

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

IMPORTANT NOTICE TO THE BAR AND PUBLIC

**THIRTY-DAY PUBLIC COMMENT PERIOD
CONCERNING ADOPTION AND AMENDMENT OF
2019 LOCAL BANKRUPTCY RULES AND FORMS**

Please be advised that the Board of Judges of the United States Bankruptcy Court for the District of New Jersey has approved for publication for a thirty-day public comment period, a draft of proposed 2019 new or amended Local Bankruptcy Rules and related local forms as highlighted below:

D.N.J. LBR 2016-1. Application for Compensation and Reimbursement of Expenses

D.N.J. LBR 2016-5. Application for Compensation of Debtor's Attorney in a Chapter 13 Case

- *Chapter 13 Debtor's Attorney Fee Application Cover Sheet*

D.N.J. LBR 3003-1. Filing Proof of Claim or Equity Security Interest in a Chapter 11 Case

D.N.J. LBR 5010-1. Service of Motion to Reopen Case

D.N.J. LBR 9010-1. Admission of Attorney to Practice

D.N.J. LBR 9013-2. Motions: Filing and Service; Hearing Date

For ease of reference, the following link may be accessed to review the proposed Local Bankruptcy Rules: www.njb.uscourts.gov/localrules/comments/2019

Dates for public comment and implementation are set forth as follows:

- **May 9, 2019 – Publication of draft rules for public comment.**
- **June 8, 2019 – Close of public comment period.**
- **June 15, 2019 – Consideration of public comments received by the Board of Judges of the Bankruptcy Court for the District of New Jersey.**
- **June 16-30, 2019 – Submission of draft rules for formal approval by the Board of Judges of the District Court for the District of New Jersey.**
- **August 1, 2019 - Effective date of 2019 Local Bankruptcy Rules.**

By approving a publication draft, the Board of Judges solicits comments from bankruptcy professionals and members of the public.

Comments may be submitted to the Court email address: local_rules@njb.uscourts.gov

Dated: May 9, 2019

Jeanne A. Naughton, Clerk

D.N.J. LBR 2016-1. Application for Compensation and Reimbursement of Expenses

(a) Compensation on an hourly rate basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

(1) for an application for compensation under \$10,000:

(A) the date and docket number of the applicant's order of retention or authorization;

(B) the date and docket number of any administrative fee order providing for interim compensation;

(C) a description of services rendered;

(D) the time spent in 1/10th of an hour increments by date and person, with applicable time sheets attached;

(E) the billing rate for each person who rendered services;

(F) the total time spent by each person who rendered services;

(G) a list of actual expenses summarized by category; and

(H) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity.

(2) for an application for compensation of \$10,000 or more or, in chapter 13 cases, an application for compensation and reimbursement of necessary expenses for any amount:

(A) Local Form *Fee Application Cover Sheet* or, in chapter 13 cases, Local Form *Chapter 13 Debtor's Attorney Fee Application Cover Sheet*;

(B) a description of services rendered, by date and person;

(C) the time in 1/10th of an hour increments spent by each person, with applicable time sheets attached; and

(D) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing

or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity.

(b) Compensation on a contingent fee basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

- (1) the date and docket number of the applicant's order of retention or authorization;
- (2) a list of actual expenses summarized by category;
- (3) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity; and
- (4) an explanation of the calculation of the fee and expense request.

(c) Compensation on a commission basis. The statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

- (1) the date and docket number of the applicant's order of retention or authorization;
- (2) a list of actual expenses summarized by category;
- (3) a narrative explaining the nature of the work performed and the results achieved; and any circumstances not apparent from the description of services or that the applicant seeks to emphasize, including special employment terms, billing or expense policies, voluntary reductions, reasons for the use of multiple professional persons for a particular activity, and reasons for substantial time billed for a particular activity; and
- (4) an explanation of the calculation of the fee and expense request.

(d) Exemption for certain real estate brokers. A real estate broker who is retained under Local Bankruptcy Rule 2014-1 and whose fees and expenses are approved in an order authorizing the sale of real property and the payment of certain professional persons at closing under Local Bankruptcy Rule 6004-5 is exempt from this Rule.

(e) Compensation on a flat fee basis. The application must contain:

- (1) the date and docket number of the applicant's order of retention or authorization; and
- (2) a statement indicating that the purpose for which the applicant was retained has been fulfilled.

(f) Other compensation arrangements. In any other circumstances, the statement of the services rendered, time expended, expenses incurred, and amounts requested under Bankruptcy Rule 2016 must contain:

(1) a narrative explaining the grounds on which the applicant seeks allowance of fees and expenses; and

(2) to the extent applicable, the items required in an application of an hourly rate applicant under subdivision (a) or a contingent fee applicant under subdivision (b).

(g) Request for reimbursement of expenses of a committee member. An official committee member may submit a list of actual expenses summarized by category.

2019 Comment

Subdivisions (a)(2) and (a)(2)(A) are amended to reflect the new requirement that all Chapter 13 fee applications include a cover sheet.

2015 Comment

This Rule has been significantly revised to accommodate both the electronic filing process and the variety of compensation arrangements in bankruptcy proceedings. The Rule now allows for payment of both flat fee professionals and real estate brokers retained on a commission basis without the need for a full fee application.

The required narrative assists the court in its review of fee applications consistent with the precedent established in In re Busy Beaver Building Centers, Inc., 19 F.3d 833 (3d Cir. 1994) and Zolfo Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d 253 (3d Cir. 1995).

The procedure for compensating auctioneers is now found in Local Bankruptcy Rule 2016-2.

D.N.J. LBR 2016-5. Compensation of Debtor’s Attorney in a Chapter 13 Case

(a) Disclosure of compensation. The attorney must file with the petition Local Form *Disclosure of Chapter 13 Debtor’s Attorney Compensation*. The attorney must select a compensation method as set forth in subdivisions (b) or (c).

(b) Standard fee. An attorney who charges a fee of \$4,750 or less is not required to file an application for compensation. The standard fee includes all services and reimbursable necessary expenses required to confirm a plan, including administrative services required subsequent to confirmation. The attorney may file an application for compensation and reimbursement of necessary expenses under Local Bankruptcy Rule 2016-1 for the following services which are excluded from the standard fee:

- (1) representation of the debtor in an adversary proceeding;
- (2) representation of the debtor in loss mitigation/loan modification efforts;
- (3) representation of the debtor in postconfirmation filings and matters brought before the court.

(c) Hourly billing. An attorney who elects hourly billing must file and serve on the debtor and the chapter 13 standing trustee an application for compensation and reimbursement of necessary expenses under Local Bankruptcy Rule 2016-1 not later than 7 days after the date of the order confirming the chapter 13 plan.

(d) Application for additional preconfirmation fees and expenses. An attorney who elected a standard fee under subdivision (b) may seek additional compensation and reimbursement of necessary expenses by filing an application under Local Bankruptcy Rule 2016-1 on notice to the debtor and chapter 13 standing trustee. The applicant must demonstrate that the additional services were unforeseeable at the time of the filing of the disclosure required under subdivision (a).

(e) Chapter 13 Debtor’s Attorney Fee Application Cover Sheet. An attorney seeking compensation and reimbursement of necessary expenses in any amount must file with the application Local Form *Chapter 13 Debtor’s Attorney Fee Application Cover Sheet* and comply with Local Bankruptcy Rule 2016-1. A request for compensation totaling under \$1,000 does not require completion of Sections I – III of the *Chapter 13 Debtor’s Attorney Fee Application Cover Sheet*.

(f) Service. The attorney must serve the application and cover sheet on the debtor and Chapter 13 standing trustee.

2019 Comment

This Rule is amended to require the use of a fee application cover sheet any time the debtor’s attorney files a fee application, not just for fee applications of \$10,000 or more.

The fee application cover sheet has been modified to reflect any differential in distribution caused by the fee.

2018 Comment

This Rule is amended to increase the standard fee. For cases filed or converted to Chapter 13 on or after the effective date of this Rule, the Court will no longer accept Local Forms, *Certification of Debtor's Counsel Supporting Supplemental Chapter 13 Fee* and *Order Granting Supplemental Chapter 13 Fees*. In those cases, all fees requested under this Rule must be filed in compliance with Local Bankruptcy Rule 2016-1.

Examples of administrative services under subdivision (b) include preparation and filing of a Certification in Support of Discharge, preparation and filing of a Certification About a Financial Management Course, and providing documentation requested by the chapter 13 standing trustee.

Subdivision (c) does not preclude an attorney who elects hourly billing from submitting fee applications after the initial fee request.

2015 Comment [Abrogated]

This Rule was formerly Local Bankruptcy Rule 2016-1(j).

Taking the steps necessary to discharge liens modified under the plan under subdivision (a)(1)(G) includes the filing of Local Forms *Application to Cancel and Discharge Mortgage/Lien* and *Chapter 13 Order Authorizing Cancellation, Voiding and/or Discharge of Record of Mortgage/Lien*.

The calculation of the fee amounts in this Rule is exclusive of the filing fee and expenses.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

CHAPTER 13 DEBTOR'S ATTORNEY FEE APPLICATION COVER SHEET

Debtor: _____ Applicant: _____
Case No.: _____ Chapter: 13
Petition Date: _____

I certify that I am the attorney for the debtor(s) and submit this Application for Compensation and Reimbursement of Expenses ("Application") in accordance with D.N.J. LBR 2016-1 and 2016-5.

I further certify:

1. A pre-petition written retainer agreement ("Agreement") has been executed with the debtor(s) and this Application is consistent with that Agreement and D.N.J. LBR 2016;
2. I have complied with 11 U.S.C. §§ 527 and 528;
3. The fees sought in this Application:
 - will not reduce the amount to be paid to general unsecured creditors under the plan;
 - will reduce the amount to be paid to general unsecured creditors under the plan as follows: _____
_____;
4. I have advised the debtor(s) that the fees sought in this Application:
 - will not increase the amount and/or duration of plan payments;
 - will increase the amount and/or duration of plan payments as follows: _____
_____;
5. I have advised the debtor(s) that the fees sought in this Application:
 - will be paid through the plan;
 - will be paid outside of the plan;
6. I have served a copy of this Fee Application Cover Sheet and Application on the debtor(s).

I certify under penalty of perjury that the above is true.

Date: _____ Signature _____

NOTE: DO NOT COMPLETE SECTIONS I-III BELOW IF THE AMOUNT OF THIS APPLICATION, INCLUSIVE OF EXPENSES, IS UNDER \$1,000.

**SECTION I
FEE SUMMARY**

Interim Fee Application No. _____ or Final Fee Application

	<u>FEES</u>	<u>EXPENSES</u>
Total Previous Fees Received	\$ _____	\$ _____
Total Fees Allowed to Date:	\$ _____	\$ _____
Total Retainer (If Applicable):	\$ _____	\$ _____
Total Received by Applicant:	\$ _____	\$ _____

NAME OF PROFESSIONAL & TITLE	YEAR ADMITTED (Or Years of Professional Service)	HOURS	RATE	FEE
1.				
2.				
3.				
4.				
5.				
6.				
7.				

Fee Totals: _____

Expense Totals: _____

Total Fee Application _____

**SECTION II
SUMMARY OF SERVICES**

SERVICES RENDERED	HOURS	FEE
a) Preparation of Petition Meeting with client(s), drafting and signing of petition.		
b) Attendance at Meeting of Creditors Preparation for, and attendance at meeting of creditors.		
c) Review of Claims; Prosecution of Objections to Claims Review and analysis of filed claims. Negotiate with creditors and coordinate with debtor. Preparation of pleadings and responses. Attend Hearing.		
d) Case Administration Coordination of administrative tasks with debtor. Communication with trustee and creditors. Filing and service of amendments to schedules, change of address, Certification in Support of Discharge, Financial Management Certification. Preparation and filing of retention and fee applications.		
e) Plan and Modification of Plan Formulation and drafting of plan or modified plan. Coordination with client and creditors. Review of objections to confirmation. Attend confirmation hearing(s).		
f) Prosecution of Motion(s) Draft motion(s), reply to opposition filed and attend hearing.		
g) Defense of Motion(s)/Certification(s) of Default Review and analysis of pleadings. Coordinate response with client. Draft opposition documents. Attend hearing.		
h) 2004 Examination Preparation for, and attendance at 2004 examination(s).		
i) Prosecution/Defense of Adversary Proceeding Review and analyze issues. Preparation for and attendance at depositions. Preparation of related pleadings and responses. Court appearances.		
j) Loss Mitigation/Loan Modification Communication with secured lender. Coordination with debtor. Preparation of pleadings. Participation in settlement conferences. Attend hearing.		
k) Travel Time		
TOTALS:		

**SECTION III
SUMMARY OF EXPENSES**

DISBURSEMENTS	AMOUNT
a) Computer Assisted Legal Research Westlaw/Lexis and a description of manner calculated.	
b) Pacer Fees Payable to the Pacer Service Center.	
c) Case Specific Telephone/Conference Call Charges Exclusive of overhead charges.	
d) In-House Reproduction Services Exclusive of overhead charges. Include per page fee charged.	
e) Outside Reproduction Services Including scanning services.	
f) Other Research Title searches, UCC searches, Asset searches, Accurint.	
g) Court Reporting Transcripts.	
h) Travel Mileage, tolls, parking.	
i) Courier & Express Carriers Overnight and personal delivery.	
j) Postage	
k) Other (specify)	
DISBURSEMENTS TOTAL:	

I certify under penalty of perjury that the above is true.

Date: _____

Signature

rev.8/1/19

D.N.J. LBR 3003-1. Filing Proof of Claim or Equity Security Interest in a Chapter 11 Case

(a) Time for filing.

(1) Creditors and Equity Security Holders. A creditor (other than a governmental unit) or equity security holder subject to Bankruptcy Rule 3003(c)(2) must file a proof of claim or interest not later than 70 days after the date of the order for relief.

(2) Governmental Units. A governmental unit subject to Bankruptcy Rule 3003(c)(2) must file a proof of claim not later than 180 days after the date of the order for relief.

(b) Rejection damages. A proof of claim arising from the rejection of an executory contract or unexpired lease must be filed by the later of:

(1) 30 days after rejection; or

(2) 70 days after the date of the order for relief.

2019 Comment

Subdivisions (a)(1) and (b)(2) are modified to be consistent with the amendments to Federal Rule 3002(c).

Subdivision (a)(2) is new. It fixes the deadline for the filing of a proof of claim by a governmental unit in a chapter 11 case, as provided by Bankruptcy Rule 3003(c)(3).

2015 Comment

An adjournment of the meeting of creditors does not affect the deadlines in this Rule.

D.N.J. LBR 5010-1. Service of Motion to Reopen Case

A motion to reopen a case pursuant to § 350(b) of the Code must be served on the debtor, the United States trustee, and any party against whom specific relief is sought under Bankruptcy Rule 9014(b).

2019 Comment

This Rule is new. It is intended to set forth the service requirements regarding motions to reopen, which are not provided in the Code or Bankruptcy Rules.

D.N.J. LBR 9010-1. Admission of Attorney to Practice

(a) Scope of admission. The bar of this court consists of attorneys admitted to practice before the United States District Court for the District of New Jersey. An attorney of this bar is within the disciplinary jurisdiction of the District Court and is bound by the Rules of Professional Conduct.

(b) Admission *pro hac vice*

(1) Local counsel must file on behalf of an attorney seeking admission *pro hac vice* an application and Local Form *Order for Admission Pro Hac Vice* on notice to the debtor, any official committee, and the United States trustee, and make the payments required by the *Order for Admission Pro Hac Vice*.

(2) The application must include a certified statement from the attorney seeking admission that discloses:

(A) each bar in which the attorney seeking admission is a member in good standing, and the year of admission;

(B) whether a disciplinary proceeding is pending against the attorney seeking admission, and if so, the jurisdiction, the nature of the alleged violation, and the likely date of disposition; and

(C) whether discipline has ever been imposed against the attorney seeking admission. If discipline has been imposed during the five year period preceding the application, the certification must state the date, jurisdiction, nature of the violation, and penalty imposed.

(3) Local counsel must file Local Form *Notice of Appearance*.

(4) Only local counsel, and not the attorney admitted *pro hac vice*, may file papers, enter appearances, and receive notices and service of papers.

(5) An attorney admitted *pro hac vice* must promptly advise the court of the disposition of a pending disciplinary proceeding or the institution of a new disciplinary proceeding against the attorney.

(6) An attorney admitted *pro hac vice* is within the disciplinary jurisdiction of the District Court and is bound by the Rules of Professional Conduct.

2019 Comment

Subdivision (b)(2)(C) of this Rule is amended to be consistent with Local Civil Rule 101.1(c)(1).

2015 Comment

This Rule is derived in part from Local Civil Rule 101.1(c). The Rule allows admission by application rather than motion, and allows good standing to be established by attorney certification rather than a certificate of good standing.

An attorney of this bar, including one admitted *pro hac vice*, is bound by Local Civil Rule 103.1(a) regarding the Rules of Professional Conduct and Local Civil Rule 104.1 regarding discipline of attorneys.

D.N.J. LBR 9013-2. Motions: Filing and Service; Hearing Date

(a) Filing and service.

(1) Unless specified elsewhere in these Rules, a motion must be filed and served not later than 21 days before the hearing date.

(2) Any (i) opposition to a motion or (ii) cross-motion must be filed and served not later than 7 days before the hearing date. A cross-motion must relate to the original motion.

(3) Any (i) reply or (ii) opposition to a cross-motion must be filed and served not later than 4 days before the hearing date.

(b) Hearing date. Unless specified elsewhere in these Rules, the movant must schedule the hearing date for the motion. Hearing dates for each judge are available on the court's website.

(c) Application to shorten time. A movant seeking shortened time for hearing on a motion must file Local Forms *Application for Order Shortening Time* and *Order Shortening Time Period for Notice, Setting Hearing and Limiting Notice*.

2019 Comment

Subdivisions (a)(1) and (b) are amended to include the phrase “unless specified elsewhere in these Rules” to account for rules, such as Local Bankruptcy Rule 4001-4, that permit an expedited motion procedure.

2015 Comment

This Rule is new. It is derived from Local Bankruptcy Rule 9013-1.

A motion or cross-motion must be served by non-electronic means under Local Bankruptcy Rule 5005-1(c)(1)(B). Service of a motion or cross-motion by e-mail or Notice of Electronic Filing is not proper service.

Local Bankruptcy Rule 5071-1 addresses adjournment requests.

Local Bankruptcy Rule 7065-1 addresses use of an order to show cause.