

PROPOSED NEW/REVISED LOCAL BANKRUPTCY RULES FOR NOTICE AND COMMENT

Revised rule:

1001-1 Scope, Application, Waiver of Rules, and Construction

(a) Citation; Abbreviations. These rules shall be cited as NM LBR _____. “BR” or “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure. “Code” means the United States Bankruptcy Code. “FRCP” means the Federal Rules of Civil Procedure. “NM LBR” means these local rules. References to “trustee” means the case trustee or the standing trustee. **The term “debtor” includes both debtors in a joint case.**

Reason for change: used the phrase “the term” to mirror language in § 101(13).

Revised rule:

1007-1 A debtor shall not file the payment advices described in BR 1007(b)(1)(E). Instead, a debtor shall **give- provide** copies of the payment advices to the trustee at least **seven fourteen** days before the first date set for the meeting of creditors, and to the United States trustee not later than ten days after service of a written request therefor. In addition, if a creditor requests in writing copies of such payment advices at least 14 days before the first date set for the meeting of creditors, the debtor shall provide them to the requesting creditor at the same time they are provided to the trustee

Reason for change: the change to the period of time from seven to fourteen days accommodates needs of chapter 13 trustee, case trustees, and UST. Changing “give” to “provide” is stylistic.

Revised rule:

1017-1 Motion to Convert or Dismiss a Chapter 11 Case. Before filing a motion to convert or dismiss a case pursuant to Code § 1112(b), the movant shall contact the courtroom deputy for the assigned judge to request a hearing. **If the movant does not waive** the 30-day period under Code § 1112(b)(3), **this period** will not begin to run until the movant has served notice of the hearing. Ordinarily, the motion will be set for a scheduling conference and then a final hearing. The movant shall file with the motion, and serve within two days thereafter, a notice that includes the dates and times of any scheduling conference and the final hearing, and the deadline to object. The objection deadline shall be ten days from the date of service of the notice. **The foregoing notwithstanding, If the movant waives the 30-day period under Code § 1112(b)(3), then-unless the court orders otherwise** the procedures in NM LBR 9013 shall apply instead.

Reason for change: language revised to clarify the process.

New rule:

1017-2 Voluntary Dismissal of Chapter 13 Case. A debtor's motion to dismiss a chapter 13 case under § 1307(b) requires notice to all electronic notice recipients, with a minimum five-day deadline to object.

Reason for change: Under the Code, a chapter 13 debtor has the right to voluntarily dismiss a chapter 13 trustee; however, the chapter 13 trustee may have grounds to object. This rule provides for a shortened objection period prior to dismissal.

New rule:

1017-3 Dismissal of Chapter 13 Case for Failure to Timely File a Plan or Statement of Current Monthly Income. If a chapter 13 debtor fails to file a plan and/or a statement of current monthly income within 14 days of the petition or conversion date, the Court will issue a notice of intent to dismiss the case for such failure, fixing a deadline for debtor to seek an extension or object to dismissal. Unless the debtor timely files an extension motion or objects, the Court will dismiss the case without further notice or a hearing.

Reason for new rule: The Clerk's office currently provides notice of the filing deficiencies covered in this rule, including deficiencies that will result in the 46-day auto-dismissal. However, the failure to timely file a chapter 13 plan or file a statement of current monthly income does not fall within the 46-day auto-dismissal provided in the Code. This rule includes the failure to timely file a chapter 13 plan or statement of current monthly income as grounds for sua sponte dismissal of the case.

New rule:

2003-1 Adjourning § 341 Meetings. All requests to reschedule § 341 meetings must be made to the United States trustee in chapter 11 cases and to the trustee in chapter 7, 12, and 13 cases at least 7 days before the scheduled meeting. If the trustee agrees, the requesting party must immediately file and serve a notice to all creditors and parties in interest of the new meeting date and time, together with a certificate of service. The trustee may continue a § 341 meeting from time to time by announcing the continuance(s) at the regularly scheduled meeting; no further notice is required, but the appropriate trustee must promptly make a docket entry in the case of the new meeting date and time.

Reason for change: clarifies existing practice.

New and revised rule:

2016-1

(a) Disclosure of Compensation of Debtor's Counsel in Chapter 7 and Chapter 13 Cases.

Debtor's counsel in chapter 7 and chapter 13 cases must use NM LF 2030 to comply with § 329 and BR 2016(b).

(b) Disclosure of Compensation – Substituted Counsel. Substituted debtor's counsel in all cases must file a Rule 2016 statement within 14 days of the date representation commenced.

~~a)(c)~~ Applications for Compensation. Applications for interim or final compensation of professionals shall **recite the number of the application (i.e., 1st, 2nd, 3rd and final) and** be accompanied by detailed billing statements itemizing all services provided, the time spent on each service, the charge for the service, the identity and hourly rate of each service provider, all costs for which reimbursement is sought, and all taxes passed on to the debtor or estate. Applications shall list the total amounts of fees, costs, and taxes previously requested, awarded, or paid. *Note: Recommended Local Form NM LF 2016-13(a) was created for compliance with this rule for use in chapter 7 and chapter 13 cases.*

(d) Compensation of Subchapter V Trustees. Unless the court orders otherwise or the subchapter V trustee agrees to defer payment, the Debtor is authorized and directed to pay a Subchapter V trustee, upon receipt of a monthly billing statement, 75% of billed fees and 100% of reimbursable costs and gross receipts tax. All interim payments, whether or not approved by interim Court order, may be subject to disgorgement if the estate becomes administratively insolvent or if the payments exceed the amount finally allowed. All fees, costs, and gross receipts taxes are subject to Court approval under Code §§ 328, 330 and 331. The Subchapter V trustee shall file fee applications every six months or more frequently. Each application must be filed and noticed to creditors and other parties in interest within 28 days after the application period. Failure to comply with this deadline will result in the suspension of Debtor's authority to make interim payments to the trustee until the Court rules on the late-filed fee application. Fee applications must contain a detailed statement showing services performed by the trustee, compensation received, and compensation previously approved.

~~(b)~~ **(e) Electronic Reporting to the United States trustee.** Unless the court orders otherwise, any professional or other entity seeking fees, compensation, or reimbursement of expenses exceeding \$25,000 shall submit time and expense detail electronically to the United States trustee, in a format compatible with the United States trustee's software. The submissions shall comply with the United States trustee fee guidelines. This requirement is not applicable to final fee applications that exceed \$25,000 due only to previously approved interim fee applications.

~~(c) (f) Payment From the Estate. Professional fees will be allowed and paid from the estate in all chapters only after court approval.~~

Reason for rule: Subsections (a) and (b) were added to ensure compliance with BR 2016 and § 329. Subsection (d) was added to ensure that Subchapter V Trustees are timely paid for their services; it mirrors current practice for compensation of debtor's counsel on an interim basis prior to final approval of fee applications. Subsection (c) was deleted as unnecessary.

Revised Rule:

3015-2 Chapter 13 Plan and Confirmation

(e) Notice of Objection Deadline and Confirmation Hearing. If both a plan and a confirmation hearing notice are filed with the petition ~~in accordance with the clerk's case opening instructions,~~ the clerk will include a copy of the plan and notice with the notice of the bankruptcy filing. In all other cases, the debtor shall serve on all creditors and other parties in interest a copy of the plan and the notice of objection deadline and confirmation hearing, and shall file a certificate of service within three days thereafter. *Note: [NM LF 3015-2\(e\)A](#) and [NM LF 3015-2\(e\)B](#) were created by the clerk for compliance with this rule.*

Reason for rule: deleted unnecessary language from the rule.

Revised rule:

3015-3 Conduit Mortgage Payments in Chapter 13 Cases

(a) Definitions. "Conduit payments" are post-petition Mortgage payments made by the debtor to the Trustee for payment to the Mortgagee under a confirmed Chapter 13 plan. ~~"Debtor" includes both debtors in a joint case.~~ "Gap payment" means the first Mortgage payment that becomes due post-petition. ~~"Delinquent" means more than two months behind on principal and interest payments.~~ "Mortgage" includes deeds of trust ~~and is not limited to security interests in debtor's principal residence.~~ "Mortgagee" is the holder of a Mortgage. ~~including but not limited to a Mortgage on debtor's principal residence.~~ "Trustee" is the Chapter 13 Trustee.

(b) Required Conduit Payments; Gap Payment. Conduit payments are required if debtor (i) was ~~Delinquent more than two months delinquent~~ on the petition date; (ii) becomes Delinquent before plan confirmation; or (iii) becomes ~~more than two months~~ Delinquent after plan confirmation. If debtor is making Conduit payments and the monthly Mortgage payment increases, debtor will increase the Conduit payment if and to the extent necessary to ensure plan feasibility. If debtor's plan provides for Conduit payments, it must provide for treatment of the Gap payment.

(g) Application of Rule. NM LBR 3015-3 and BR 3002.1 shall apply to all Mortgages.

Reason for change: "Debtor" defined in NM LBR 1001-1(a) to include both debtors in a joint case. Defined "Delinquent" to clarify when conduit payments are required. Added (g) so that all delinquent mortgages will require conduit payments, not just mortgages on a debtor's principal residence. Conduit mortgage payments result in a higher success rate for chapter 13 cases.

New rule:

3015-5 Post-Confirmation Modification of Chapter 13 Plan. If the debtor needs to modify a confirmed chapter 13 plan and the modification would not decrease amounts to be paid to any class of creditors, the debtor may submit to the trustee a proposed stipulated order approving the modification. Said modification must not extend the plan duration more than 3 months. If the trustee approves the stipulated order, it may be submitted to the Court for entry without a motion for modification or notice to creditors. If the trustee does not approve the proposed stipulated order, the debtor may file an opposed motion for modification and give the required notice.

Reason for new rule: It is not uncommon for chapter 13 debtors to need a short moratorium in payments. This rule provides greater flexibility to chapter 13 debtors to obtain a short payment moratorium (with oversight by the chapter 13 trustee) without incurring the added expense of filing a motion with a notice of objection deadline.

New rule:

3015-6 Application to Incur Non-Emergency New Debt in Chapter 13 Cases.

(a) De Minimis Non-Mortgage Consumer Debt. The debtor may incur non-mortgage consumer debt of less than \$1,000 in the aggregate in any calendar year without seeking approval of the trustee or the Court.

(b) Non-Mortgage Consumer Debt with Approval Only by the Trustee. The debtor may incur non-mortgage consumer debt with the trustee's approval but without Court approval under the following procedure.

(1) Application to Incur Debt. If the debtor seeks to incur non-mortgage consumer debt that will not affect payments under the plan or the dividend to unsecured creditors, the debtor may submit to the trustee a written application for approval of such new debt. The debtor shall not file the application in the bankruptcy case.

(2) Contents of the Application. The application shall include: (i) proposed amended Schedules I and J in support of feasibility of the request, or a certified statement that either no changes in income/expenses have occurred since plan confirmation or Schedules I and J were filed within the previous 12 months; (ii) a description of the item to be purchased; (iii) if applicable, a description of the collateral securing the new debt; (iv) debtor's reasons for needing to incur the new debt; (v) the principal balance, interest rate, monthly payments, maturity date, and any other relevant financing terms for the new debt; and (vi) the debtor's certification that the debt will not affect plan feasibility, payments under the plan, or the dividend to unsecured creditors.

(3) Trustee Approval The trustee will give written notice to the debtor whether the application is approved or denied. If the trustee approves the application, within ten (10) days thereafter the debtor will file in the bankruptcy case a notice of the trustee's approval. The notice must disclose the item purchased, the amount of the new debt, the collateral securing the debt (if applicable), the amount of the monthly payments, and the maturity date.

(4) Trustee Denial or Untimely Review. If the trustee denies the application or does not notify the debtor of the trustee's decision within a reasonable time, debtor may file a motion to incur the proposed debt and give the required notice.

(c) Limitation on Subsequent Plan Modifications. The Court will not approve a motion to modify a plan to reduce the plan payment or the dividend to unsecured creditors if such modification is necessitated in whole or in part by the new debt incurred and approved only by the trustee under the application process in this rule.

Reason for rule: The rule provides more flexibility for chapter 13 debtors who find themselves needing to incur debt, for example, needing a replacement vehicle. Debtors may only use the alternative process if the new debt will not result in reduced plan payments, reduce the dividend to unsecured creditors, or necessitate a subsequent plan modification to reduce plan payments or the dividend to unsecured creditors.

Revised rule:

3017-1 Notice of Confirmation Hearing in Chapter 11 Small Business Cases. The debtor in a chapter 11 small business case **(including a subchapter V case)** shall, within three business days after filing the plan and disclosure statement **(or a plan in a subchapter V case)**, contact the courtroom deputy for the assigned judge to request a confirmation hearing. ~~The debtor shall serve the notice and order prepared by the courtroom deputy within three business days of receipt.~~

Reason for rule: amended to include subchapter V cases. Language regarding notice is deleted as unnecessary because the form order fixes the deadline for debtor to serve the notice and order/plan/and ballots.

Revised rule:

3020-1 Chapter 11 Confirmation Hearing. Unless the court orders otherwise, in a chapter 11 case when the plan has been accepted by the requisite majorities and no objection to confirmation has been filed, the plan proponent may establish that the plan meets the applicable requirements of Code § 1129(a) by oral offer of proof, provided that any witness whose testimony is being proffered is present. **A plan proponent making an oral offer of proof must file a written offer of proof in the form of an unsworn declaration authorized by 28 U.S.C. § 1746 in support of confirmation prior to the confirmation hearing.**

Reason for rule: A filed, written offer of proof streamlines uncontested chapter 11 confirmation hearings.

Revised rule:

4001-1 Continuation or Imposition of Automatic Stay

(c) Requirement to Obtain Hearing and Objection Deadline. Before filing a motion to continue or impose the stay, movant shall contact the courtroom deputy for the assigned judge to request a hearing and an objection deadline. Unless the court orders otherwise, the deadline to object shall be ten days from the date the motion and notice are served. The notice shall state that if no objections are timely filed, the court may grant the relief requested without further notice **or a hearing**. Movant shall immediately serve the motion and notice.

Reason for change: The rule clarifies that relief can be granted without a hearing.

Revised rule:

4002-4 Address of Debtor.

When a debtor's mailing or street address changes during the pendency of a case under any chapter, the debtor shall file the statement required by BR 4002(a)(5) within 14 days of the date of the change. *Note: Form NM LF 4002-4 was created by the clerk for compliance with this rule.*

Reason for revised rule: New local form created; referencing local form in the rule alerts practitioners to the existence of the form.

Revised rule:

4004-1 Debtor Certification in Support of Chapter 13 Discharge

As soon as practicable after **the chapter 13 trustee files a notice of** completion of chapter 13 plan payments, the debtor shall file a certificate containing the information required by Code §§ 1302(d)(1)(C)(ii) and (iii) and Code §§ 1328(a) and (h). Note: Form NM LF 4004-1 was created by the clerk for compliance with this rule.

Reason for Rule: clarification needed because debtors were filing the certification *before* the trustee filed the notice; the trigger for filing the certification is the chapter 13 trustee's notice of completion of chapter 13 plan payments.

New Rule:

4004-2 Debtor Certification in Support of Chapter 12 Discharge

As soon as practicable after completion of chapter 12 plan payments, the debtor shall file certificate containing the information required by Code §§ 1202(c)(1)(C)(ii) and (iii) and Code §§ (a) and (f). *Note: Form NM LF 4004-2 was created for compliance with this rule.*

Reason for rule: Rule added because the requirement for certification in support of discharge applies in chapter 12 cases.

Revised rule:

5005-2 Electronic Filing

(a) ~~Electronic Filing Policies and Procedures.~~ **Online Manual.** The clerk shall prepare and publish policies and procedures for electronic filing **in an Online Manual**, which the clerk may amend from time to time. **These policies and procedures, which are** exempt from the public notice and comment requirements for adoption of local rules, shall have the force of local rules. ~~A link to the policies and procedures will be~~ **The Online Manual is** available on the court's web page.

Reason for revision: The Clerk's office moved its Electronic Filing Policies and Procedures to the Online Manual accessible from the Court's public website.

Delete existing rule:

~~(b) After Hours Electronic Filing. Unless otherwise ordered, any paper filed electronically must be filed before midnight local time to be considered timely filed that day.~~

Reason for change: The local rule is no longer necessary in light of BR 9006(a)(4), which provides: “Unless a different time is set by a statute, local rule or order in the case, the last day ends: (A) For electronic filing, at midnight in the court’s time zone; and (B) For filing by other means, when the clerk’s office is scheduled to close.”

Proposed revised rule re: signatures on electronically filed documents:

5005-2(c) Signatures on Documents filed Electronically. Any paper physically signed and filed electronically, or ~~submitted~~ ~~filed~~ in paper ~~form~~ **for filing** and thereafter converted to an electronic document by the clerk, has the same force and effect as an original. Verified or certified papers filed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed and/or subscribed. ~~An attorney shall not file a paper requiring a person’s signature without obtaining the person’s signature before filing.~~

Reason for change: Moved the deleted language to NM LBR 9011-1(b). Change clarifies that it applies to documents filed electronically.

New rule:

5005-3 Pro Se Electronic Filing. Unrepresented individuals may request permission from the court to file documents electronically in a particular case or adversary proceeding by filing an Application for Access to Pro Se Electronic Drop Box. *Note: NM LF _____ were created by the clerk for compliance with this rule.*

Reason for new rule: Both judges have agreed to allow pro se debtors to submit documents electronically for filing. Providing unrepresented parties with electronic access places those parties on par with attorneys who file electronically.

Revised rule:

5005-~~3~~ **4** Pro Se Filing – **General**. Except for proofs of claim and petitions filed using court-approved electronic filing procedures, all papers filed by unrepresented parties **who have not been granted access to the pro se electronic drop box** must be submitted to the clerk in paper unless the court, for good cause, authorizes an unrepresented party to submit papers for filing by alternate means.

Reason for revised rule: Language revised to account for pro se electronic filing through the pro se electronic drop box.

Revised rule:

6007-1 Abandonment Coupled with Stay Relief

In an individual Chapter 7 or 13 case, a creditor seeking relief from the automatic stay with respect to a debtor’s principal residence or personal vehicle may simultaneously request abandonment of that asset from the estate. **Notice of the deadline to object to abandonment coupled with stay relief must be served on the debtor, debtor’s counsel, the United States trustee, and the trustee.**

Reason for revision: Abandonment of an asset from the estate requires notice.

Revised rule:

7007-1 Motion Practice in Adversary Proceedings (Except Summary Judgment Motions) ~~The movant shall determine whether a motion will be opposed. If the motion is opposed, it shall so state. If the movant has not obtained concurrence or opposition from the opposing part(ies), the motion shall recite the attempts made to do so.~~ All motions ~~except for unopposed motions~~ filed in adversary proceedings shall be served on opposing parties. Responses shall be due within 21 days after service. Optional replies shall be due within 14 days after service of the response. Briefs are optional unless otherwise ordered by the court. The court may grant the requested relief by default if no response is timely filed. The movant may obtain a hearing on a motion by contacting the courtroom deputy for the assigned judge. Hearings may either be preliminary or final, in the Court's discretion, but shall be so described in the notice of hearing. This rule does not apply to motions for summary judgment (See NM LBR 7056).

Reason for revision: Revised language to match the general motions practice requirements of LR 9013-1(b).

Revised rule:

7016-1 Pretrial Matters

Pretrial Orders in Adversary Proceedings. Pretrial orders shall substantially conform to the form promulgated by the judge assigned to the adversary proceeding, unless the Court orders otherwise. Any party who does not cooperate in preparing the joint pretrial order in a timely manner may be subject to sanctions, including preclusion from calling witnesses or submitting exhibits at trial. ~~The opposing party may file a motion seeking entry of a pretrial order in the form prepared by that party, setting forth the details of the other party's lack of cooperation.~~

Reason for change: Language deleted as unnecessary. The Court may fashion that relief without the need for a party to file a motion.

Revised rule:

7026-1 Discovery in Adversary Proceedings and Contested Matters.

- (b) Format. The proponent of written discovery shall give the recipient a copy of the discovery requests in Word ~~or WordPerfect~~ format. Responses shall include a restatement of each interrogatory or request. Each interrogatory or request shall be numbered sequentially across sets, e.g., first set, numbered 1-5; second set, numbered 6-10; etc.

Reason for change: WordPerfect deleted as outdated/no longer used.

New Rule:

7055-1 Default Judgment. A party seeking a default judgment in an adversary proceeding must file a combined motion for clerk's entry of default and for default judgment. The motion must be served in accordance with BR 7005 on the defendant against whom the judgment is sought. *Note:* See the Online Manual for suggested instructions and procedures.

Reason for rule: This rule comports with the procedures established in the Online Manual.

Revised rule:

7056-1 Summary Judgment.

(b) Response. A response to the motion shall contain a concise statement of the material facts the respondent contends are in genuine dispute. Each such fact shall be numbered, shall refer with particularity to the portions of the record relied upon, and shall state the number of the movant's alleged fact that is disputed. ~~All facts in movant's statement of facts that are properly supported shall be deemed admitted unless respondent specifically controverts them.~~ The response may set forth other additional facts that the non-moving party contends are material to the resolution of the motion. Each additional fact must be lettered and must refer with particularity to the portions of the record relied upon.

Reason for revision: This rule clarifies the requirements for responding to a motion for summary judgment to aid the court in evaluating contested motions for summary judgment.

Revised rule:

9004-2 Case Number. Every paper filed after the petition shall include the ~~year, chapter number of the case~~, the case number, the initial of the assigned judge, ~~and the chapter number of the case -and the initial of the location of the section 341 meeting of creditors~~, e.g., 24-12345-j7 or 24-19999-t13. ~~7-10-12345-JA or 10-12345-ja7. This rule does not apply to papers generated by the court's electronic filing program.~~

Reason for revision: Although it is helpful to know the location of the § 341 meeting, it is no longer necessary to include the location code in the case number. The Court routinely allows out-of-town parties to participate in evidentiary hearings by Zoom video; consequently, the need to schedule final evidentiary hearings and trials in Roswell or Las Cruces has greatly diminished.

Revised rule:

9009-1 Required Use of Certain **Local** Procedural Forms. All ~~national or~~ local procedural forms designated by the clerk as "required" must be used. The clerk will publish a list of the required forms, together with the forms themselves, on the court's website "Forms" pages.

Reason for change: Modified to apply only to local forms. Use of national "official" forms is already required. All forms including "recommended" and "required" local forms and links to the national "official" forms are posted/accessible from the Court's webpage.

Revised rule:

9011-1 Contact Information; Signing Papers

- a) Contact Information. All attorneys and pro se parties shall ensure that all filed papers include their name, address, telephone number, and ~~e-mail~~ email address below

their signature line. ~~and shall promptly notify the clerk, in writing, of any changes to this information.~~ Attorneys shall promptly update any changes to their contact information through PACER. Pro se parties must file of record a notice of any changes to their contact information in each case or adversary proceeding in which they are a party.

~~(b) Reproduced Signatures. The court will treat a reproduced signature on any document filed with the court as an original signature.~~

Reason for change: Language in a) and section b) deleted due to changes to NM LBR 9011-1 and NM LBR 5005-2(c)

Proposed new/revised rule regarding signatures:

9011-1(b) ~~Reproduced~~ Signatures. The court will treat a reproduced signature on any document filed with the court as an original signature. Verified or certified papers filed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed and/or subscribed. ~~An attorney shall not file a paper requiring a person's signature without obtaining the person's handwritten wet ink signature before filing. The court does not accept digitally signed documents.~~

Reason for change: The requirement to obtain the client's signature before filing moved from NM LBR 5005-2(c). The requirement for wet signatures and prohibition of digitally signed documents incorporates the Court's prior notice to practitioners regarding use of electronic signing programs, such as docu-sign.

New rule:

9011-2 Rules of Professional Conduct. The Rules of Professional Conduct adopted by the Supreme Court of the State of New Mexico apply except as otherwise provided by local rule or by court order. Counsel appearing before the court must comply with the section for lawyers of "A Creed of Professionalism of the New Mexico Bench and Bar."

Reason for new rule: Follows the USDC's local rule 83.9 to incorporate the rules of professional conduct and the Creed of Professionalism into the Bankruptcy Court's local rules.

Revised rule:

9013-1 Motion Practice in Contested Matters-General

(d) Notice of Deadline to Object. For opposed motions and motions requiring notice to some or all creditors, the movant shall file and serve a notice of the motion that complies with NM LBR 9004-1. ~~The notice shall state that if no objections are timely filed, the court may enter an order granting the motion without further notice or a hearing.~~ Unless otherwise provided by the Bankruptcy Rules or these rules or unless extended or shortened by order of the court, the objection deadline shall be 21 days from the date of service. ~~The deadline to file an optional reply is 14 days after service of the objection. Note: see recommended NM LF 2002.~~

(e) Procedure If No Party Objects. If no objection is timely filed, the movant shall promptly submit to the court ~~via the court's electronic filing system~~ a proposed form of order, reciting the

notice given, specifying the method of service in compliance with BR 7004 if applicable (including to whose attention the motion and notice were mailed and whether service was made by certified mail, if BR 7004(b)(3) or (h) applies), and reciting the date of expiration of the time to object, in lieu of the default procedure set forth in BR 7055. **This rule does not apply to pro se parties.**

(j) Certificate of Service. A certificate of service shall be filed for all motions and notices within a reasonable time after service. The certificate of service may be part of the motion or notice or a separate document. *Note: see recommended NMLF 9014.*

Reason for change: Optional reply deadline added to (d) to be consistent with other local motion-practice rules. Language requiring the notice to provide that the court may grant the motion without further notice or a hearing if no objections are timely filed conforms with local “negative notice” practice and applies to motions practice generally. Section (e) changed to align with the Court’s e-orders system. The rule does not apply to *pro se* parties because they do not have access to the e-orders system.

New Rule:

9019-2 Settlement of § 727 Adversary Proceeding by Dismissal. If the proposed settlement of an adversary proceeding includes dismissal of a claim for relief under one or more of the provisions of § 727(a), the plaintiff must file a motion in the related bankruptcy case to approve dismissal of the § 727(a) claim(s) and serve the motion on all parties on the mailing list together with a notice of the deadline to object.

Reason for new rule: This rule codifies existing practice. Consider whether this should be part of LBR 4004 because it concerns discharge.

New Rule:

9019-3 Mediation

- (a) Appointment Order. The court may appoint another available active or recall status United States Bankruptcy Judge from any judicial district to act as mediator to assist in possible resolution of disputes through mediation. The details regarding the appointment of a particular settlement judge will be specified in a mediation order.
- (b) Process for Appointment. If the parties request judge-assisted mediation, the Court will contact the potential mediation judge (directly or through court staff) to confirm that such judge is willing and able to serve as mediator.
- (c) Judicial Immunity and Other Protections. Any active or recall status bankruptcy judge appointed as mediator will be so appointed because of a judicial position as, and to act in the specific capacity as, a United States Bankruptcy Judge. By serving as a mediator, such judge performs judicial duties. Accordingly, such judge and all persons assisting a mediation judge will have full, unqualified, judicial immunity, as well as all other privileges, immunities, and protections of a United States Bankruptcy Judge and judiciary employees, regarding any matter arising from or related to such judge’s role as mediator.

(d) Waiver. All parties participating in the mediation process will automatically:

- (i) Waive and be unable to assert any claims or causes of action against the mediation judge or any court employees assisting with the mediation process that arise from or relate to the mediation process; and
- (ii) Except as may be required by otherwise applicable disclosure law, waive and be unable to seek to compel from the mediation judge or from any court employees assisting with the mediation process any oral or written testimony, document production (including, without limitation, regarding any records, reports, summaries, notes, communications, or other documents received or made by the mediation judge or any court employees while serving in such capacity), or other participation whatsoever in any litigation, judicial arbitral, or other proceeding of any kind.

The mediator judge may, in his or her sole discretion, require that the parties sign an agreement memorializing the above understandings before agreeing to serve as mediator.

- (e) Disqualification. No judge may serve as mediator if that judge would be disqualified (i) under 28 U.S.C. § 144 if that judge were a district judge presiding over the matter or proceeding, or (ii) under 28 U.S.C. § 455 if that judge were a justice, judge, or other judicial officer presiding over the matter or proceeding, in each case unless the parties consent in writing after disclosure.
- (f) Non-judge mediators. The Court may appoint a mediator who is not an active or recall status United States Bankruptcy Judge (a “non-judge appointed mediator”) to act as mediator to assist in possible resolution of disputes through mediation. A non-judge appointed mediator shall have quasi-judicial immunity to the maximum extent permitted by law. The provisions of subsection (d) apply to all parties participating in mediation by a non-judge appointed mediator.

Reason for new rule. The court is now a one-judge district. This rule authorizes the court to appoint bankruptcy judges from other districts to serve as mediators. The court’s existing mediation order provides immunity to court-appointed mediators. This local rule clarifies that court-appointed judicial mediators and court employees who assist with mediation have judicial immunity and other protections for actions taken in connection with the mediation, and that non-judge appointed mediators have quasi-judicial immunity to the maximum extent permitted by law.

New rule:

9027-1 Removal. To comply with BR 9027, and in accordance with the automatic referral by the district court to the bankruptcy court (*see* Misc. No. 84-0234 (D.N.M. July 18, 1984)) a notice of removal must be filed with the bankruptcy court and be served on all parties to the removed

action. The certificate of service of the notice of removal shall list the names and addresses of all parties to the removed action. *Note: See Online Manual for removal procedures.*

Reason for new rule: BR 9027 provides that “[a] notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending.” This rule clarifies that the notice of removal must be filed with the bankruptcy court.

Deleted rule:

~~9036-1 Service and Notice by Electronic Transmission. Notice of entry of orders and judgments and service of certain papers by the clerk shall be by electronic transmission in accordance with guidelines established by the court. Pursuant to FRCP 5(b)(3), t The court authorizes registered electronic filers to use its case management and electronic filing system to make service under FRCP 5(b)(2)(E).~~

Reason for deletion: FRCP 5(b)(3) was abrogated. *See* BR 7005 and FRCP 5(b)(2)(E) In addition, BR 9036 expressly cover this.

Revised rule:

9070-1 Exhibits

~~Unless the court orders otherwise, parties shall provide all opposing parties with a set of exhibits (by email is sufficient) and shall provide the court with three sets of exhibits (one for the witness, one for the law clerk, and one for the judge) at or prior to a final evidentiary hearing.~~

Unless the court orders otherwise, the court will retain an official set of exhibits submitted at a trial or final hearing for 30 days after the final disposition of each matter for which exhibits have been submitted. The parties have 30 days after the final disposition of each matter to retrieve the exhibits submitted on that matter. Exhibits not retrieved within that period may be destroyed.

Reason for revision/addition: The addition incorporates into the local rules the Court’s standard practice of requiring 3 sets of exhibits at final hearings.