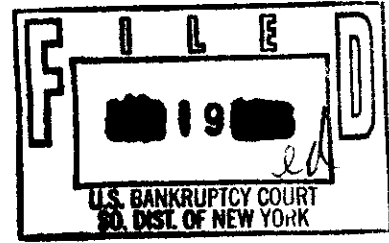


M-10

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
In the Matter :
of :
LOCAL BANKRUPTCY RULES :
-----X

The Bankruptcy Judges having considered the report of the Committee to Draft Local Bankruptcy Rules (the "Committee"), and it appearing that the Proposed Local Bankruptcy Rules submitted by the Committee are acceptable to the Bankruptcy Judges of this District and that pursuant to Bankruptcy Rule 9029 they should be adopted,

NOW, it is

ORDERED, that the annexed Local Bankruptcy Rules be, and the same hereby are adopted, effective April 21, 1986.

Dated: New York, New York
March 19, 1986

Burton R. Lifland
Burton R. Lifland
Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
LOCAL BANKRUPTCY RULES

EFFECTIVE APRIL 21, 1986

Copies of these rules are obtainable at the following offices of
the United States Bankruptcy Court:

Office of the Clerk
40 Foley Square, Room 230
New York, New York 10007

101 East Post Road
White Plains, New York 10601

P. O. Box 1000
176 Church Street
Poughkeepsie, New York 12602

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RULE 1. Short Title; Applicability

(a) Short Title. These rules may be known and cited as the "Local Bankruptcy Rules".

(b) Applicability.

(1) Rules 1 to 35 of these Local Bankruptcy Rules shall apply both to cases governed by the Bankruptcy Act and to cases governed by the Bankruptcy Code.

(2) Rules 36 to 62 of these Local Bankruptcy Rules shall apply only to cases governed by the Bankruptcy Code.

(3) Rules 63 to 82 of these Local Bankruptcy Rules shall apply only to cases governed by the Bankruptcy Act.

Comment

Pursuant to Bankruptcy Rule 9029, "[e]ach bankruptcy court... may make and amend rules governing its practice and procedure not inconsistent with" the Bankruptcy Rules and "[i]n all cases not provided for by rule, the bankruptcy court may regulate its practice in any manner not inconsistent with" the Bankruptcy Rules.

These Local Bankruptcy Rules supersede the Additional
Local Bankruptcy Rules, adopted April 30, 1980, and now repealed.

RULE 2. Definitions

Unless inconsistent with the context, in these
Local Bankruptcy Rules --

(1) "Bankruptcy Act" or "Act" means the Bankruptcy Act of 1898, Pub. L. No. 61, 30 Stat. 544-66 (1898), as amended;

(2) "Bankruptcy Code" or "Code" means Title 11 of the United States Code, as it may be amended from time to time;

(3) "Bankruptcy Rules" means the Bankruptcy Rules and Official Bankruptcy Forms promulgated pursuant to 28 U.S.C. § 2075 and in effect on the effective date of these Local Bankruptcy Rules and as thereafter amended or enacted;

(4) "clerk" means clerk or deputy clerk of the court or, with respect to a Chapter X case which has not been referred, it means clerk or deputy clerk of the district court;

(5) "court" means the United States Bankruptcy Court for the Southern District of New York established by 28 U.S.C. §§ 151 and 152 or, with respect to a Chapter X case which has not been referred, it means the district court;

(6) "district clerk" means clerk or deputy clerk of the district court;

(7) "district court" means the United States District Court for the Southern District of New York;

(8) "district judge" means any United States District Judge appointed to or sitting by designation in the district court;

(9) "District Rules" means the Local Rules of Procedure for General, Civil, Criminal, Admiralty and Magistrate Proceedings of the district court;

(10) "former Bankruptcy Rules" means the Rules of Bankruptcy Procedure and Official Forms as promulgated in connection with the Bankruptcy Act and as in effect on July 31, 1983;

(11) "judge" means any bankruptcy judge appointed to or sitting by designation in the court or, with respect to a Chapter X case which has not been referred, it means district judge; and

(12) "United States trustee" means the United States trustee or assistant United States trustee for the Southern District of New York.

The meanings of other words and phrases used in these Local Bankruptcy Rules shall, unless inconsistent with the context, be construed in accordance with the Bankruptcy Code or Bankruptcy Act, whichever may apply.

Comment

These definitions apply only to the interpretation of these Local Bankruptcy Rules.

RULE 3. Attorney Practice Before the Court

(a) General. Any attorney who may practice before the district court pursuant to General Rule 2(a) and (b) of the District Rules may practice in this court.

(b) Pro Hac Vice. A member in good standing of the bar of any state or of any United States District Court may be permitted to practice on motion in this court in a particular case, adversary proceeding, contested matter, or action.

Comment

A person permitted to practice pursuant to subdivision (b) of this rule may appear without local counsel, but must designate a local address under Local Bankruptcy Rule 4(a).

RULE 4. Attorneys of Record and Parties Appearing Pro Se;
Withdrawal

(a) Local Address for Service. Any attorney of record permitted to practice in the court who does not have an office within the Southern or Eastern District of New York shall designate with such attorney's initial notice or pleading a member of the bar of either district having an office within the Southern or Eastern District of New York upon whom service of papers may be made, except as otherwise ordered by the court.

(b) Pro Se Designation of Address. Unless the court otherwise orders, an individual appearing pro se who is a resident of the Southern or Eastern District of New York shall file with such individual's initial notice or pleading a designation of the individual's residence address. An individual appearing pro se who is not a resident of the Southern or Eastern District of New York shall designate a mailing address within the Southern or Eastern District of New York.

(c) Withdrawal as Attorney of Record. An attorney who has appeared as attorney of record may be relieved or displaced only by order of the court. Such an attorney may not withdraw from a case or proceeding without leave of the court granted by order entered for cause shown after notice and a hearing. Such an order may be granted only upon a show-

ing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case.

(d) Exception. This rule shall not apply to the filing of a proof of claim or interest.

Comment

This rule is an adaptation of General Rule 3 of the District Rules.

Subdivisions (a) and (b) of this rule are intended to facilitate the service of papers.

RULE 5. Assignment of Cases and Proceedings; Assignment Committee

(a) Cases. Where the mailing address of the debtor set forth on the petition is in New York or Bronx County, the clerk shall assign the case to a judge sitting in New York County; cases where such mailing address is in Rockland or Westchester County, the case will be assigned to a judge sitting in the Divisional Office of Westchester County; and any case where the debtor's address is in Dutchess, Orange, Putnam or Sullivan County the case will be assigned to a judge sitting in the Divisional Office of Dutchess County. Where more than one judge is sitting, cases, except chapter 13 cases, shall be assigned by random selection in such a manner that each judge shall be assigned as nearly as possible the same number of cases. The judges may direct that chapter 13 cases be referred to the same judge or judges. Related cases, including cases involving affiliates, shall be assigned to the same judge. The clerk shall have no discretion in determining the judge to whom any case is assigned; such action shall be ministerial only.

(b) Proceedings

(1) Except as otherwise provided in the Code and Bankruptcy Rules, the assignment of a case to a judge includes the assignment of all proceedings arising under title 11 or arising in or related to a case under title 11.

(2) Any adversary proceeding which does not arise out of a case pending in this court shall be designated to a judge sitting in New York County or to a judge sitting in a Divisional Office within the district by the clerk. In making a designation, the clerk shall take into consideration the residence of the defendant, the convenience of litigants, counsel and witnesses, and the place where the cause of action arose. The designation shall be the place of trial and of all other proceedings, unless otherwise ordered by the court. The designation shall be made at the time of commencement of the adversary proceeding, and notice thereof shall be given promptly by the clerk to the parties or their counsel. After the designation, the adversary proceeding shall be assigned to a judge in the manner provided in subdivision (a) of this rule. Objection to the designation shall be made, on notice to opposing counsel, before the judge to whom the adversary proceeding has been assigned.

(3) A removed action which does not arise out of a case pending in this court shall be deemed to have venue in the county in which the court from which it is removed is situated and shall be assigned to a judge in the manner provided in subdivision (a) of this rule.

(c) Assignments and Reassignments. The chief judge shall supervise and rule upon all problems relating to assignments and reassignments of cases, adversary proceedings, contested matters and actions.

Comment

This rule prescribes the procedures to be utilized by the clerk's office for assigning cases, adversary proceedings, contested matters and actions. Prior to the adoption of the Code, assignments were made by the clerk of the district court and governed by the District Rules.

In addition, this rule provides a formal procedure for designating a particular judge or judges to hear chapter 13 cases, including all adversary proceedings and contested matters arising in such cases. It should be noted that the other provisions of this rule will also apply to chapter 13 cases and adversary proceedings arising therein.

RULE 6. Action in Absence of Judge

In the event of the absence of a judge from his office and court, any other judge who is available may act temporarily in his place.

Comment

This rule supplements Bankruptcy Rule 9028 and is intended to assure that the business of the court will not be impeded by the absence of a judge.

RULE 7. Transfer of Cases or Proceedings to Another District

In a case or proceeding ordered transferred from this district, the clerk, unless otherwise ordered, shall, promptly after the expiration of 10 days from the date of entry of such order, mail to the court to which the case is transferred (1) certified copies of the court's or the district court's opinion ordering the transfer, its order thereon, and the docket entries in the case, and (2) the originals of all other papers on file in the case or proceeding. When transfer is ordered by the district court, the district clerk shall transmit the order of the district judge to the clerk of the bankruptcy court.

Comment

This rule is an adaptation of Civil Rule 26 of the District Rules.

RULE 8. Clerk's Office: Office Hours; After Hours Filing

The offices of the clerk shall be open on Monday through Friday from 8:30 a.m. to 5:00 p.m. except on legal and court holidays, and shall be closed on Saturdays and Sundays. When the clerk's office is closed, papers may be submitted to the bankruptcy court in a night depository located in the courthouse lobby, and if in proper form for filing will be deemed to have been filed as of 8:30 a.m. the following business day.

Comment

Bankruptcy Rule 5001(c) permits the adoption of a local rule setting forth the business hours of the clerk.

This local rule is provided for the convenience of persons filing papers. It is not an alternative to Bankruptcy Rules 5001(a) and 5005(a) for after-hours filing. The time stamped on papers filed in the night depository does not determine the timeliness of the filing.

RULE 9. Filing Papers

(a) Where to File. Petitions may be filed in any office of the clerk. All other papers shall be filed in the office of the clerk that is located where the judge assigned to a particular case, adversary proceeding, contested matter, or action sits.

(b) Form of Papers. Unless a judge of this court otherwise directs, no paper shall be received for filing unless (1) it is plainly written, a typed ribbon copy, printed, or an identical facsimile without erasures or interlineations which materially deface it, (2) it bears the title, initials of the judge to whom the case has been assigned and the index numbers, if any, assigned to the case and the adversary proceeding, (3) it bears endorsed on the cover the name, office and post office address and telephone number of the attorney of record, if any, for the party filing the same, and the name and address of the local attorney, if any, designated pursuant to Local Bankruptcy Rule 4(a), and (4) it is signed by an attorney of record, if any, in accordance with Civil Rule 1(b) of the District Rules.

(c) Docket Entries. With the exception of proofs of claim, the clerk shall consecutively number each paper

filed in a case or adversary proceeding and enter that number on the appropriate docket sheet next to the corresponding entry. Proofs of claim shall be consecutively numbered and entered on a separate claims docket.

(d) Copies. A copy of all papers filed in Code cases, other than proofs of claim, shall be submitted to the clerk for transmittal to the United States trustee.

(e) Chambers' Copies. A copy of all papers including pleadings, motions, responses and briefs shall be marked "Chambers' Copy" and delivered to the chambers of the assigned judge on the same date as the papers are filed with the clerk.

Comment

Subdivision (b) of this rule is an adaptation of Civil Rule 1 of the District Rules.

RULE 10. Payment of Fees in Advance

The clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the service is paid in advance, or (i) an application for permission to make installment payments is filed pursuant to Bankruptcy Rule 1006(b), or (ii) the court orders otherwise.

Comment

This rule is an adaptation of General Rule 6(a) of the District Rules.

RULE 11. Reopening Cases

A motion to reopen a case pursuant to Bankruptcy Rule 5010 or former Bankruptcy Rule 515 shall be in writing and shall state the name of the judge to whom the matter was assigned at the time the case was closed. No filing fee shall be required to file such a motion unless and until the motion is granted. Notwithstanding the foregoing, no filing fee is required if a case is reopened to correct an administrative error or on account of actions relating to discharge. A motion to reopen a case shall be filed with the clerk, who shall refer the motion to the judge to whom the matter was assigned. If that judge is no longer sitting, the motion shall be assigned in accordance with Local Bankruptcy Rule 5(a). The judge may direct the clerk to obtain any required part of the record of the closed case from wherever it is stored.

RULE 12. Deposit for Stenographers' Expenses

A party who commences an adversary proceeding or contested matter may be required by the judge to deposit with the stenographer such sum as the judge may determine is necessary to pay the expense of the stenographer in reporting the minutes. In that event, the clerk shall give notice thereof to the attorney for the plaintiff or movant, which notice shall state the amount of the deposit required and shall also state that the complaint or motion may be dismissed without prejudice if the deposit is not made.

Comment

See Local Bankruptcy Rule 33 regarding the taxing of costs of stenographic transcripts.

RULE 13. Motions

(a) Time and Manner. Notice of motion in all adversary proceedings and contested matters to be heard before the court shall be in the time and manner provided in the applicable provisions of the Code, the Act, the Bankruptcy Rules, the former Bankruptcy Rules, and these Local Bankruptcy Rules, except as otherwise ordered by the court.

(b) Memorandum of Law. Unless the court orders otherwise, the moving party shall serve and file with any motion a memorandum setting forth the points and authorities relied on in support of the motion, divided under appropriate headings into as many parts as there are points to be determined. Unless the court orders otherwise, the opposing party shall serve and file with its papers in opposition to the motion an answering memorandum, similarly divided, setting forth the points and authorities relied on in opposition. Failure to comply may be deemed sufficient cause for the denial of the motion or the granting of the motion by default.

(c) Service. The notice of motion, supporting affidavits and memoranda shall be served in accordance with the following:

(1) All motions under Bankruptcy Rules 7026 through 7037 shall be served at least 5 days before the return day unless otherwise provided by statute or directed

by the court. Where such service is made, opposing affidavits and answering memoranda of law shall be served no later than noon of the day preceding the return day.

(2) Except as otherwise provided in the Bankruptcy Rules, in all other motions, the notice of motion, supporting affidavits and accompanying memoranda of law shall be served at least 10 days before the return day unless otherwise provided by the court. Where such service is made, opposing affidavits and answering memoranda shall be served at least 3 days before the return day.

(d) Order to Show Cause. No order to show cause to bring on a motion will be granted except upon a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary, and shall also state whether a previous application for similar relief has been made.

(e) Rule or Statutory Basis. Any motion that is based on rules or statutes, whether brought on by notice of motion or order to show cause, shall specify the rules or statutes on which it is predicated. If such specification has not been made, the court may strike the motion from the calendar.

(f) Interrogatories and Requests for Admissions.

On any motion, objection or exception addressed to interrogatories, answers to interrogatories, or requests for admissions, the moving party shall (1) file a copy thereof simultaneously with the filing of the moving papers in all instances in which such interrogatories, answers to interrogatories, or requests for admissions have not been filed previously, and (2) specify and quote verbatim in the motion papers each interrogatory, answer or request to which the objection or exception is taken, and immediately following each specification shall set forth the basis of the objection or exception.

(g) Attorney's Affidavit. No motion of the type described in paragraph (1) of subdivision (c) of this rule shall be heard unless counsel for the moving party files with the court, at or prior to the argument, an affidavit certifying that he has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the court and has been unable to reach such an agreement. If part of the issues raised by motion have been resolved by agreement, the affidavit shall specify the issues so resolved and the issues remaining unresolved.

(h) Summary Judgment. On any motion for summary judgment pursuant to Bankruptcy Rule 7056, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit such a statement constitutes grounds for denial of the motion.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

(i) Hearing Not Required. The judge may direct the parties to submit, and may determine motions without oral hearing.

(j) Motion for Reargument. A notice of motion for reargument shall be served within 10 days after the filing of the court's determination of the original motion and shall be made returnable within the same period of time as required for the original motion. There shall be served with the

notice of motion a memorandum setting forth concisely the matters or controlling decisions which counsel believes the court has overlooked. No oral argument shall be heard unless the court grants the motion and specifically directs that the matter shall be reargued orally. No affidavits shall be filed by any party unless directed by the court.

(k) Request for Informal Conference. No discovery related motion of the type described in paragraph (1) of subdivision (c) of this rule shall be heard unless counsel for the moving party has first requested an informal conference with the court and such request has either been denied or the discovery dispute has not been resolved as a consequence of such a conference.

Comment

This rule is an adaptation of Civil Rule 3 of the District Rules.

This rule contemplates that, if appropriate, each judge may dispense with the requirement of a memorandum of law. The required memorandum of law may, where appropriate, be as short as one page.

Paragraph (2) of subdivision (c) of this rule is a standing order of the court altering the time for service of the notice of motion, supporting affidavits, and accompanying memorandum of law, if any, as set forth in Bankruptcy Rule 9006(d).

RULE 14. Interrogatories

(a) Restrictions. At the commencement of discovery, interrogatories will be restricted to those seeking names of witnesses with knowledge or information relevant to the subject matter of the action, the computation of each category of damage alleged, and the existence, custodian, location and general description of relevant documents, including pertinent insurance agreements, and other physical evidence, or information of a similar nature.

(b) Method of Obtaining Information. During discovery, interrogatories other than those seeking information described in subdivision (a) above, may only be served if they are a more practical method of obtaining the information sought than a request for production or a deposition.

(c) What May Be Served. Unless the court orders otherwise, at the conclusion of each party's discovery, and prior to the discovery cut-off date, interrogatories seeking the claims and contentions of the opposing party may be served. If not previously obtained, questions seeking the names of expert witnesses and the substance of their opinions may also be served.

(d) No Interrogatories to be Unanswered. No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.

(e) Objections.

(1) Where an objection is made to any interrogatory or sub-part thereof or to any document request under Bankruptcy Rule 7034, the objection shall state with specificity all grounds. Any ground not stated in an objection within the time provided by the Bankruptcy Rules, or any extensions thereof, shall be waived.

(2) Where a claim of privilege is asserted in objecting to any interrogatory or document demand, or sub-part thereof, and an answer is not provided on the basis of such assertion,

(i) the attorney asserting the privilege shall in the objection to the interrogatory or document demand, or sub-part thereof, identify the nature of the privilege which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

(A) for documents: (1) the type of documents; (2) general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author of the document, the addressee of the document, and, where not apparent, the relationship of the author to the addressee;

(B) for oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and place of communication; and (3) the general subject matter of the communication.

(f) Reference to Records. Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Bankruptcy Rule 7033:

(1) The specification of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to as-

certain the answer as readily as could the party from whom discovery is sought.

(2) The producing party shall make available any computerized information or summaries thereof that it either has, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise protected from discovery.

(3) The producing party shall provide any relevant compilations, abstracts or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise protected from discovery.

(4) The documents shall be made available for inspection and copying within ten days after service of the answers to interrogatories or at a date agreed upon by the parties.

Comment

This rule is an adaptation of Civil Rule 46 of the District Rules.

RULE 15. Notice of Claim of Unconstitutionality

If, at any time prior to the trial of any adversary proceeding, contested matter, or action to which neither the United States nor any agency, officer or employee thereof (other than the United States trustee) is a party, a party draws in question the constitutionality of an Act of Congress affecting the public interest, that party (to enable the court to comply with 28 U.S.C. § 2403) shall notify the judge in writing of the existence of such question, giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

Comment

This rule is an adaptation of Civil Rule 33 of the District Rules.

RULE 16. Supply of Marked Pleadings for Trial

Unless otherwise directed by the court, in any adversary proceeding or action, counsel for plaintiff shall, at least one day before the adversary proceeding or action is scheduled for trial (unless a shorter time is allowed by the judge), provide the judge and opposing counsel with a copy of marked pleadings which shall consist of the following:

(1) a copy of the complaint and of any third party complaint briefly indicating in the margin thereof, at each numbered paragraph, the manner in which the defendant or respondent, or any third party defendant or respondent impleaded who has filed an answer thereto, treats the allegations contained in said paragraph of the complaint or third party complaint;

(2) a complete and accurate copy of each answer filed by the defendant or respondent or any third party defendant or respondent impleaded in the adversary proceeding or action, similarly marked if a reply has been filed; and

(3) a complete and accurate copy of
each reply filed in the adversary proceeding or action.

Comment

This rule is an adaptation of Civil Rule 21 of
the District Rules.

RULE 17. Settlement of Orders, Judgments, and Decrees
Following a Hearing or the Rendition of a
Decision or Opinion

Proposed orders, judgments, and decrees settled following a hearing or the rendition of a decision or opinion by the bankruptcy judge shall be presented directly to the judge, unless otherwise directed by the court. Unless the form of order, judgment, or decree is consented to in writing, or unless the court otherwise directs, two days' notice of settlement is required. One day's notice is required of all counter-proposals. Unless otherwise directed by the court, such proposed orders, judgments, or decrees shall not form any part of the record of the case, adversary proceeding, contested matter, or action.

The attorney proposing an order or judgment shall append to or endorse upon it a list of the names of the parties entitled to be notified of the entry thereof and the names and addresses of their respective attorneys and shall provide to the clerk sufficient copies of a completed form of notice to enable such notice to be given.

Comment

This rule is an adaptation of Civil Rule 8 of the District Rules. It applies in both Act and Code cases to the settlement of orders following a hearing or the rendition of an opinion. Local Bankruptcy Rule 45 applies to situations

in which the Code requires "notice and a hearing" and a hearing has not been held. Local Bankruptcy Rule 46 applies to situations in which "notice and a hearing" are not required by the Code and a hearing has not been held.

The second paragraph of this rule will enable the clerk to comply with the provisions of Bankruptcy Rule 9022(a) requiring notice of entry of an order or judgment.

RULE 18. Proposed Findings of Fact and Conclusions of Law

When findings of fact and conclusions of law are required, the court may on notice to all parties require from any or all parties, before or after the announcement of its decision, proposed findings of fact and conclusions of law, for the assistance of the court, but, unless adopted by the court, such proposed findings of fact and conclusions of law shall not form any part of the record. Any party submitting proposed findings of fact and conclusions of law shall serve them on all other parties in the time fixed by the court.

Comment

This rule is an adaptation of Civil Rule 23 of the District Rules.

RULE 19. Entry of Orders, Judgments, and Decrees; Ex Parte
Orders

(a) Entry. The notation in the appropriate docket of an order, judgment, or decree shall constitute the entry of such order, judgment, or decree.

(b) Ex Parte Orders. No ex parte order in an adversary proceeding or contested matter shall be granted unless based on an affidavit or motion showing cause for ex parte action as well as cause for the relief requested, and stating whether a previous application for similar relief has been made.

Comment

This rule is an adaptation of Civil Rule 6 of the District Rules. Subdivision (a) of this rule supplements Bankruptcy Rule 9021 which requires that a judgment in an adversary proceeding or contested matter be set forth on a separate document and be entered in the docket.

RULE 20. Entering Satisfaction of Judgments or Decrees

Satisfaction of a money judgment recovered in this court shall be accomplished in accordance with any of the methods prescribed in Civil Rule 13 of the District Rules.

The clerk shall request the clerk of the district court to enter any such satisfaction.

Comment

This rule is an adaptation of Civil Rule 13 of the District Rules.

RULE 21. Default Sanctions; Imposition of Costs on Attorneys

(a) Default Sanctions. Failure of counsel for any party to appear before the court at a conference, or to complete the necessary preparations, or to be prepared to proceed to trial at the time set, may be considered an abandonment of the adversary proceeding or contested matter or failure to prosecute or defend diligently, and an appropriate order may be entered against the defaulting party either with respect to a specific issue or on the entire adversary proceeding or contested matter.

(b) Imposition of Costs on Attorneys. If the judge finds that the sanctions in subdivision (a) are either inadequate or unjust to the parties, he may assess reasonable costs directly against the party or counsel whose action has obstructed the effective administration of the court's business.

Comment

This rule is an adaptation of General Rule 5(b) and (c) of the District Rules.

RULE 22. Commission To Take Testimony

Any party seeking a deposition by commission shall furnish the officer to whom the commission is issued a copy of Rules 26(b), (c), 28(c), and 30(c), (d), (e) and (f) of the Federal Rules of Civil Procedure and Rules 607 and 611(b) and (c) of the Federal Rules of Evidence. On receipt of a copy of the transcript of the deposition taken before the commissioner, the clerk, unless otherwise ordered, shall file it forthwith and give notice thereof by mail to the attorneys for the parties.

Comment

This rule is an adaptation of Civil Rule 17 of the District Rules. The Federal Rules of Civil Procedure cited in this rule are made applicable by Bankruptcy Rules 7026, 7028, 7030 and 9017.

RULE 23. Order of Taking Depositions

Neither the service of a notice to take the deposition upon oral examination of a party or witness, nor the pendency of any such deposition, shall prevent another party, adverse or otherwise, from noticing or taking the deposition upon oral examination of any party or witness concurrently with the taking of such deposition noticed or commenced earlier. It shall be the duty of all attorneys to make every reasonable effort to stipulate as to the exact places, dates and times for the commencement and resumption of the taking of all concurrent depositions. In the event that attorneys are unable to so stipulate, any party may apply to the court for an order fixing the places, dates, and times and other terms and conditions to govern such depositions, as well as for any other order or relief relating thereto.

Comment

This rule is an adaptation of Civil Rule 14 of the District Rules. It supplements the provisions of Bankruptcy Rule 7030.

RULE 24. Attorney's Fees on Taking Depositions in
Certain Cases

(a) When Deposition is More Than 100 Miles from Courthouse. When a proposed deposition upon oral examination, including a deposition before an adversary proceeding or pending appeal, is sought to be taken at a place more than 100 miles from the courthouse, the court may provide in the order therefor, or in any order entered pursuant to Bankruptcy Rule 7030, that prior to the examination the applicant pay the expense of the attendance, at the place where the deposition is to be taken, of one attorney for each adverse party, or expected party, including a reasonable attorney's fee. The amounts paid, unless the court otherwise directs, shall be a taxable cost in the event that the applicant recovers costs of the adversary proceeding.

(b) When Attorney Appointed for Expected Adverse Party. An order, pursuant to Bankruptcy Rule 7027(a)(2), appointing an attorney to represent an absent expected adverse party and to cross-examine the proposed witness, shall fix compensation to include expenses; the compensation so fixed shall be paid by the applicant prior to the appearance of such attorney upon the examination.

Comment

This rule is an adaptation of Civil Rule 15 of the District Rules.

RULE 25. Filing of Deposition Transcripts

Unless the court orders otherwise, or unless they are required by the court for pretrial or trial purposes, transcripts of depositions and any exhibits to depositions shall not be filed with the court but shall be retained in the custody of the attorney for the noticing or the deposing party, as the case may be.

Comment

This rule is an adaptation of Civil Rule 18 of the District Rules. All other discovery documents are to be filed with the court as provided in Bankruptcy Rule 7005(b).

RULE 26. Jury Trials

(a) Impaneling a Jury. When a jury trial is to be conducted, the clerk shall request the jury clerk of the district court to summon a panel of jurors.

(b) Six Member Juries. In all jury trials the jury shall consist of six persons.

RULE 27. Custody of Exhibits

(a) Retention by Attorney. Except on appeal and unless the court orders otherwise, exhibits shall not be filed with the clerk, but shall be retained in the custody of the attorney who produced them in court.

(b) Record on Appeal. Not later than 3 days after the designation, or any counter-designation, of the contents for inclusion in the record on appeal, the attorney having possession of the original of any designated exhibit shall deposit it, or a true copy thereof, with the clerk. Exhibits not so designated shall remain in the custody of the attorney who shall have the responsibility of promptly forwarding them to the clerk of the appellate court upon that clerk's request.

(c) Bulk, Weight and Physical Exhibits. Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them, who shall permit inspection of them by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the appellate court.

(d) Removal of Exhibits from Court. Exhibits which have been filed with the clerk shall be removed by the party

responsible for them (1) if no appeal is taken, at the expiration of the time for taking an appeal, or (2) if an appeal has been taken, within 30 days after the record on appeal has been returned to the clerk. Parties failing to comply with this rule shall be notified by the clerk to remove their exhibits, and on their failure to do so within 30 days of such notification the clerk may dispose of them.

Comment

This rule is an adaptation of Civil Rule 24 of the District Rules. Local practice generally has been to permit attorneys to maintain custody of exhibits.

RULE 28. Sureties

(a) When Execution by Surety Only. Whenever a bond, undertaking, or stipulation is required, it shall be sufficient if the instrument is executed by the surety or sureties only.

(b) Security for Bond. Except as otherwise provided by law, every bond, undertaking, or stipulation must be secured by (1) the deposit of cash or government bonds in the amount of the bond, undertaking or stipulation, (2) the undertaking of a corporate surety holding a certificate of authority from the Secretary of the Treasury, or (3) the undertaking or guaranty of two individual residents of the Southern or Eastern District of New York, each of whom owns real or personal property within such district with a value of double the amount of the bond in excess of such surety's debts, liabilities, legal exemptions and obligations on other bonds, guaranties, undertakings or stipulations.

(c) Affidavit by Individual Surety. In the case of a bond, undertaking, or stipulation executed by individual sureties, each surety shall attach his affidavit of justification, giving his full name, occupation, residence and business addresses, and showing that he is qualified as an individual surety under subdivision (b) of this rule.

(d) Persons Who May Not Act As Surety. Members of the bar, administrative officers, or employees of this court, the marshal, his deputies, or assistants, may not act as surety in any case, adversary proceeding, contested matter, or action pending in this court.

Comment

This rule is an adaptation of Civil Rule 37 of the District Rules, which also requires an affidavit of justification.

RULE 29. Approval of Bonds of Corporate Sureties

Except as otherwise provided by Bankruptcy Rule 2010 and Sections 15303 and 15322(b) of the Code, all bonds, undertakings and stipulations of corporate sureties holding certificates of authority from the Secretary of the Treasury, where the amount of such bonds or undertakings has been fixed by a judge or by court rule or statute, may be approved by the clerk.

Comment

This rule is an adaptation of Civil Rule 38 of the District Rules.

RULE 30. Supersedeas Bond

A supersedeas bond, where the judgment is for a sum of money only, shall be in the amount of the judgment plus 11% to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs.

When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court, on notice, shall fix the amount of the bond. In all other cases, it may, on notice, grant a stay on such terms as to security and otherwise as it may deem proper.

On approval, a supersedeas bond shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties affected thereby. If the appellee raises objections to the form of the bond or to the sufficiency of the surety, the court shall hold a hearing on notice to all parties.

Comment

This rule is an adaptation of Civil Rule 41 of the District Rules.

RULE 31. Order, Judgment or Remand by Appellate Court

An order or judgment of an appellate court, when filed in the office of the clerk of the court, shall automatically become the order or judgment of the court and be entered as such by the clerk without further order. If such order or judgment of the appellate court remands the proceeding for further proceedings, a motion for such further proceedings shall be referred to the judge who heard the proceeding below unless the appellate court otherwise directs.

Comment

This rule is an adaptation of Civil Rule 42 of the District Rules.

If a proceeding has been remanded by the appellate court, it is the responsibility of the parties to file a motion for further proceedings in the court in which it was remanded.

RULE 32. Copies of Notice of Appeal

The appellant shall provide the clerk with sufficient copies of the notice of appeal, not later than one day after the filing thereof, to permit the clerk to comply with Bankruptcy Rule 8004.

Comment

Bankruptcy Rule 8004 requires the clerk to mail a copy of a notice of appeal to "counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address".

RULE 33. Stenographic Transcript as Taxable Cost

The expense of any party in obtaining all or any part of a transcript, for purposes of a new trial, or for amended findings may be a taxable cost against the losing party.

Comment

This rule is an adaptation of Civil Rule 12 of the District Rules.

RULE 34. Class Action

In any adversary proceeding or action sought to be maintained as a class action in this court, the provisions of Civil Rule 4 of the District Rules shall apply.

Comment

This rule supplements the provisions of Bankruptcy Rule 7023, which permits class actions as provided in Rule 23 of the Federal Rules of Civil Procedure.

RULE 35. Photographing, Broadcasting and Televising in
Courtrooms and Environs

The taking of photographs and the use of recording devices in the courtroom or its environs, except by officials of the court in the conduct of the court's business, or radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings or otherwise, whether or not court is actually in session, is prohibited.

Comment

General Rule 7 of the District Rules prohibits the above activities with respect to the entire United States Courthouse at Foley Square. This rule specifically extends such restrictions to all bankruptcy courtrooms utilized in this district, including those located at White Plains and Poughkeepsie.

CODE RULES

RULE 36. Notice to United States Trustee

Any notices required to be given to creditors under Bankruptcy Rule 2002 shall also be given to the United States trustee.

Comment

This rule supplements Bankruptcy Rule X-1008.

RULE 37. Amendment to Claim of Exemptions

An amendment to a claim of exemptions pursuant to Bankruptcy Rules 1009 and 4003 shall be filed and served by the debtor or dependent of the debtor on the trustee, the United States trustee and all creditors.

RULE 38. Involuntary Petition: Notice of Entry of Order for Relief

On entry of an order for relief on an involuntary petition, the clerk shall forthwith mail a copy of the order for relief, together with notice of entry of the order, to the attorney for the petitioners, to the debtor and its attorney of record, if any, and to the United States trustee. If the debtor has not appeared by an attorney, service of a copy of the order for relief may be made by mail to the debtor at its last known address.

RULE 39. Terms and Conditions of Employment of Professional Persons

An order fixing the terms and conditions of employment of a professional person pursuant to Section 328 of the Code shall be made only on an application stating the specific facts showing the reasonableness of the terms and conditions, including the terms of any retainer, hourly fee, or contingent fee arrangement.

Comment

This rule complements Bankruptcy Rule 2014(a). The information required by Bankruptcy Rule 2014(a) and by this rule may be contained in the same application.

RULE 40. Appraisals

(a) Requirement of Appraisal. Unless otherwise ordered by the court, when an appraiser has been employed, the property to be appraised shall not be sold until after the appraisal has been filed.

(b) Filing and Access. Unless otherwise ordered by the court, any appraiser employed pursuant to the Code shall file with the court and the United States trustee each appraisal made of property of the estate not later than noon on the day prior to a scheduled sale of the property. Each appraisal shall be kept under seal upon filing and treated as confidential by the court and the United States trustee. Access to the appraisal may be had only by the court, the United States trustee and such other parties as the court may direct, and neither they nor the appraiser shall disclose any of the contents thereof until after the conclusion of the bidding at any sale of the appraised property. Upon entry of an order by the court approving the sale or other disposition of the property that is the subject of the appraisal, the clerk shall unseal the appraisal.

(c) Conformity With Auctioneer's Catalogue of Sale. If the appraised property is to be sold at auction, the auctioneer on request shall promptly deliver the catalogue of sale to the appraiser. The appraisal shall conform to the catalogue to the extent possible.

Comment

Subdivision (b) of this rule is an adaptation of former Additional Local Bankruptcy Rule 3(a). This subdivision is also intended to protect the confidentiality of appraisals.

Under Section 70f of the Act, appraisals are required prior to the sale of any property of the estate, and the property cannot be sold for less than 75% of its appraised value unless otherwise ordered by the court. Its counterpart under Section 363 of the Code, does not mandate appraisals, and the 75% rule has been eliminated. Although not required by the Code, appraisals may be desirable in certain situations and may continue to be made prior to the sale of property of the estate.

RULE 41. Auctions and Auctioneers

(a) No Official Auctioneer. There shall be no official auctioneer.

(b) Compensation. Unless the court orders otherwise for cause shown, compensation and reimbursement of expenses shall be allowed to an auctioneer for sales of property as hereinafter specified.

(1) The auctioneer shall be allowed commissions on the gross proceeds of each sale conducted by him at the following rate:

(a) 10% of any gross proceeds of sale up to \$25,000.

(b) 8% of any gross proceeds of sale in excess of \$25,000 but not more than \$50,000.

(c) 6% of any gross proceeds of sale in excess of \$50,000 but not more than \$75,000.

(d) 4% of any gross proceeds of sale in excess of \$75,000 but not more than \$100,000.

(e) 2% of any gross proceeds of sale in excess of \$100,000.

(2) The auctioneer shall be reimbursed for reasonable and necessary expenses directly related to the sale, including labor, printing, advertising and insurance, but excluding workmen's compensation, social security, unemployment insurance or other payroll taxes. When directed by the trustee to transport goods the auctioneer shall be reimbursed for expenditures related thereto. No travel expenses shall be allowed except as ordered by the court.

(c) Purchase Prohibited. An auctioneer or officer, director, stockholder, agent or employee of an auctioneer shall not purchase directly or indirectly, or have a financial interest in the purchase of, any property of the estate which the auctioneer has been employed to sell.

(d) Bond. An auctioneer employed with court approval shall not act until he gives in each estate, at his own expense, a surety bond in favor of the United States of America, to be approved by and in such sum as may be fixed by the court, conditioned upon (1) the faithful and prompt accounting for all monies and property which may come into his possession as auctioneer, (2) compliance with all rules, orders and decrees of the court, and (3) the faithful performance of his duties in all respects. In lieu of a bond in each case, an auctioneer may be permitted to file, at his own

expense, a blanket bond covering all cases in which he may act. Such blanket bond shall be in favor of the United States of America, shall be in the sum of \$100,000 and shall be conditioned for each estate on the same terms as bonds in separate estates.

(e) Manner of Display and Conduct of Sale. Unless the court otherwise directs, the sale shall be conducted in the following manner:

(1) The property to be sold shall be on public display for a reasonable period prior to the sale.

(2) The auctioneer shall, before receiving bids, announce the terms of sale.

(3) The property shall be offered for sale first in bulk and then in lots.

(4) Any property which, because of reclamation proceedings or for other reasons, is not included in the sale, shall be set apart and conspicuously marked. "not included in the sale", and such fact shall be announced by the auctioneer before the sale.

(f) Joint Sales. Whenever the trustee and a secured party, or other third party having an interest in the

property, desire to conduct a joint auction sale, a court order fixing the method of allocating the commissions and expenses of sale shall be entered prior to the sale.

(g) Proceeds of Sale. The auctioneer shall immediately deposit in a separate account for each estate all monies received with an entity that complies with the requirements of Section 15345(a) of the Code. Payment of the gross proceeds of the sale, less the auctioneer's reimbursable expenses, shall be made promptly by the auctioneer but in no event later than 10 days after the conclusion of the sale, unless the court directs otherwise.

(h) Report of Sale. The auctioneer shall file a report with the court and the United States trustee within 20 days after the conclusion of the sale. The report of sale shall set forth:

- (1) the time, date and place of sale;
- (2) the gross amount of the sale and, when property is sold in lots, a description of the items in each lot, the quantity in each lot, the amount received for each lot, and the bulk bid(s) received;
- (3) an itemized statement of expenditures, disbursements and commissions allowable under this rule,

including the name and address of the payee, together with the original receipts or cancelled checks, or true copies thereof, for such expenditures or disbursements. Where labor charges are included, there shall be specified the days worked and the number of hours worked in each day by each person and such person's social security number. If the cancelled checks are not available at the time the report is filed, it shall be so stated, and the cancelled checks shall be filed as soon as they become available;

(4) where the auctioneer has a blanket insurance policy covering all sales conducted by him, for which original receipts and cancelled checks are not available, an explanation of how the insurance expense charged to the estate was computed;

(5) if any articles were withdrawn from the sale because of a third party claim of an interest therein, a separate itemized statement of such articles reflecting the names of such third parties;

(6) the names of all purchasers at the sale;

(7) the sign-in sheet, if one was used, otherwise, the approximate number of people attending the sale;

(8) the items for which there was no bid and the disposition of any of such items;

(9) the terms and conditions of sale which were read in full to the audience immediately prior to the commencement of the sale;

(10) a statement of the manner and extent of advertising of the sale;

(11) a statement of the manner and extent of the availability of the items for inspection; and

(12) such other information as the United States trustee may request.

(i) Affidavit To Accompany Report of Sale. The auctioneer shall submit with his report of sale an affidavit stating: (1) that he is a duly licensed auctioneer and his license number and place of business, (2) the authority pursuant to which he conducted the auction sale and the date and place of the sale, and (3) that the labor and other expenses incurred on behalf of the estate as listed in his report of sale were necessary, true and accurate, and that the gross proceeds of sale exclusive of his expenses were remitted to the trustee or debtor in possession and the date of such remittance.

(j) Application for Commissions. An auctioneer shall apply to the court for approval of commissions on not less than 5 days' notice to the United States trustee, the trustee, if any, the debtor in possession, and any committee. No such application shall be granted unless the report referred to in subdivision (h) of this rule has been filed.

Comment

Where appropriate, any bond required or permitted by subdivision (d) of this rule may be approved by the clerk in accordance with Local Bankruptcy Rule 29.

Advertisements of auction sales are governed by Local Bankruptcy Rule 42.

RULE 42. Advertisement and Publication of Notice of Sale

An advertisement or publication of notice of a sale by auction or otherwise, may be made without court approval provided that it is sufficient to inform the appropriate persons of the sale and is advertised or published at least once in a newspaper of general circulation in the city or county in which the property is located. The advertisement or publication shall include (a) the date, time and place of the sale, (b) a description of the property to be sold, (c) the terms and conditions of the sale and (d) the name, address and telephone number of the trustee or debtor in possession. The court may at any time fix the manner and extent of advertising and publication.

RULE 43. Books and Records; Storage

The trustee or debtor in possession may place in storage, at the expense of the estate, the debtor's books, records, and papers.

Comment

This rule sets no time limit on the storage of books and records. On request the court may make an appropriate order limiting storage of the debtor's books, records, and papers. Disposal of the debtor's books, records, and papers is governed by Section 363 or 554 of the Code.

RULE 44. Relief from Automatic Stay; Motion to Assume Executory Contract or Unexpired Lease

(a) Relief from Automatic Stay. A party moving for relief from the automatic stay under Section 362 of the Code shall notice the hearing on such motion for a date not more than 30 days after the date of the filing of the motion with the court.

(b) Motion to Assume Executory Contract or Unexpired Lease in a Chapter 7 Case. Unless otherwise ordered by the court in a case under chapter 7, a trustee moving for assumption of an executory contract or unexpired lease of residential real property or of personal property of the debtor shall notice the hearing on such motion for a date not more than 60 days after the order for relief.

(c) Motion to Assume Unexpired Lease of Non-Residential Real Property. Unless otherwise ordered by the court in a case under any chapter, a debtor, debtor in possession or trustee moving for assumption of an unexpired lease of non-residential real property under which the debtor is the lessee shall notice the hearing on such motion for a date not more than 60 days after the order for relief.

Comment

Bankruptcy Rule 4001(a) provides that a request for relief from the automatic stay shall be made by motion. Section 362(e) of the Code contemplates that a hearing will take place within 30 days from the date of the request for relief. Rule 13(c)(2) governs the time within which responsive papers shall be served. Bankruptcy Rule 6006 provides that a proceeding to assume an executory contract, including an unexpired lease, other than as part of a plan shall be made by motion.

Section 365(d)(1) of the Code contemplates that a hearing on a motion by a chapter 7 trustee to assume an executory contract or an unexpired lease of residential real property or of personal property of the debtor ordinarily will take place within 60 days from the date of the order for relief. Likewise, Section 365(d)(4) of the Code contemplates that a hearing on a motion by a debtor, debtor in possession or trustee to assume an unexpired lease of non-residential real property of the debtor ordinarily will take place within 60 days from the date of the order for relief. In order to avoid automatic rejection of an executory contract or unexpired lease pursuant to Sections 365(d)(1) or (4) of the Code, a motion must be filed and an order obtained extending the time specified in § 365(d)(1) or (4) of the Code.

RULE 45. Notice and a Hearing

(a) Contents of Notice. Unless otherwise ordered by the court, whenever "notice and a hearing" are specified in the Code or Rules, the entity proposing to act or obtain an order, if not proceeding by motion, shall give notice in writing, setting forth:

(1) a statement of the action proposed to be taken or the order to be presented, including a concise statement of the terms and conditions of and the reasons for the proposed action or order;

(2) the date by which objections concerning the proposed action or order shall be served and filed;

(3) the time when the action will be taken or the proposed order will be presented for signature if there is no objection, and a statement that the action will be taken or the order may be entered without a hearing unless a timely objection is made; and

(4) the date when a hearing will be held if a timely objection is made, which date shall ordinarily

be a calendar day of the judge to whom the case has been assigned.

(b) Time for Notice. Unless otherwise ordered by the court, notice by mail shall be given at least 20 days prior to the date when the proposed action is to be taken or proposed order is to be presented, if notice is being given to all creditors and, at least 7 days prior to such date, if notice to all creditors has been dispensed with by the court pursuant to subdivision (c) hereof.

(c) Persons to Receive Notice. In addition to the requirements of Rule 2002, and unless otherwise ordered by the court, notice shall be given to any entity who has or claims an interest in the subject matter of the proposed action or order or who otherwise would be affected by such action or order.

(d) Filing and Proof of Service. Any entity giving notice pursuant to subdivision (a) of this rule shall file the notice and proof of service with the clerk within 3 days of the date of service.

(e) Objection. Unless otherwise prescribed by the Bankruptcy Rules or ordered by the court, any objection to the proposed action or order, shall be in writing, and shall state with particularity the reasons for the objection to the proposed action or order. The objection shall be served on

the entity proposing the action or order or its attorney at least one day prior to the date set for the hearing if (i) at least 10 days notice has been given, or (ii) at least three days prior to the date set for the hearing if at least 20 days' notice has been given. The objection, together with a proof of service, shall be filed with the court and a copy delivered to judge's chambers prior to the date set for the hearing.

(f) Hearing. An objection to a proposed action or order shall constitute a request for a hearing. If an entity objects to a proposed action or order or a request for a hearing is made, the entity proposing the action or order shall not take such action until a hearing is held by the court and an order is entered. The court may order the proposed action to proceed on such conditions as will protect the rights of parties in interest.

(g) No Order Needed to Confirm a Sale. If a timely objection is not made, then a court order shall not be required to authorize a sale of property pursuant to this rule. The trustee, debtor, or debtor in possession may execute such documents and instruments as shall be necessary to complete the sale and file with the court and the United States trustee, a report of the sale as required by Bankruptcy Rule 6004(e) when the sale is completed. On request, the clerk shall issue

a certificate stating that a notice of a proposed action, with proof of service, has been filed with the court and that no timely objection has been made.

Comment

This rule provides a standard procedure which may be used whenever the Code requires "notice and a hearing", including Sections 363, 364, 554 and 725 of the Code.

The "notice and a hearing" requirements concerning the use, sale or lease of property and the abandonment or other disposition of property are governed by Bankruptcy Rules 6004 and 6007 respectively. To the extent not inconsistent with those Bankruptcy Rules, this rule shall apply.

Other procedures for the submission of orders are provided for by Local Bankruptcy Rules 46 and 17. Local Bankruptcy Rule 46 applies to situations in which "notice and a hearing" are not required by the Code and a hearing has not been held. Local Bankruptcy Rule 17 applies to the settlement of orders in situations in which a hearing has been held.

RULE 46. Notice of Proposed Order

(a) Use. Whenever "notice and a hearing" are not required by the Code and a hearing has not been held, the form set forth in subdivision (b) of this rule shall be used for the submission of orders to the court.

(b) Form. Notice of a proposed order shall be given to the debtor, debtor in possession, trustee, if any, United States trustee and any creditors' or equity security holders' committee appointed or elected pursuant to the Code in substantially the following form:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____	:	
	:	
	:	
Caption of Case	:	Docket No.
	:	
_____	:	

NOTICE OF PROPOSED ORDER

PLEASE TAKE NOTICE that upon the annexed [application or motion] of [insert name of applicant or movant] the undersigned will present for signature the attached order to the Honorable [insert name], Bankruptcy Judge on [insert date] at 12 o'clock noon.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed order must be made in writing and received in the Bankruptcy Judge's chambers and by the undersigned not later than 11:30 a.m. on that date [and

be given to the undersigned.] Unless objections are received by that time, the order may be signed.

Dated: [Place]
[Date]

[insert name, address and
telephone number of attorney
for applicant or movant]

To: [insert names and addresses
of entities to receive notices]

(c) Time. Three (3) days' notice shall be required for the presentation of an order under this rule. If notice is given by mail, three (3) days shall be added to the prescribed period.

Comment

This rule establishes a formal procedure for submitting orders to the court whenever "notice and a hearing" are not required by the Code and a hearing has not been held. For example, use of this rule would be appropriate in obtaining an order retaining a professional person pursuant to Section 327 of the Code. In contrast, Local Bankruptcy Rule 45 applies to situations in which the Code requires "notice and a hearing", and Local Bankruptcy Rule 17 applies to situations in which a hearing has been held.

Times for objecting to and presenting for signature proposed orders are specified in this rule to promote uniformity in practice.

RULE 47. Obtaining Credit

If priority for obtaining credit or incurring debt is sought pursuant to Section 364(c) or (d) of the Code, the motion shall expressly state whether priority over any and/or all administrative expenses specified in Section 503(b)(2) or 507(b) of the Code is sought.

RULE 48. Withdrawal and Settlement of Actions to Determine Discharge and Dischargeability

(a) Withdrawal of Complaint. In the event of withdrawal of a complaint objecting to discharge or failure to prosecute an adversary proceeding objecting to discharge, no discharge shall be granted unless the debtor shall make and file an affidavit and his attorney shall make and file a statement that no consideration has been promised or given, directly or indirectly, for any such withdrawal or failure to prosecute.

(b) Settlement of Proceedings. In all instances not governed by Section 524(d) of the Code, no adversary proceeding to determine the dischargeability of a debt shall be settled except on an order of the court after due inquiry into the circumstances of any settlement, including the terms of any agreement entered into between the creditor and the debtor relating to the payment of the debt, in whole or in part.

RULE 49. Bond Upon Removal

Unless the court otherwise directs, the bond required by Bankruptcy Rule 9027(b) shall be in the sum of \$500.

Comment

The amount of the bond is the same as that required for removal of cases to the district court pursuant to Civil Rule 25(a) of the District Rules.

RULE 50. Debtor's Address in Petition; Matrix and List of Creditors

(a) Debtor's Address. If not included in the debtor's post office address, the petition shall also state the debtor's residence and place of business, including the street number, street, apartment or suite number, and zip code.

(b) Matrix and List of Creditors. If there are more than 25 but fewer than 250 creditors, the debtor shall file a matrix list with a certification by the debtor that such is true, complete and correct for the preparation of mailing labels containing the names and post office addresses, including zip codes, of the debtor's creditors, the debtor, the debtor's attorney, the United States trustee and if a debt is owing to the United States then to the particular agency or department, if known, to which such debt is owing, not later than 10 days after the filing of a petition in a voluntary case, and not later than 10 days after the entry of an order for relief in an involuntary case, unless, on application for cause shown on notice to the United States trustee and any other party designated by the court, the court extends the time. Any amendment to the debtor's schedules which amends, deletes or adds to any of the information contained in the original matrix shall be accompanied by an amended or supplemental matrix, certified by the debtor.

If there are 250 or more creditors all of the requirements set forth above shall be complied with, except that, in lieu of a matrix list, the debtor shall file a list in such form and specifications as is compatible with the Bankruptcy Automatic Noticing System utilized by the court.

The clerk shall make the form and specification requirements of the noticing system available at the clerk's office.

Comment

Compliance with subdivision (b) of this rule is essential to enable notices required by Bankruptcy Rule 2002 to be given to all creditors, the debtor, the debtor's attorney, the United States trustee and to the particular agency or department of the United States to which a debt is owing.

Listing the Department of Justice alone will not suffice if the particular agency or department of the United States to which a debt is owing is known.

RULE 51. Corporate Resolution

A voluntary petition or consent to an involuntary petition filed by a corporation shall be accompanied by a copy of the corporate resolution or other appropriate authorization, duly attested to, authorizing such filing.

RULE 52. Debtor's Affidavit to be Filed in Chapter 11 Cases

(a) Contents of Affidavit. A debtor in a chapter 11 case shall file an affidavit setting forth:

(1) if the case was originally commenced under chapter 7 or 13, the name and address of any trustee appointed in such chapter 7 or 13 case and the names and addresses of the members of any creditors committee elected in the chapter 7 case;

(2) the names and addresses of the members of any committee and any attorney for such committee, organized prior to the order for relief in a chapter 11 case, and a brief description of the circumstances surrounding the formation of any committee and the date of its formation;

(3) the following information with respect to the 20 largest unsecured creditors, excluding insiders: the names, addresses (including the number, street, apartment or suite number, and zip code, if not included in the post office address), telephone numbers, names of persons familiar with the debtor's account, the amount of each claim, and an indication of whether such claims are contingent, unliquidated, disputed or partially secured;

(4) the nature of the debtor's business and a concise statement of the circumstances leading to the debtor's filing under Chapter 11;

(5) a summary of the debtor's assets and liabilities;

(6) the number and classes of shares of stock, debentures or other securities of the debtor which are publicly held, and the number of holders thereof, listing separately those held by the debtor's officers and directors and the amounts so held;

(7) a list of all property of the debtor in the possession or custody of any custodian, public officer, mortgagee, pledgee, assignee of rents, or secured creditor or agent for any such person, giving the name, address and telephone number of such person and the court, if any, in which a proceeding relating thereto is pending;

(8) the nature and present status of each action or proceeding pending or threatened against the debtor or its property where a judgment against the debtor or a seizure of its property may be imminent;

(9) a list of the premises owned, under lease, or held under other arrangement from which the debtor operates its business; and

(10) the location of the debtor's substantial assets, the location of its books and records, and the nature, location and value of assets, if any, held by the debtor outside the territorial limits of the United States.

(b) Additional Information if Business is to Continue. If the debtor intends to continue the operation of its business, the affidavit shall so state and shall set forth:

(1) the estimated amount of the weekly payroll to employees (exclusive of the officers, partners, stockholders, and directors) for the 30 day period following the filing of the chapter 11 petition;

(2) the amount paid and proposed to be paid for services for the 30 day period following the filing of the chapter 11 petition

a. if a corporation, to officers, stockholders, and directors;

b. if an individual or a partnership, to the individual or the members of the partnership;
and

c. if a consultant has been retained, to such consultant.

(3) a schedule setting forth for the 30 days following the filing of the petition estimated cash receipts and disbursements, net cash gain or loss, accrued but unpaid obligations, other than professional fees, and any other information relevant to an understanding of the foregoing.

(c) When to File. In a voluntary chapter 11 case, the affidavit shall accompany the petition. In an involuntary chapter 11 case, the affidavit shall be filed within 15 days after entry of the order for relief or after the filing of a consent to the petition, whichever is earlier.

(d) Waiver of Requirements. On application of the debtor and notice to the United States trustee showing that it is impracticable or impossible to furnish any of the foregoing information, the court may dispense with any of the foregoing provisions, except that the affidavit shall contain the information required by paragraphs (1), (2), (3) and (4) of subdivision (a) of this rule.

Comment

This rule is an adaptation of former Additional Local Bankruptcy Rule XI-2 and supplements Bankruptcy Rule 1007.

It should be noted that Bankruptcy Rule 2011 provides a procedure whereby a banking institution may be assured that a debtor in possession is authorized to open a bank account.

RULE 53. Notice of Amendment of Schedules in
Chapter 11 Case

When the debtor, debtor in possession or trustee in a chapter 11 case amends the schedules to change the amount, nature, classification or characterization of a debt owing to a creditor, notice of such amendment shall be transmitted forthwith by the debtor, debtor in possession or trustee to such creditor.

Comment

This rule compliments Bankruptcy Rule 1009. The term "characterization" as used in this rule, is intended to include, inter alia, the following descriptions of debt: disputed or undisputed, fixed or contingent, liquidated or unliquidated.

RULE 54. Certification of Acceptances and Rejections
of Plans

Prior to or at the hearing on confirmation, the proponent of a plan or other party who receives the acceptances or rejections shall certify to the court the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served on the debtor, debtor in possession, trustee, if any, United States trustee and any creditors' or equity security holders' committee appointed pursuant to the Code. On the basis of the certification the court may find that the plan has been accepted or rejected.

Comment

The certification requirement of this rule continues local practice. This rule also permits the court to rely on such certification in determining whether a plan has been accepted or rejected under Section 1126 of the Code. If there is an issue raised as to the acceptance or the rejection of a plan, the court may hold an evidentiary hearing.

RULE 55. Proposed Disclosure Statements: Transmittal
and Disclaimer

(a) Notice: By Whom Transmitted. Unless the court otherwise directs, the proponent of a plan shall transmit all notices and documents required by Bankruptcy Rules 3017(a) and X-1008(a)(4). On request, the clerk shall supply the proponent, at a reasonable cost, with any matrix of creditors for the purpose of preparing address labels, if the matrix is available to the clerk.

(b) Disclaimer. Before approval of the disclosure statement by the court, any proposed disclosure statement shall have on its face the following language, or words of similar import, in boldface type:

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

Comment

Bankruptcy Rules 3017(a) and X-1008(a)(4) provide that notice of a hearing on a disclosure statement shall be given to the debtor, trustee, if any, United States trustee, any committee appointed under the Code, the Securities and Exchange Commission, and any party in interest who requests in writing a copy of the disclosure statement or plan.

Bankruptcy Rule X-1008(a)(4) requires that the United States trustee should be provided with a copy of the proposed disclosure statement and plan.

Bankruptcy Rule 2002(b) permits the court to require a party other than the clerk to bear the responsibility for transmitting the notices and documents specified in this rule.

RULE 56. Modification of Chapter 11 Plan Before Acceptance

In the event that the proponent of a chapter 11 plan files a modification of the plan after transmission of the approved disclosure statement and before acceptance of the plan, the proponent shall serve a copy of the plan as modified on the debtor, debtor in possession, trustee, if any, the United States trustee and any creditors' or equity security holders' committee appointed pursuant to the Code. On notice to such entities, the court shall determine whether the modification adversely affects the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted the modification in writing. If the modification is not adverse, the plan as modified shall be deemed accepted by all creditors and equity security holders who accept the plan. If the modification is adverse, the requirements of Bankruptcy Rule 3017 shall apply to the modified plan and any amendment of the disclosure statement made necessary by the modification.

Comment

Pursuant to Section 1127(a) of the Code, the proponent of a chapter 11 plan may modify such plan at any time before confirmation. Bankruptcy Rule 3019 governs modification of a plan after acceptance and before confir-

mation, while this rule governs modification subsequent to the transmission of an approved disclosure statement and before acceptance.

RULE 57. Time for Making Objection to Confirmation of a Plan;
Withdrawal of Objection

(a) Objection to Confirmation. An objection to confirmation of a plan shall be filed not later than 3 days prior to the first date set for the hearing to consider confirmation of a plan or by such other date as the court may fix.

(b) Withdrawal of Objection. In the event of the withdrawal of an objection to confirmation of a plan or the failure to prosecute the objection, no plan shall be confirmed unless the proponent of the plan shall make and file an affidavit and its attorney shall make and file a statement that no consideration has been promised or given, directly or indirectly, for any such withdrawal or failure to prosecute.

Comment

Subdivision (a) of this rule designates a fixed time for objecting to confirmation as permitted by Interim Bankruptcy Rule 3008(a)(1).

Subdivision (b) is an adaptation of former Additional Local Rule XI-5.

RULE 58. Post Confirmation Reports in Chapter 11 Cases

Ninety days after entry of an order of confirmation or within such other time as the court may direct, the debtor or the trustee shall file a report or reports with the clerk and shall serve a copy on any creditors' or equity security holders' committee appointed in the case pursuant to the Code and on the United States trustee, which report or reports shall set forth the actions taken and the progress made towards the consummation of the plan including a detailed account of all payments made. In the event that a purpose would be served thereby, the court may also direct the filing of additional reports.

Comment

This rule is an adaptation of former Bankruptcy Rule 10-208(a)(10) which required the trustee to file a similar report within 30 days after an order of confirmation.

RULE 59. Hearing on Confirmation of Chapter 13 Plan

The debtor shall attend the hearing on confirmation of the chapter 13 plan or any adjourned hearing thereon unless the court on application on such notice as the court directs and for cause orders otherwise.

RULE 60. Modification of Chapter 13 Plan Before Confirmation

Unless the court finds that the modification of a chapter 13 plan does not adversely affect the treatment of the claim of any creditor, the debtor shall serve a copy of the modified plan on any standing trustee assigned to such case, on all creditors and on the United States trustee not later than 10 days prior to the date fixed for the hearing on the confirmation or any adjournment thereof.

Comment

This rule supplements Section 1323 of the Code.

Rule 61. Chapter 13 Plan Exceeding 3 Years

If a chapter 13 plan proposes payments to creditors over a period that exceeds 3 years, then not later than 10 days prior to the date fixed for the hearing on confirmation of the plan or any adjournment thereof, the debtor shall file an application on notice to the standing trustee, the United States trustee, and all creditors, setting forth the reasons for such longer period of time.

Comment

Section 1322(c) of the Code permits the court, for cause, to approve a chapter 13 plan that proposes payment for a period up to 5 years. This rule provides a procedure for an application pursuant to that section.

RULE 62. Notice and Hearing for Debtor's Attorney's Fee to
be Treated as Administrative Expense Under Chapter
13 Plan

If the compensation or any portion thereof of the attorney for a chapter 13 debtor is to be treated as an administrative expense under the plan, the attorney shall provide adequate notice of that fact to the standing trustee assigned to the case, to all creditors, and to the United States trustee. Such notice shall be deemed made if the debtor's plan or any amended plan that is transmitted to all parties in interest states with particularity the time and amount of any payments to be made to the attorney.

ACT RULES

RULE 63. Appraisals

Local Bankruptcy Rule 40 shall apply in cases under the Bankruptcy Act except that all references to "the United States trustee" shall be deleted.

RULE 64. Auctions and Auctioneers

Local Bankruptcy Rule 41 shall apply in cases under the Bankruptcy Act except that:

(1) All references to the United States trustee in that rule are inapplicable, and

(2) The following subdivision is added at the end of that rule:

"(k) Minimum Sales Proceeds. No sale shall be final without special order of the court unless the sale realizes 75% or more of the appraised value."

RULE 65. Advertisement and Publication of Notice

Local Bankruptcy Rule 42 shall apply in cases under the Bankruptcy Act.

RULE 66. Interim and Final Reports by Trustees in
Bankruptcy

(a) Interim Reports. Within one month after qualification the trustee in bankruptcy shall file a report with the court, and shall every 6 months thereafter, unless otherwise ordered by the court, file a duly verified report, in writing, to keep the court and creditors advised of the progress of the administration of the estate. Every such report shall state what, if any, dividends can be paid and the reasons why a final report cannot then be filed. The report shall show the condition of the estate, the amount of money on hand and the receipts and disbursements in detail. The report shall be accompanied by a copy of the last prior report, if any. Photocopies of the current bank statement and certificates of deposit, or receipts therefor, shall be appended.

The body of the report shall be substantially in the following form:

The undersigned trustee in bankruptcy was appointed on [fill in date of appointment] and qualified by filing a bond in the amount of [fill in amount of bond].

1. Those claims to which objection is intended to be made are as follows: [If the time to file claims has not yet expired, this fact may be stated to satisfy the requirements of this portion of the report.]

2. The details of the matters pending are as follows: [state in detail, the matters pending and the

time when, in the judgment of the trustee, such matters will be closed].

3. The trustee's best estimate as to when he will be in a position to file his final report is as follows: [the trustee will state his best estimate as to when he will be in a position to file his final report].

4. The books and records received and put in storage in the current period are identified as follows: [the trustee will identify, with particularity, the nature of the books and records received and put in storage in the current period; the report will explain the delay, if any, in paying storage charges on a current basis].

5. The charges for the services of the official hearing stenographer are being paid on a current basis, except as follows: [the report will explain the delay, if any, in paying the charges for the services of the official hearing stenographer].

6. Attached hereto is Schedule A showing the property which has come into the trustee's possession. [Schedule A should identify the property which has come into the trustee's possession during the current period, including cash items which should be described in detail, giving the dates of receipt and on account of what received, and the total of such receipts. This schedule should carry forward any cash balance from the last prior report.]

7. Attached hereto is Schedule B showing the disbursements of the trustee and the total of the amounts on hand. [Set forth in Schedule B the disbursements of the trustee during the current period in detail, giving the date of each disbursement, the amount thereof, the purpose thereof, and the total of such disbursements. This schedule should carry forward the total disbursements, if any, from the last prior report and shall show the amount of money which the trustee has on hand.]

(b) Final Reports. The trustee's final report shall be filed in duplicate and shall contain in the order listed below, the following information:

(1) Date of the trustee's qualification and the amount of his bond.

(2) Statement of the services performed by the trustee.

(3) Total receipts and total disbursements of the trustee.

(4) Total disbursements made by him in continuing the business of the bankrupt.

(5) A statement that all the assets have been reduced to cash and that the estate is ready to be closed.

(6) A statement referring in reasonable detail to the items of property mentioned in the debtor's schedules, including accounts receivable and choses in action, and accounting for the same.

(7) A statement that the trustee has examined into the amount paid, prior to the filing of the petition, to any attorney for the bankrupt for services rendered or to be rendered in connection with the bankrupt setting forth the amount of such payment, and whether he deems the fee reasonable; and if he deems the fee unreasonable, what proceedings have been taken thereon.

(8) A statement of the amounts of compensation asked for by his attorneys and accountants, together with such comments or recommendations as he may deem appropriate.

(9) A statement that all disbursements made by the trustee were reasonable in amount and properly made.

(10) A statement that the claims on file with the court have been examined and the trustee has no objection to the allowance of such claims in the amounts claimed or for such amounts as have been fixed by order.

(11) The compensation requested by the trustee for his services and the amount of any previous compensation allowed.

(12) A list of unpaid claims incurred in any prior proceeding superseded by the bankruptcy and filed with the trustee or the court containing the names of the holders, their addresses and amounts, and a statement whether such claims are valid and, if not, that objections thereto have been or are being filed and noticed for hearing.

Attached to the report shall be vouchers for all disbursements, together with bank statements and the following schedules:

Schedule A. Cash items received by the trustee in detail, giving the dates of receipt and on account of what received and the total of such receipts.

Schedule B. The disbursements of the trustee, in detail, giving the date of each disbursement, the amount thereof, the purpose thereof and the total of such disbursements.

Schedule C. An adequate statement as to the assets which came into the trustee's possession and the disposition thereof.

Comment

This rule is former Additional Local Bankruptcy Rule 2(b) with minor changes.

tions with respect to such account to the trustee personally and not to any agent or attorney for such trustee. No trustee shall have the power to designate an agent or attorney to receive such bank statements, cancelled checks or other communications.

Comment

This rule is former Additional Local Bankruptcy Rule 2(a) with minor changes.

RULE 68. Chapter X; Number of Copies of Papers to Be Filed

(a) Original and 4 Copies. The original and 4 copies of each of the following papers shall be filed with the clerk: (1) orders approving or dismissing petitions; (2) orders appointing trustees or continuing debtors in possession; (3) orders determining the time within which claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (4) orders approving any plan or plans, together with copies of such plans; (5) orders approving alterations or modifications in plans, together with copies of such alterations or modifications; (6) orders confirming plans, together with copies of such plans; (7) applications for allowances for compensation and expenses; (8) orders making or refusing to make such allowances; (9) orders adjudging debtors to be solvent or insolvent; and (10) orders adjudging debtors as bankrupts or dismissing proceedings.

(b) Determination of Copies to be Filed. Except as otherwise provided in these Local Bankruptcy Rules and the Bankruptcy Rules, the clerk or judge shall determine the number of copies of papers to be filed.

Comment

This rule is former Additional Local Bankruptcy
Rule X-1 with minor changes.

RULE 69. Chapter X; Retention of Supervision by Judge

The judge who approves the petition shall retain supervision over all subsequent steps in the proceeding.

Comment

This rule continues verbatim former Additional Local Bankruptcy Rule X-2.

RULE 70. Chapter X; Intervention

(a) Contents of Application. Every application for leave to intervene pursuant to Bankruptcy Rule 10-210 shall state whether the application is to intervene generally or as to specific matters, the interest which the applicant seeks to protect, the facts showing the necessity for intervention to protect such interest, and the specific matters or issues as to which the applicant desires to intervene. If the intervention is sought by any person or committee required to file a statement under Bankruptcy Rule 10-211, a copy of such statement shall be annexed to the petition for leave to intervene. Notice of the application shall be given to the debtor in possession or trustee, to all persons who shall theretofore have been granted leave to intervene generally in the proceeding, to the Securities and Exchange Commission and to such other persons as the judge may direct.

(b) Notice of Prior Representative. If the interest which the applicant seeks to protect is already represented in the proceeding, the application shall state the name of the prior representative and the reasons why the interest which the applicant seeks to protect is not adequately protected by such prior representative.

(c) Contents of Order of Intervention. If intervention is granted, the order shall state that the intervention is general or that the intervention is granted as to the specific matters or issues enumerated in such order. The granting of leave to intervene shall not of itself entitle the intervenor, or his attorney, to an allowance of compensation for services or reimbursement of expenses.

Comment

This rule is former Additional Local Bankruptcy Rule X-3 with minor changes.

RULE 71. Chapter X; Confirmation of Report of Special Master

Hearings upon a special master's report on the approval or confirmation of a plan of reorganization, dismissal of the case, adjudication of the debtor to be a bankrupt, or allowance of fees and expenses, shall be held at such time and place and upon such notice as the judge shall direct. Upon all other matters, the report of the special master shall be filed with the clerk and upon the same day notice thereof shall be delivered or mailed by the special master to the attorneys who appeared before him at the hearing and to the parties who appeared at the hearing without attorneys. The report shall be brought on for confirmation on the day named in the notice, which shall be not less than 5 days after the filing of the report and delivery or mailing of the notice. The clerk shall place the case on the calendar on the day specified in the notice.

Comment

This rule is former Additional Local Bankruptcy Rule X-4 with minor changes.

RULE 72. Chapter X; Reports of Operation of Business

Unless the court otherwise orders, every trustee or debtor in possession, if authorized to operate the business, shall file with the clerk, not later than the 15th of each month, a report and summary of the operations of the business during the preceding month. Unless the judge otherwise directs, the report shall include a classified statement of receipts and disbursements, balance on hand at the beginning and at the end of the months, indebtedness incurred, credit extended, contractual and other obligations assumed, and such other matters as may be specified by the judge.

Comment

This rule is former Additional Local Bankruptcy Rule X-5 with minor changes.

RULE 73. Chapter X; Operation of Vessels and Protection
of Maritime Liens

(a) In all proceedings in which the debtor is the owner, or owner pro hac vice, or charterer, or is an agreed purchaser in possession, of one or more vessels upon which maritime liens are asserted, the judge shall, unless in his discretion he shall otherwise direct, upon application made at any time by the trustee, or by the debtor in possession, or by any one asserting such maritime lien, make such provision as he shall deem wise for the protection by insurance or otherwise of the holders of such maritime lien existing or claimed to exist at the time of the filing of the petition or arising thereafter, during such time as any such vessel or vessels may remain in the ownership of or be operated by the trustee, or by the debtor in possession.

(b) Any maritime lienor, notwithstanding any restraining order that may be issued in such proceeding, unless issued after hearing upon notice to him, shall be at liberty to file a libel in admiralty in rem against a vessel for the determination of his lien and the amount thereof, but without the right to issue process of attachment, or right of seizure, or of sale, or interference with the possession of the trustee or debtor in possession, except upon further order of the judge. Upon the filing of such libel the

trustee or debtor in possession shall file claim to such a vessel without being required to file any stipulation for costs or value, and shall confess or defend the libel as may seem proper. In the latter event the issues raised by the pleadings shall be tried as a preferential cause on the admiralty side of court.

Note: -- The purpose of the rule is to protect an existing maritime lienor against the possibility of loss of the vessel or incurrence of priority charges while it is in the operation of a debtor in reorganization. Limitation of such protection to a situation where the debtor is the actual owner or owner pro hac vice, is inadequate. An owner pro hac vice is a bareboat or demise charterer, and but one of the class of persons who are presumptively clothed with power to pledge the credit of the vessel under Title 46 U.S.C. Section 972, 973. Section 973 designates the persons having presumptive authority to pledge the credit of the vessel as ". . . such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel;" Hence, the rule should include all persons of such class and now includes ". . . the owner, the owner pro hac vice, the time charterer or an agreed purchaser in possession of one or more vessels"

As to the jurisdiction of the reorganization court see Foust v. Munson S.S. Lines, 299 U.S. 77, 57 S. Ct. 90.

Comment

This rule continues verbatim former Additional Local Bankruptcy Rule X-6 and the note thereto.

RULE 74. Chapter X; Agents of Receivers or Trustees
for the Disbursement of Funds or the Execution
of Instruments

The judge may authorize a receiver or trustee to designate one or more agents to sign, endorse and deliver checks and other negotiable instruments, orders for the payment of money or the delivery of property, documents of title, and other instruments and documents.

Comment

This rule continues verbatim former Additional Local Bankruptcy Rule X-7.

RULE 75. Chapter X; Security Records and Transfer of Securities; Notices

(a) Records and Transfers. Whether a trustee is appointed or the debtor is continued in possession, the debtor shall continue, unless otherwise directed by the court, to transfer and exchange its stock certificates, bonds and other securities, and upon satisfactory proof of loss, theft, destruction or mutilation, to issue new stock certificates, bonds, and other securities, in the usual manner and in accordance with applicable law and the terms of the agreements, indentures, instruments, or other authority under which the securities were issued or listed, and it shall continue to record such transactions in its security records.

The schedules of the debtor in possession filed pursuant to Bankruptcy Rule 10-108, or the trustee's list of stockholders and of creditors holding claims founded on securities filed pursuant to such rule, shall conform to such records, and all subsequent transfers and changes noted on such records shall be deemed to be amendments of the schedules or lists so filed.

A sale, assignment or transfer of a security shall be deemed to effect a sale, assignment or transfer of the

claim or interest covered by any filed proof of claim or interest founded on such security.

(b) Notices. Communications to holders of claims or interests founded upon registered securities shall be addressed to them at their addresses in the registration records of the debtor's securities. Upon written request by a registered holder, his address on such records shall be changed.

Comment

This rule is former Additional Local Bankruptcy Rule X-8 with minor changes.

RULE 76. Chapter X; Hearing on Plans

Notice of a hearing for the approval of a plan pursuant to Bankruptcy Rule 10-303 shall be accompanied by a copy of the plan or plans filed unless the court otherwise directs. If the hearing is on a report by the trustee that a plan cannot be effected, a copy of the report shall accompany the notice.

Comment

This rule is an adaptation of former Additional Local Bankruptcy Rule X-9, with the exception that the court has been given flexibility with respect to whether a copy of the plan must accompany the notice of hearing for the approval of a plan.

RULE 77. Chapter XI; Affidavits to be Filed

Every petition under Chapter XI of the Bankruptcy Act shall be accompanied by an affidavit containing the information specified in Local Bankruptcy Rule 53.

Comment

Local Bankruptcy Rule 53 is an adaptation of former Additional Local Bankruptcy Rule XI-2.

RULE 78. Chapter XI; Operation of Debtor's Business

Unless otherwise ordered, every receiver, trustee or debtor in possession authorized to operate the business, shall file, in duplicate, with the clerk: (1) a verified monthly statement of cash receipts and disbursements setting forth the names of the persons to whom payments have been made, the amounts of the payments, the consideration, and where payments are to employees, the amounts of the deductions for withholding and social security taxes and whether or not such deductions have been deposited in a special account; and (2) a verified monthly report not later than the 15th of each month which shall set forth a summary of the operations of the business during the preceding month and a verified statement of (a) receipts from all sources, classified, and balance on hand at the beginning and at the end of the month, (b) disbursements for all purposes, classified, (c) the amount of indebtedness incurred and remaining unpaid and contractual and other obligations assumed, and, (d) detailed inventory on hand at the beginning of the month and detailed inventory on hand at the end of the month.

Comment

This rule is an adaptation of former Additional Local Bankruptcy Rule XI-3.

RULE 79. Chapter XI; Operation of Vessels and Protection
of Maritime Liens

(a) In all proceedings in which the debtor is the owner, or owner pro hac vice, or charterer, or is an agreed purchaser in possession, of one or more vessels upon which maritime liens are asserted, the court shall, unless in its discretion it shall otherwise direct, upon application made at any time by the trustee, or by the debtor in possession, or by any one asserting such maritime lien, make such provision as it shall deem wise for the protection by insurance or otherwise of the holders of such maritime lien existing or claimed to exist at the time of the filing of the petition or arising thereafter, during such time as any such vessel or vessels may remain in the ownership of or be operated by the trustee, or by the debtor in possession.

(b) Any maritime lienor, notwithstanding any restraining order that may be issued in such proceeding, unless issued after hearing upon notice to him, shall be at liberty to file a libel in admiralty in rem against a vessel for the determination of his lien and the amount thereof, but without the right to issue process of attachment, or right of seizure, or of sale, or interference with the possession of the trustee or debtor in possession, except upon further order of the court. Upon the filing of such libel the trustee or debtor

in possession shall file claim to such vessel without being required to file any stipulation for costs or value, and shall confess or defend the libel as may seem proper. In the latter event the issues raised by the pleadings shall be tried as a preferred cause on the admiralty side of the court.

Comment

This rule continues verbatim former Additional Local Bankruptcy Rule XI-4.

RULE 80. Chapter XI; Objections to Confirmation of Arrangement

In the event of the withdrawal of objections to an arrangement or the failure to prosecute the objections, no arrangement shall be confirmed unless the debtor and his attorney and the objecting party and his attorney shall make and file with the court an affidavit that no consideration has been promised or given, directly or indirectly, for any such withdrawal or failure to prosecute.

Comment

This rule continues verbatim former Additional Local Bankruptcy Rule XI-5.

RULE 81. Chapter XII; Applicability of Chapter XI Rules

Local Bankruptcy Rules 77 to 80 shall also apply to cases under Chapter XII. In addition to the copies of papers required by Local Bankruptcy Rule 77, the original and one copy of the following shall be filed with the court: (a) orders appointing trustees; (b) orders determining the time within which claims of creditors may be filed or allowed and the division of creditors into classes.

Comment

This rule is an adaptation of former Additional Local Bankruptcy Rule XII-1.

RULE 82. Chapter XIII; Applicability of Chapter XI Rules

Local Bankruptcy Rules 77 to 80 shall also apply to cases under Chapter XIII. In addition to the copies of papers required by Local Bankruptcy Rule 77, the original and one copy of the following shall be filed with the court: (a) orders confirming plans, together with copies of plans; and (b) orders increasing or reducing the amount of the installment payments under plans and orders extending or adjourning the time of such payments.

Comment

This rule is an adaptation of former Additional Local Bankruptcy Rule XIII-1.

Ms. Cecelia Lewis
NYS

Dear Cecelia:

In the wake of our visit to your court, we have reassessed your staffing needs in light of the significant backlogs your office is experiencing in the case processing and support areas. Based on the filing information you provided us, we have decided to recalculate your credit for Chapter 11 filings.

We will create a new "Other Additive" for your district that reflects the extraordinary workload associated with the Chapter 11 filings with assets in excess of \$100 million. We will now allocate one-half position for each case with assets of \$100-\$499 million, one position for each case with assets of \$500-\$999 million, and one and one-half positions for each case with assets of \$1 billion or greater. Based on calendar year 1991 actual data, we will authorize your court 18 additives. Since this is a mid-year correction, the full-time equivalent budget credit will be prorated accordingly. Please note however that we will eliminate all current credit for "Other Additives" which is 7.5 staff previously provided for Eastern, LTV, etc. + next page

We believe this staffing is necessary to alleviate the 10 day backlog in the docketing area. It may also allow more staff for the intake section. Since the bankruptcy work measurement study is about to be undertaken, these interim adjustments will be examined again at that time or when an independent formula is developed for your office.

Enclosed please find a copy of the personnel action raising your position ceiling by 10 additional positions. If we can be of further assistance, please do not hesitate to call Jody Humphreys or me on FTS 633-6236.

Sincerely,

Charles E. Six

Enclosure

COURT ADMINISTRATION DIVISION
Personnel Action

DATE: May 18, 1992
FROM: JOANNE L. HUMPHREYS, John Regional Administrator, CAD.
TO: LYNDA RABY, Human Resources Division, Court Branch

AUTHORIZATION TO TAKE PERSONNEL ACTION IN THE FOLLOWING:

Circuit District Bankruptcy Other

Circuit/District New York Southern

NEW WORK MEASUREMENT FORMULA: 100 % = 114

Previous Permanent Position Ceiling Authorized 108

New Permanent Position Ceiling Now Authorized 114

6 New Permanent Position(s) New Temporary Position(s) _____

_____ Critical Exception(s) Extension of Temporary Position(s) _____

(Next Position(s) Vacated Must Be Returned)

Authorization to Hire Position(s) \$ _____

_____ Overlap (Create New Temporary Position to Allow Overlap) Other Action _____

Effective Date: 5/18/92 Not to Exceed: _____

Name of Incumbent(s) _____

Reason for Personnel Action: "Other" additive formula

modified for cases over \$1 billion. New additions are:

> \$3 billion = 2, > \$5 billion = 2.5, > \$10 billion = 3,

> \$15 billion = 4 TOTAL OTHER ADDITIVES = 24

The following funds are allocated by the Contracts & Services Division as a result of this personnel action:

FUND	/BUDGET ORGANIZATION /	BUDGET OBJECT CODE	/ AMOUNT
	C=Decent X=NonDecent		
92 8928 BC	<u>B02 N45 C</u>	3101 (Equipment @ \$750 ea)	\$ <u>4500</u>
92 8928 BC	<u>B02 N45 C</u>	3111 (Furniture @ \$1,500 ea)	\$ <u>9000</u>

cc: Cecelia Lewis, Clerk cc: James Herbert - CSD

cc: Theresa Doty cc: Stanley Sargol

ENCLOSURE II

401.1 COMPUTATIONS FOR THE ALLOCATION OF CLERK'S OFFICE POSITIONS
TO BANKRUPTCY COURTS EFFECTIVE MAY 8, 1989

The explanations shown below correspond with the factors as shown on Enclosure I.

ALLOCATION OF CLERK'S OFFICE POSITIONS TO BANKRUPTCY COURTS

Formula Total: This is the total staffing credit earned based on filings and all other factors. These figures are used as the initial basis to determine staffing allocation to the courts.

90 Percent of Formula: This is 90 percent of column 1 except that court recorder operator positions are not subject to the 90 percent staffing limitation. To compute the 90 percent level, take the formula total from column 1, subtract the number of court recorder operators, as shown on Exhibit IV, multiply the result by 90 percent, and then add back the number of court recorder operators.

Positions Authorized As of May 7, 1989: This is the total number of positions authorized before this allocation.

Positions Authorized as of May 8, 1989: This is the total number of permanent positions authorized to each court after this allocation. It does not include estate administrator or bankruptcy administrator positions. Positions can be filled up to this level. Any court with more positions than this must reduce staff through attrition down to this level.

STAFFING CREDIT FOR FILINGS

Chapter 7 Filings: This is the total number of Chapter 7 filings as reported by the Statistical Analysis and Reports Division.

Credit for Chapter 7 Filings: This is the credit earned for Chapter 7 filings. It is computed by multiplying the number of Chapter 7 filings shown above by .00386 for courts with one or more staffed divisional offices and .00396 for courts without any staffed divisional offices.

Chapter 11 Filings: This is the total number of Chapter 11 filings as reported by the Statistical Analysis and Reports Division.

Credit for Chapter 11 Filings: This is the credit earned for Chapter 11 filings. It is computed by multiplying the number of Chapter 11 filings shown above by .0179 for courts with one or

more staffed divisional offices and .0184 for courts without any staffed divisional offices.

Chapter 12 Filings: This is the total number of Chapter 12 filings as reported by the Statistical Analysis and Reports Division.

Credit for Chapter 12 Filings: This is the credit earned for Chapter 12 filings. It is computed by multiplying the number of Chapter 12 filings shown above by .0179 for courts with one or more staffed divisional offices and .0184 for courts without any staffed divisional offices.

Chapter 13 Filings: This is the total number of Chapter 13 filings as reported by the Statistical Analysis and Reports Division.

Credit for Chapter 13 Filings: This is the credit earned for Chapter 13 filings. It is computed by multiplying the number of Chapter 13 filings shown above by .00194 for courts with one or more staffed divisional offices and .00199 for courts without any staffed divisional offices.

Adversary Complaint Filings: This is the total number of Adversary Complaints filed as reported by the Statistical Analysis and Reports Division.

Credit for Adversaries: This is the credit earned for Adversary complaints filed. It is computed by multiplying the number of Adversaries shown above by .00106 for courts with one or more staffed divisional offices and .00109 for courts without any staffed divisional offices.

Total: This is the total staffing credit earned for Chapter and Adversary Filings.

STAFFING CREDIT FOR OTHER FACTORS

Manual Noticing: This is the estimated number of notices for each court computed by multiplying the number of no-asset Chapter 7 petitions by 75, the number of asset Chapter 7 petitions by 230, the number of Chapter 11 and Chapter 12 petitions by 544, the number of Chapter 13 petitions by 68, and the number of adversary complaints by 16. Chapter 7 cases were divided into Asset and No-Asset Cases by applying a three-year average (1985-1987) of cases terminated with and without distributions.

Credit for Manual Noticing: This is the total credit earned for manual noticing before any subtractive is applied. It is computed by multiplying the number of notices computed above by a factor of .0000075.

Manual Claims: This is the estimated number of claims for each court computed by multiplying the number of no-asset Chapter 7 petitions by 26, the number of asset Chapter 7 petitions by 51, the number of Chapter 11 and Chapter 12 petitions by 128, and the number of Chapter 13 petitions by 17. Chapter 7 cases were divided into Asset and No-Asset Cases by applying a three-year average (1985-1987) of cases terminated with and without distributions.

Credit for Manual Claims: This is the total credit earned for manual claims. It is computed by multiplying the number of claims computed above by a factor of .000023.

Noticing Subtractive: This is a reduction to the noticing credit because of the number of notices processed by other than clerk's office personnel. For non-BANS courts it is computed by multiplying the percentage of notices processed by other than clerk's office personnel by total noticing credit and then multiplying the result by .5. For BANS courts, the subtractive is computed by first taking the number of BANS notices as reported by the Administrative Office and multiplying by a factor of .0000029 for courts with one or more divisional office and by .000003 for courts with no divisional offices. In addition, the same subtractive factor, equal to one-half the noticing credit, is applied for those notices prepared by other than the clerk's office or BANS.

Constant: This is the "open the door" cost for every court regardless of the volume of the other workload factors. The credit given is 3.040 for courts without divisional offices and 3.804 for courts with one or more divisional officer.

Deviation Factor: This is the factor, positive or negative, computed to convert the measured core equation based on both filings and pending cases to an equation based solely on filings. This adjustment provides credit for the complexity of cases filed in a particular court.

Total Other Factors: This is the total staffing credit earned for other factors.

ADDITIVES

Closing Bankruptcy Act Cases: This is the estimated number of Bankruptcy Act cases which will be closed in the next year.

Credit for Closing Bankruptcy Act Cases: This is the total credit earned for closing Act cases. It is computed by multiplying the estimated number of Act cases closed by .0033 for courts with divisional offices, and .0034 for courts without divisional offices.