerk will stamp the following notation on the document: “This document is deemed filed on (date) pursuant to L.B.R. 5005-4(12), ‘Filing Papers After Hours.’” Documents filed in accordance with this rule will be deemed filed on the date and at the time the email addressed to NCEBml_EmergencyFiling@nceb.uscourts.gov or facsimile sent to 919-334-3855 is received.

PART VI
COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6004-1
SALE OF ESTATE PROPERTY

Following a public sale, the trustee shall file a report of sale and serve the report on the debtor and the bankruptcy administrator. The report shall include an itemized statement of the property sold, list of bidders, the name of each purchaser, and the price received for each item or lot or for the property as a whole, if sold in bulk, and shall state the date, time, and place of the sale. The report shall include a calculation of compensation allowable under the order of employment and copies of the sale advertisement along with a summary listing of all advertising expenses, sign expenses, shipping costs and postage expenses.

Rule 6005-1
APPRAISERS AND AUCTIONEERS

- (a) **EMPLOYMENT OF AUCTIONEER.** Unless otherwise ordered by the court, an auctioneer shall be paid pursuant to the scale provided in the Administrative Guide. Ordinary expenses of the sale shall be included in the commission scale, and other expenses may be reimbursed as allowed by the court.
- (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 subsection (a) above must have been employed as an auctioneer in a chapter 7 case in this district, by order of this court, within the prior 12 months;
 - (2) the auctioneer must be licensed and in good standing with the North Carolina Auctioneer's Commission consistent with North Carolina General Statute §§ 85B-3 and 4;
 - (3) the auctioneer must execute and deliver to the trustee the same affidavit that would be required in support of an application for employment of auctioneer otherwise filed with the court;
 - (4) the auctioneer must not have been censured or suspended; and
 - (5) the affidavit executed by the auctioneer must affirmatively set out compliance with the conditions of subsections (2) and (4) above. The trustee shall be entitled to rely on the truth and accuracy of the affidavit submitted by the auctioneer.
- (c) **REPORT BY TRUSTEE.** The trustee shall prepare a report of sale that discloses fees paid to the auctioneer, and the report shall be accompanied by the auctioneer's affidavit. The trustee must file the report of sale with the clerk and serve copies on the bankruptcy administrator.
- (d) **REPORT BY AUCTIONEER.** An auctioneer employed to conduct a sale on behalf of the bankruptcy estate must file a report of sale following the conclusion of any sale within the time and in the format as prescribed by the bankruptcy administrator.

Rule 6070-1
TAX RETURNS AND TAX REFUNDS

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

PART VII
ADVERSARY PROCEEDINGS

Rule 7005-1
SERVING AND FILING PLEADINGS AND OTHER PAPERS

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

Rule 7007-1
MOTION PRACTICE IN ADVERSARY PROCEEDINGS

- (a) GENERAL REQUIREMENTS. All motions shall state with particularity the facts supporting the motion and shall state the relief requested. All motions, except those seeking a shortening or extension of any time period, shall be filed with an accompanying memorandum.
- (b) RESPONSES TO MOTIONS. Any party may file a written response to any motion within 21 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 21 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 consent 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 the amount of time needed for discovery;
 - (F) the timing and form of disclosures under Rule 26(a)(1) of the Federal Rules of Civil Procedure, including a statement of when disclosures under (a)(1) were made or should be made;
 - (G) changes that should be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure;

- (H) whether use of expert witnesses is contemplated, and if so, whether and when the disclosure of expert information as required by Rule 26(a)(2) of the Federal Rules of Civil Procedure should be required;
 - (I) if a jury demand has been made, whether the parties consent to a jury trial in the bankruptcy court;
 - (J) whether the parties have engaged in settlement discussions;
 - (K) whether the parties have considered voluntary or court ordered mediation and/or arbitration;
 - (L) the need for additional pretrial conferences;
 - (M) whether there are witnesses whose testimony could be accommodated at deposition or trial by video conferencing, and if so, what stipulations can be made regarding the appearance of witnesses by video conferencing.
- (3) **PRELIMINARY PRETRIAL CONFERENCE REPORT.** At least seven days prior to the preliminary pretrial conference, counsel shall file with the clerk of court a joint report containing information concerning all the items to be discussed at the preliminary pretrial conference.
- (4) **DISCLOSURES.** Unless counsel agree to disclosures at an earlier date, disclosures required to be made by Rule 26(a) and (b), Federal Rules of Civil Procedure, shall be made at the time and under the circumstances directed by the court in the scheduling order entered after receipt of the preliminary pretrial conference report.
- (b) **FINAL PRETRIAL CONFERENCE**
- (1) **SCHEDULING AND NOTICE.** A final pretrial conference may be scheduled at the discretion of the court. The clerk of court shall give at least 30 days notice of the conference.
 - (2) **PREPARATION BY COUNSEL FOR FINAL PRETRIAL CONFERENCE.** At least 14 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 14 days prior to the scheduled trial. It is the duty of counsel for the plaintiff to arrange this conference. The conference of attorneys shall be held in a mutually agreeable location or may be conducted by telephone conference. Each counsel must bring to the conference or be responsible for the exchange of copies of exhibits to be introduced into evidence, lists of witnesses to be called and designations of discovery material to be used at the trial. The disclosure of witnesses and exhibits under this section supersedes the requirements of timing and format otherwise required by Rule 26(a)(3), Federal Rules of Civil Procedure.
- (c) **PRETRIAL ORDER.** The pretrial order shall be prepared in one sequential document without reference to attached exhibits or schedules and shall contain the following in five separate sections, numbered by Roman numerals, as indicated:
- (1) **I. STIPULATIONS.** Stipulations covering jurisdiction, joinder, capacity of the parties, all relevant and material facts, legal issues and factual issues.
 - (2) **II. CONTENTIONS.** Contentions covering matters on which the parties have been unable to stipulate, including jurisdiction, misjoinder, capacity of the parties, relevant and material facts, legal issues and factual issues. Claims and defenses as to which no contentions are listed in the pretrial order are deemed abandoned.
 - (3) **III. EXHIBITS.** A list of exhibits that each party may offer at trial, including any map or diagram, numbered sequentially, which numbers shall remain the same throughout all further proceedings. Copies of all exhibits shall be provided to opposing counsel not later than the attorney conference provided for in Local Bankruptcy Rule 7016-1(b)(2). The court may excuse the copying of large maps or other exhibits. Except as otherwise

indicated in the pretrial order, it will be deemed that all parties stipulate that all exhibits are authentic and may be admitted into evidence without further identification or proof. Grounds for objection as to authenticity or admissibility must be set forth in the pretrial order.

- (4) IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS. The designation of all portions of pleadings and discovery materials, including depositions, interrogatories and requests for admissions that each party may offer at trial by reference to document, volume, page, and line. Objections by opposing counsel must be noted by document, volume, page and line, and reasons for objections must be stated.
- (5) V. WITNESSES. A list of the names and addresses of all witnesses each party may offer at trial, together with a brief statement of what counsel proposes to establish by their testimony.

A pretrial order should be submitted in detail sufficient to comply with these rules. A sample pretrial order is in the Administrative Guide to Practice and Procedure.

(d) PRETRIAL CONFERENCE.

- (1) The purpose of the pretrial conference is to resolve any disputes concerning the contents of the pretrial order. At the pretrial conference, counsel should be prepared to present to the court all information and documentation necessary for completion of the pretrial order. Failure to do so shall result in the sanctions provided by this rule.
- (2) Rule 16(f) of the Federal Rules of Civil Procedure, which provides for sanctions if a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, is applicable to adversary proceedings pursuant to Rule 7016, Federal Rules of Bankruptcy Procedure.

Rule 7016-2
TRIALS

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

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

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

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

(c) EXHIBITS.

- (1) All exhibits shall be pre-marked with stickers with sequential numbers as listed in the pretrial order.
- (2) Copies of all exhibits, properly bound, shall be provided to the court at the beginning of the trial.
- (3) The original exhibit shall bear a sticker. After receipt into evidence, it shall remain in the custody of the courtroom deputy except when being used by a witness.

- (4) Copies of all exhibits shall bear the photocopy of the sticker or a typed or printed reproduction thereof.
- (5) Upon presentation of an exhibit to a witness, counsel shall announce to the court the exhibit number.
- (d) CLOSING ARGUMENT. The court will set the times for closing argument after consultation with parties. Unless otherwise ordered by the court, the party with the burden of proof shall open and close the arguments.

Rule 7026-1
DISCOVERY - GENERAL

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

Rule 7055-1
DISMISSAL OF ACTIONS FOR LACK OF PROSECUTION

- (a) Except where a complaint objecting to a discharge has been filed, an adversary proceeding may be dismissed by the court for lack of prosecution as follows:
 - (1) where no service of process has been made and certified to the court within 30 days after the filing of the complaint; or
 - (2) where no responsive pleadings have been filed and plaintiff has not moved for entry of default within 30 days after the time for filing responsive pleadings has expired.
- (b) Dismissal under this local bankruptcy rule shall be without prejudice unless the delay has resulted in prejudice to an opposing party.

RULE 7065-1
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

- (a) Prior to submitting a motion for a temporary restraining order or for a preliminary injunction, an adversary proceeding shall be filed seeking such relief.
- (b) A motion for a temporary restraining order or for a preliminary injunction shall be made in a document separate from the complaint and shall be accompanied by:
 - (1) a proposed temporary restraining order or preliminary injunction; and
 - (2) a declaration or affidavit by the moving party or counsel for the moving party showing compliance with Rule 7065, Federal Rules of Bankruptcy Procedure, regarding notice to opposing parties.

PART VIII
APPEALS TO DISTRICT COURT
[RESERVED]

PART IX
GENERAL PROVISIONS

Rule 9004-2
CAPTION - DOCUMENTS, GENERAL

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

RULE 9006-1
TIME PERIODS - MOTION FOR EXTENSION OF TIME

MOTIONS FOR AN EXTENSION OF TIME TO PERFORM ACT. All motions for an extension of time to perform an act required or allowed to be done within a specified time must show cause and indicate whether there is consent of other affected parties to the motion, including the bankruptcy administrator in chapter 11 matters.

Rule 9007-1
DESIGNATION OF PARTIES TO PROVIDE NOTICE

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

RULE 9009-1
FORMS

Local forms are available on the court's website at www.nceb.uscourts.gov.

Rule 9011-1
ATTORNEYS - DUTIES

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

Rule 9011-3
SANCTIONS

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

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

Rule 9011-4
SIGNATURES

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

Rule 9013-1
SERVICE OF MOTIONS

- (a) **SERVICE ON TRUSTEE AND ATTORNEY FOR DEBTOR IN POSSESSION.** In addition to the parties affected by the pleading, all filings (except claims) in all proceedings and cases must be served on the trustee whether or not the trustee is a party to the proceeding. In chapter 11 cases, the attorney for the debtor in possession must be served in like manner.
- (b) **SERVICE ON BANKRUPTCY ADMINISTRATOR.** In chapter 11 cases, all filings (except claims) must be served on the bankruptcy administrator. In chapter 7 cases, all pleadings filed by the chapter 7 trustee, or filed in response to a pleading filed by the trustee, must be served on the bankruptcy administrator.

RULE 9013-2
BRIEFS AND MEMORANDA OF LAW

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

RULE 9013-3
CERTIFICATE OF SERVICE

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

Rule 9014-1
CONTESTED MATTERS – GENERAL

- (a) **REQUIREMENTS OF MOTION.** A motion shall be accompanied by all exhibits and attachments referred to in the motion, together with a notice of motion and certificate of service, and filed with a proposed order pursuant to Local Bankruptcy Rule 9072-1. The notice of motion shall give notice of the filing of the motion, allow for a specific response time to the motion and shall conform substantially to the notice of motion in the local forms. A response to a motion does not require a notice of motion or an accompanying proposed order.

- (b) **CONTENT OF MOTIONS.** Motions seeking relief other than as to the debtor or the trustee must recite the name and address of the party against whom relief is sought.
- (c) **TIME FOR RESPONSE.** A response and accompanying affidavits, if any, to any motion shall be filed within 14 days from the date of the service of the motion, unless otherwise ordered or provided in the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.
- (d) **SERVICE OF MOTION.** The moving party shall serve the notice of the motion together with the motion and all exhibits and attachments (unless service of the motion itself is not required) in the manner prescribed in Rule 9014, Federal Rules of Bankruptcy Procedure, and Local Bankruptcy Rule 9013-1.
- (e) **RESPONSE.** Any party against whom relief is sought may file a written response to the motion. The response may be accompanied by affidavits and other supporting documents and shall be served on all interested parties.
- (f) **CONTENT OF RESPONSE.** All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. If a response is not in compliance with this provision, the court in its discretion may resolve the matter without a hearing.
- (g) **HEARING ON MOTION.** Unless a hearing is requested in the motion or in the response, motions may be determined without a hearing. A hearing on a motion may be ordered by the court in its discretion.
- (h) **SCHEDULING ORDER.** If requested by a party, the court may enter a scheduling order.
- (i) **EVIDENTIARY HEARINGS.** Evidentiary hearings, at which witnesses may testify, will be held in contested matters at the first appearance before the court, unless otherwise ordered.
- (j) **FRIVOLOUS OR DELAYING MOTIONS.** Where the court finds that a motion is frivolous or filed for delay, costs may be assessed against the party or counsel filing the motion. Any party filing a request for a hearing shall appear at the hearing set by the court in support of the request or costs may be assessed.

Rule 9014-2
CONTESTED MATTERS – EXPEDITED

- (a) **APPLICABILITY.** This rule is applicable to any motion in which a hearing or the entry of an order is requested with less than 14 days notice.
- (b) **PROCEDURE.**
 - (1) Any request for a shortened notice time and expedited hearing shall be filed as a separate motion.
 - (2) The motion for which shortened notice time is requested shall be filed contemporaneously with the filing of the motion for shortened notice.
 - (3) The movant shall contact the clerk's office by email to inform that the motion has been filed so that the motion may be immediately referred to the judge.
- (c) **SERVICE OF MOTION AND NOTICE OF HEARING.**
 - (1) **MOTION.** The moving party shall immediately serve a copy of the motion to shorten time and the motion upon which expedited relief is requested by hand delivery, overnight delivery, facsimile or electronic transmission.
 - (2) **NOTICE OF MOTION.** Immediately upon receipt of the order on the motion to shorten time, the movant shall file a notice of motion consistent with the order indicating the response due date, and notice of hearing, if applicable, and shall serve the notice upon the parties in the manner prescribed in subparagraph (c)(1) above.
 - (3) In instances where service of the notice of motion may not provide sufficient time for parties in interest to respond or appear, counsel shall telephonically provide notice.

- (4) A certificate of service indicating the manner of service shall be filed immediately upon completion of service.

Rule 9019-1
SETTLEMENTS AND AGREED ORDERS

Unless additional time is granted by the court, parties to a settlement shall submit a consent order within 21 days of the notification to the court that the settlement has been reached.

Rule 9019-2
MEDIATED SETTLEMENT CONFERENCE

The court may require parties and their representatives to attend a pretrial mediated settlement conference in any adversary proceeding or contested matter pending in the court.

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

- (a) **TIMING OF THE ORDER.** The court may issue the order at any time.
- (b) **CONTENT OF ORDER.** The court's order shall:
- (1) require that a mediated settlement conference be held in the case;
 - (2) establish a deadline for the completion of the conference;
 - (3) state clearly that the parties have the right to select their own mediator as provided by Local Bankruptcy Rule 9019-2(2);
 - (4) state the rate of compensation of the court appointed mediator in the event that the parties do not exercise their right to select a mediator pursuant to Local Bankruptcy Rule 9019-2(2); and
 - (5) state that the parties shall be required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the court.
- (c) **MOTION TO DISPENSE WITH MEDIATED SETTLEMENT CONFERENCE.** A party may move the court, within 14 days after entry of the court's order, to dispense with the conference. The motion shall state the reasons the relief is sought. Any party may file a written objection specifically stating the reasons for opposing the motion.
- (d) **MOTION FOR COURT ORDERED MEDIATED SETTLEMENT CONFERENCE.** In cases not ordered to mediated settlement conference, any party may move the court to order such a conference. The motion shall state the reasons why the order should be allowed. Objections may be filed in writing with the court within 14 days after the date of the service of the motion.
- (e) **MEDIATED SETTLEMENT CONFERENCE IS NOT TO DELAY OTHER PROCEEDINGS.** The mediated settlement conference shall not delay 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 court.

Rule 9019-2(2)
SELECTION OF MEDIATOR

- (a) **SELECTION OF MEDIATOR BY AGREEMENT OF PARTIES.** The parties appearing of record may select a mediator. The plaintiff (or movant in a contested matter) shall file with the court a notice indicating the selection of a mediator by agreement within 14 days of the court's order requiring mediation. This notice shall state the name, address and telephone number of the mediator selected; 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. Mediators must, prior to service, agree to be bound by all provisions of these rules, including submission to the jurisdiction of this court for disciplinary purposes, and, if not certified by the North Carolina Dispute Resolution Commission, to be bound by the North Carolina Standards of Professional Conduct for Mediators. Mediators shall be deemed to have given the required agreement by undertaking any action as mediator in the case to which he or she has been assigned.
- (b) **APPOINTMENT OF MEDIATOR BY THE COURT.** If the parties cannot agree upon the selection of a mediator, the plaintiff (or movant in a contested matter) shall submit a motion for court appointment of mediator. The motion must be filed within 14 days after the court's order requiring mediation and shall state that the parties and their attorneys discussed the selection of a mediator and are unable to agree.
- (c) **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 court and the parties.

Rule 9019-2(3)
MEDIATED SETTLEMENT CONFERENCE LOCATION AND TIME

- (a) **LOCATION OF CONFERENCE.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the United States Bankruptcy Courthouse or other public or community building in the Eastern District. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- (b) **TIME OF CONFERENCE.** The court's order issued pursuant to Local Bankruptcy Rule 9019-2(1) shall state a date of completion for the conference. As a guiding principle, the conference should be held after the parties have had a reasonable time to conduct discovery but well in advance of the trial date.
- (c) **REQUEST TO EXTEND DATE OF COMPLETION.** A party, or the mediator, may request the judge to extend the deadline for completion of the conference. The request shall state the reasons the continuance is sought and shall be served by the movant upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the judge. The judge may grant the request and enter an order setting a new date for the completion of the conference, which date may be set at any time prior to trial. The order shall be served on all parties and on the mediator by the person who sought the extension.
- (d) **RECESSES.** The mediator may recess the conference at any time and may set times for reconvening. No further notification is required for persons present at the recessed conference.

Rule 9019-2(4)

DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS

- (a) **ATTENDANCE.** The following persons shall physically attend the entire mediated settlement conference until an agreement is reduced to writing and signed as provided by subsection (c) of this rule or an impasse has been declared, unless excused by the court or by the mediator with approval of all parties and attorneys.
 - (1) **PARTIES.**
 - (A) all individual parties;
 - (B) any party that is not a natural person or a governmental entity, represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action; and
 - (C) any party that is a governmental entity, represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.
 - (2) **INSURANCE COMPANY REPRESENTATIVES.** A representative of each insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each carrier shall be represented at the conference by an officer, employee, or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of the carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have decision-making authority.
 - (3) **ATTORNEYS.** At least one counsel of record for each party or other participant whose counsel has appeared in the action.
- (b) **NOTIFYING LIEN HOLDERS.** Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify the lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request the lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.
- (c) **FINALIZING AGREEMENT.** Upon reaching agreement, either before or during the mediation conference, the settlement shall be immediately reduced to writing and signed by the parties, their counsel, and others with settlement authority.
- (d) **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.
- (e) **PARTY UNABLE TO AFFORD.**
 - (1) **MOTION.** Any party may move the court for a finding that it is unable to pay the costs of the mediation. If the court determines that the party to a matter referred for mediation is unable to pay its share of the costs of the mediation, the court may waive those fees for a particular party or reallocate the waived fees to the other parties.
 - (2) **DEFERRAL.** The court may defer ruling on such a motion until the mediation is completed or, if the mediation is unsuccessful, until after the matter is tried, at which time the court shall consider the outcome of the action, including whether a judgment was

rendered in the movant's favor and whether the movant can pay fees in installments or through a bankruptcy plan.

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

- (a) If any person required to attend the conference pursuant to Local Bankruptcy Rule 9019-2(4) fails to attend without good cause, the court may impose an appropriate monetary sanction, including but not limited to, the payment of fines, attorneys fees, mediator fees, expenses and losses of earnings incurred by persons attending the conference.
- (b) A party seeking sanctions against another party or person shall do so in a written motion stating the grounds for the motion and the relief sought.

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

- (a) **AUTHORITY OF MEDIATOR.**
 - (1) **CONTROL OF CONFERENCE.** The mediator shall at all times be in control of the conference and the procedures to be followed.
 - (2) **PRIVATE CONSULTATION.** The mediator may meet and consult privately with any participant or counsel during the conference.
 - (3) **SCHEDULING THE CONFERENCE.** The mediator shall make a good faith effort to schedule the conference at a time that is convenient to the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.
- (b) **DUTIES OF MEDIATOR.**
 - (1) **GENERALLY.** The mediator shall define and describe the following to the parties at the beginning of the conference:
 - (A) the process of mediation;
 - (B) the differences between mediation and other forms of conflict resolution;
 - (C) the costs of the mediated settlement conference;
 - (D) that the mediated settlement conference is not a trial, the mediator is not a court, and the parties retain their right to trial if they do not reach settlement;
 - (E) the circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (F) whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (G) the inadmissibility of conduct and settlements as provided by applicable Rules of Evidence.
 - (H) the duties and responsibilities of the mediator and the participants; and
 - (I) the fact that any agreement reached will be reached by mutual consent.
 - (2) **DISCLOSURE.** The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
 - (3) **DECLARING IMPASSE.** It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
 - (4) **LOCATION OF CONFERENCE.** Unless all parties agree, the mediated settlement conference shall be held at a place selected by the mediator. 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.
- (5) **REPORTING RESULTS OF CONFERENCE.** The mediator shall submit a Report of Mediator to the court which indicates the results of the conference. This report shall be filed within two weeks of the conclusion of the conference or upon the receipt of a copy of a written settlement agreement, whichever comes first. The mediator's report shall list the names of all persons attending the conference.
- (A) If an agreement was reached, the report shall state whether the action will be concluded by consent judgment, voluntary dismissal, or otherwise and shall identify the persons designated to file the appropriate document.
- (B) If the mediation is suspended without impasse or agreement, the mediator shall submit an interim report within two weeks of the suspension of the conference, advising that the conference took place, that discussions are continuing, and whether or not the mediation is to be formally reconvened.

RULE 9019-2(7)
INADMISSIBILITY OF NEGOTIATIONS

- (a) Evidence of statements made and conduct occurring in a mediated settlement conference conducted under these Rules, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the bankruptcy case or adversary proceeding or other related cases or proceedings, except:
- (1) In proceedings for sanctions under these Rules;
 - (2) In proceedings to enforce or rescind a settlement of the action;
 - (3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
 - (4) In proceedings to enforce laws concerning juvenile or elder abuse.
- As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.
- (b) No settlement agreement to resolve any or all issues reached at the proceeding conducted under these Rules or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties.
- (c) No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.
- (d) No party, mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:
- (1) to attest to the signing of any agreements;;
 - (2) proceedings for sanctions under this section;;
 - (3) disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals;; and
 - (4) proceedings to enforce laws concerning juvenile or elder abuse.

Rule 9036-1
NOTICE BY ELECTRONIC TRANSMISSION

- (a) Whenever the clerk or some other person as directed by the court is required to send notice by mail, and the entity or person entitled to receive the notice requests in writing that instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission.
- (b) Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received, except where the recipient of the notice has agreed in writing that confirmation is not required, in which case notice is complete upon transmission.

Rule 9036-1(1)
DEBTOR'S ELECTRONIC NOTICING REQUEST

- (a) **DeBN REQUEST FORM.** Each debtor who files a voluntary petition in bankruptcy on or after December 1, 2016, must file, contemporaneous with the petition, a completed Debtor's Electronic Noticing Request (DeBN Request) on the form provided by the Clerk of the Bankruptcy Court. Each DeBN Request must indicate whether the debtor:
 - (1) requests creation of a new DeBN account to begin receiving court notices and orders via email pursuant to Rule 9036, Federal Rules of Bankruptcy Procedure;
 - (2) declines participation in the DeBN program;
 - (3) requests an update to or reactivation of an existing DeBN account; or
 - (4) requests deactivation of an existing DeBN account.
- (b) **EMAIL ADDRESS.** Requests to create a new DeBN account and requests to update or reactivate an existing DeBN account must list a valid and active email address for the debtor. A debtor may list the same email address that was listed on a joint debtor's DeBN Request; however, each debtor and each joint debtor must sign and file a separate DeBN Request regardless of whether they share the same email address.
- (c) **PROOF OF IDENTITY.** All DeBN Requests must be filed with sufficient evidence of the debtor's identity. The debtor provides sufficient evidence of identity when:
 - (1) the debtor's attorney files the DeBN Request electronically in CM/ECF;
 - (2) the debtor files the DeBN Request in person at the Clerk's Office and displays a photo identification or other information that would satisfy 11 U.S.C. § 521(h); or
 - (3) the debtor files the DeBN Request by mail and provides a copy of a photo identification or other information that would satisfy 11 U.S.C. § 521(h).
- (d) **CLERK DUTIES.** The clerk will act upon the DeBN Request promptly after it is filed. While the debtor's DeBN account is active, the clerk is directed to send court-issued notices and orders via email pursuant to Rule 9036, Federal Rules of Bankruptcy Procedure, whenever the clerk would otherwise be required to send the notice or order by regular mail.
- (e) **UNDELIVERABLE EMAIL NOTICES.** If an attempt to deliver a notice or order via email fails, the debtor's DeBN account may be immediately deactivated. A debtor may reactivate the debtor's DeBN account by submitting a DeBN Request to reactivate an existing account and supplying a valid and active email address.
- (f) **SCOPE OF DeBN.** The existence of an active DeBN account does not authorize any person other than the court to provide notice of service solely by email if notice or service would otherwise be required by regular mail or other means.

Rule 9070-1
EXHIBITS

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

Rule 9072-1
PROPOSED ORDERS

A proposed order shall be submitted contemporaneously with the filing of any document requesting relief in accordance with the procedures established in the Administrative Guide.

RULE 9074-1
TELEPHONE OR VIDEO CONFERENCES AND HEARINGS

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