

**PROPOSED 2004 LOCAL RULE AMENDMENTS**  
**AS APPROVED FOR COMMENT BY THE**  
**BOARD OF JUDGES**  
**FOR THE**  
**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEW JERSEY**

*Approved for Comment: April 29, 2004*

## D.N.J. LBR 1002-1 PETITION - GENERAL

- (a) *Content.* In addition to the requirements of the Code, Federal Rules of Bankruptcy Procedure and Official Forms, every voluntary and, to the extent possible, involuntary petition shall contain the following information:
- (1) The correct name, complete street address, city, state, and zip code of the debtor. The address stated on the petition shall be the actual location of the debtor's residence or principal place of business.
  - (2) In an individual petition, the correct full first, middle, and last name and **the last four digits of** the social security number of the debtor.
  - (3) In a business petition, the employer's identification number of the debtor.
  - (4) In a corporate petition, the signature of an officer or other authorized representative of the corporation.
  - (5) In a corporate petition, a copy of the corporate resolution authorizing the filing.
  - (6) In a partnership petition, a certification evidencing compliance with Fed. R. Bankr. P. 1004(a).
- (b) *Involuntary Petitions.* In involuntary petitions, the above subdivisions (a) (1) through (3) apply.

1997 Comment: Subpart (a)(1) through (a)(7) is the former Local Rule 2(b)(1)(A) through (G); Subpart (b) is the former Local Rule 2(b)(2).

2003 Comment: Subpart (a)(7) is deleted as duplicative of Fed. R. Bankr. P. 1008.

**2004 Comment: Subpart (a)(2) is amended to require the last four digits of a debtor's social security number on an individual petition, in accordance with the amendments to the Federal Rules of Bankruptcy Procedure and Official Forms which became effective December 1, 2003, implementing the Judicial Conference's policy on privacy and public access to case files. Pursuant to the amendment to Fed. R. Bankr. P. 1007(f) an individual debtor must submit a verified statement that sets out the debtor's full social security number, or states that the debtor does not have a social security number. The statement is submitted, in accordance with instructions posted to the Court's website, but it is not filed in the case, and does not become a part of the Court record. Per the national rule amendment, the statement provides the information necessary to include on the service copy of the notice required under Rule 2002(a)(1). The corresponding amendment to Fed. R. Bankr.P. 1005 now provides that the caption of the petition include only the last four digits of the social security number.**

Reference: 28 U.S.C. § 1930(a) Bankruptcy fees; 11 U.S.C. § 301 Voluntary cases; 11 U.S.C. § 302 Joint Cases; 11 U.S.C. § 303 Involuntary cases; Fed. R. Bankr. P. 1003 Involuntary Petition; Fed. R. Bankr. P. 1004 Partnership Petition; Fed. R. Bankr. P. 1005 Caption of Petition; **Fed. R. Bankr.P. 1007 Lists, Schedules and Statements, Time Limits**; Fed. R. Bankr. P. 1008 Verification of Petitions and Accompanying Papers; Fed. R. Bankr. P. 9011 Signing and Verification of Orders; Official Form 1.

## D.N.J. LBR 2016-1 COMPENSATION OF PROFESSIONALS

- (a) The statement of services rendered and itemization of expenses in an application for fees or expenses shall contain:
  - (1) A copy of the order of retention or authorization.
  - (2) The dates of services rendered.
  - (3) The services rendered on each date and the identity of the person rendering the service.
  - (4) The time spent in the rendering of each service. Computer time sheets showing the time units used may be attached to the application.
  - (5) The normal billing rate for each person.
  - (6) At the end of the application, a total of the time spent by each individual performing services.
  - (7) A list of actual, not estimated, expenses.
  - (8) For attorneys and accountants seeking allowance of fees in excess of \$10,000, except as provided in subdivision (g), a summary on Local Form No. 3 or 4.
  - (9) A narrative explanation of the nature of the work performed and the results achieved.
- (b) Appraisers shall include in the application the value of the appraised assets.
- (c) An auctioneer shall be allowed those expenses approved by the Court and, in addition, commissions on net proceeds of sale, not to exceed: 10% of the first \$50,000; 7% of the next \$50,000; 5% of the next \$50,000; and 3% of all amounts above \$150,000.
- (d) No Court appearances shall be required on applications by trustees, examiners and professional persons for commissions, fees and expenses, unless an objection is filed and served.
- (e) A copy of each application for allowances shall be served on the United States Trustee at the time of filing.
- (f) A trustee seeking commissions in excess of \$10,000 shall comply with all requirements of subdivision (a) of this Rule, except subdivision (a)(8). A trustee seeking commissions in an amount less than \$10,000 is exempt from the requirements of subdivisions (a)(2), (3), (4), (5), (6) and (8).
- (g) A professional retained on a contingency basis is exempt from the requirements of subdivisions (a)(2), (3), (4), (5), (6) and (8).
- (h) Objections to applications for allowance shall be filed and served no less than 7 days prior to the scheduled hearing date.
- (i) **Chapter 11. Professionals retained in a Chapter 11 case pursuant to 11 U.S.C. 327 and 1103 seeking post-petition interim compensation and reimbursement of expenses pursuant to 11 USC sections 105(a) and 331 for services rendered and expenses incurred during a Chapter 11 case may file a motion seeking the entry of an administrative order in accordance with the Court's General Order Adopting Guidelines Governing Procedures for Payment of Interim Compensation and Reimbursement of Expenses to Professionals.** All applications for allowance of fees and expenses shall be filed within 90 days after entry of a final order confirming a plan, or such fees and expenses shall be deemed to be waived.

(j) *Chapter 13.*

- (1) If the fee of the attorney for the debtor disclosed pursuant to Fed. R. Bankr. P. 2016(b) exceeds \$2,000.00, the attorney for the debtor shall file and serve on the Chapter 13 trustee and the debtor an application for allowances not less than 7 days before the confirmation hearing.
- (2) For supplemental fee applications of up to \$1,000.00 per application, for the services listed in D.N.J. Local Form 13, the attorney for the debtor may submit D.N.J. Local Forms 13 and 14. Such applications shall be served on the Chapter 13 trustee and the debtor.
- (3) Any other supplemental applications shall be filed in accordance with section (a) of this rule and shall be served on the Chapter 13 trustee and the debtor. If the supplemental application is for an amount in excess of \$1,000.00, the clerk shall issue notice of hearing as required by Fed. R. Bankr. P. 2002(a)(6) for a date on which chapter 13 cases are heard.
- (4) Supplemental fee applications shall be submitted not more than once every 120 days.
- (5) A real estate broker or debtor's real estate attorney duly retained pursuant to D.N.J. LBR 2014-1 and whose fees are approved in an order authorizing debtor to sell real property and pay certain professionals' fees upon closing, pursuant to D.N.J. LBR 6004-1(b) is exempt from the requirements of this rule.**

1997 Comment: Subparts (a) and (b), and (d) through (h) are former Local Rule 8(a) through (g); subpart (c) is former Local Rule 7(c); subpart (i) is the former Local Rule 25(c); subpart (j) is former Local Rule 33.

2001 Comment: Subpart (j) amended March 8, 2001; amendments include increasing the fee dollar amount from \$1,500.00 to \$2,000.00 and the addition of paragraphs (2), (3) and (4).

**2004 Comment: Subsection (i) is amended to add reference to the Court's *General Order Adopting Guidelines Governing Procedures for Payment of Interim Compensation and Reimbursement of Expenses to Professionals* which was implemented on March 31, 2003, and posted to the Court's website, as one of four General Orders comprising the Court's Chapter 11 Initiative. The General Orders and related Guidelines governing Chapter 11 practice in this District are referenced at D.N.J. LBR 3016-1(e).**

**Subsection (j)(5) is added for Chapter 13 cases, exempting from the requirements of this Local Rule, a real estate broker or debtor's real estate attorney duly retained pursuant to D.N.J. LBR 2014-1 and whose fees are approved in an order authorizing debtor to sell real property and pay certain professionals fees at closing, pursuant to D.N.J. LBR 6004-1(b).**

Reference: 11 U.S.C. § 327 Employment of professional persons; 11 U.S.C. § 328 Limitation on compensation of professional persons; 11 U.S.C. § 330 Compensation of officers; 11 U.S.C. § 504 Sharing of compensation; Fed. R. Bankr. P. 2013 Public Record of Compensation Awarded to Trustees, Examiners, and Professionals; Fed. R. Bankr. P. 2014 Employment of Professional Persons; D.N.J. LBR 2014-1, 2016-1, 6004-1, 6005-1.

## D.N.J. LBR 3016-1 CHAPTER 11 PLAN

- (a) A plan proponent shall review all claims prior to filing a plan.
- (b) *Effective Date.* Unless a plan provides otherwise, its effective date shall be the date on which the order of confirmation becomes final.
- (c) *Format of Plan.* In addition to the requirements of § 1123 of the Code, a plan shall contain:
  - (1) A title indicating whether the plan is one of reorganization or liquidation.
  - (2) A table of contents.
  - (3) Definitions.
  - (4) Clearly numbered articles or sections.
  - (5) A signature of the proponent and the date thereof.
- (d) *Modification of Plan.* If a chapter 11 plan is modified, the entire modified plan shall be refiled and shall indicate in its title its relationship to the original plan and any previous modification, such as “First Modified Plan of Reorganization.”
- (e) **Pursuant to D.N.J. LBR 1001–1(c), the Court has issued the following General Orders and related Guidelines governing the Chapter 11 practice in this District:**
  - (1) General Order Governing Procedures For Complex Chapter 11 Cases;**
  - (2) General Order Adopting Guidelines Governing First Day Matters;**
  - (3) General Order Adopting Guidelines Governing Procedures For Payment of Interim Compensation and Reimbursement of Expenses To Professionals;**
  - (4) General Order Adopting Guidelines For Financing Requests**

**Copies of the General Orders and related Guidelines may be obtained from the Clerk through the Court’s website: [www.njb.uscourts.gov](http://www.njb.uscourts.gov).**

1997 Comment: Formerly Local Rule 20.

**2004 Comment: Subsection (e) is added to formally reference within the Court’s Local Rules, the four General Orders and related Guidelines comprising the Chapter 11 Initiative implemented by the Court on March 31, 2003.**

Reference: 11 U.S.C. § 1128 Confirmation hearing; D.N.J. LBR **1001-1**, 3016-2, 3018-2.

## D.N.J. LBR 3018-2 ACCEPTANCE/REJECTION OF PLANS

**Unless the Court directs otherwise, ballots shall be filed with the attorney for the plan proponent.**

At or before the chapter 11 confirmation hearing, the plan proponent shall file a certification of balloting, **under penalty of perjury**, summarizing both the numbers and amounts of acceptances and rejections in each class, **and certifying to their timely filing. The ballots shall be retained by the party completing the certification for a period of two years from the time of closing of the case. A copy of the certification shall be served on the debtor, debtor in possession, trustee, if any, United States trustee and any committee appointed pursuant to the Code, any party having filed a notice of appearance in the case, and such other persons as the Court may direct.**

1997 Comment: Formerly Local Rule 22.

**2004 Comment: This rule is amended as a result of the Court's transition to Case Management/Electronic Case Filing (CM/ECF). This amendment requires that unless the Court directs otherwise, ballots are to be filed with the attorney for the plan proponent. At or before the chapter 11 confirmation hearing, the certification of balloting is then filed with the court, under penalty of perjury, by the party with whom ballots have been filed. The party filing the certification, must certify to both the numbers and amounts of acceptances and rejections in each class, as well as to the timely filing of same. The ballots are to be retained by the party with whom they have been filed, for a period of two years from the date of case closing, and need not be filed with the Court. This amendment also conforms with the requirements of Official Form 14 (Ballot for Accepting or Rejecting Plan) which allows for mailing of the ballot to the attorney for the plan proponent.**

Reference: 11 U.S.C. § 1126 Acceptance of plan.

## D.N.J. LBR 6004-1 SALE OF ESTATE PROPERTY

- (a) The trustee, debtor in possession, or an authorized representative shall attend and monitor the bidding process at all auctions of estate property.
- (b) **In a Chapter 13 case, an Information for Notice of Private Sale of Real Property may include a request to pay at closing, the fees or commissions of a duly retained real estate broker or debtor's real estate attorney.**

**2004 Comment: Subsection (b) is added in conjunction with the 2004 amendment to D.N.J. LBR 2016-1(j)(5) which allows, exclusively in a Chapter 13 case, a real estate broker or debtor's real estate attorney retained pursuant to D.N.J. LBR 2014-1, to include a request for reasonable fees to be paid upon closing, in the debtor's Information for Notice of Private Sale. The notice of private sale pursuant to Fed. R. Bankr.P. 2002(a) will include the requested real estate broker's commission as a percentage of the sale price, and/or the debtor's real estate attorney's fee, as well as the date of the respective orders of appointment. A request for approval of a section 363(f) sale requires the filing of a motion (Fed. R. Bankr.P. 6004(a)), in addition to the Information for Notice of Private Sale (2002(a)). Moreover, where debtor's counsel seeks entry of an order authorizing debtor to sell real property and pay certain professionals at closing, a motion will accompany the filing of the Information for Notice of Private Sale. The Court retains its discretion, on a case by case basis, to require the filing of an application for fees and expenses pursuant to D.N.J. LBR 2016-1, setting forth a statement of services rendered and itemization of expenses incurred by the real estate broker or debtor's closing attorney.**

**D.N.J. LBR 7005-1 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS -  
ELECTRONIC CASE FILING SYSTEM**

- (a) Participants in the Court's electronic case filing system (ECF), by accepting a login and password from the Court, waive their right to service by personal service or first class mail and agree to electronic service, except with regard to service of process of a summons and complaint in an adversary proceeding under Fed. R. Bankr. P. 7004 and the initiating motion in a contested matter under Fed. R. Bankr. P. 9014.
  
- (b) A party may make service upon a Participant **of in** the Court's electronic case filing system under Fed. R. Civ. P. 5(b)(2)(D) made applicable to bankruptcy cases pursuant to Fed. R. Bankr. P. 7005, through the Notice of Electronic Filing automatically generated by the Court's transmission facilities.

2003 Comment: The December 2001 amendment to Fed. R. Civ. P. 5(b)(2)(D) requires the promulgation of a local rule if a court wants to authorize parties to use its transmission facilities to make electronic service. Express written consent to electronic service through the Court's transmission facilities as further required by Fed. R. Civ. P. 5(b)(2)(D) is provided by the Participant's signature on the Court's ECF registration form.

## **D.N.J. LBR 9013-1 MOTION PRACTICE**

- (a) *General Provisions.* An application to the Court for an order requiring notice and opportunity for hearing shall be by motion. Every motion shall state the time and place returnable, the grounds upon which it is made, and the nature of the relief sought. A motion shall be deemed uncontested unless responsive papers are timely filed in accordance with subdivision (d). A proposed form of order shall accompany the moving papers, except as provided in D.N.J. LBR 9072-1(b).
- (b) *Scheduling.* An application by motion except in a chapter 13 case shall be made returnable on a regular motion day before the judge to whom the case has been assigned. The regular motion day shall be Monday for all three vicinages. A motion in a chapter 13 case shall be made returnable on a date assigned by the Court. A motion not timely filed pursuant to subdivision (c) will be scheduled for the next motion day.
- (c) *Time and Place of Filing.* All moving papers shall be filed in the vicinage of the case. Such papers shall be filed and served at least 20 days before the return date, except as provided in Fed. R. Bankr. P. 3007.
- (d) *Responsive Papers; Cross-Motions.* All answering papers and cross-motions shall be filed and served at least 7 days before the return date. All cross-motions shall be deemed contested. No motion shall be designated as a cross-motion unless it is related to the original motion.
- (e) *Orders Shortening Time.* An application under Fed. R. Bankr. P. 9006(c) for an order shortening time for hearing on a motion shall be submitted with the moving papers in a form substantially the same as Local Forms 1 and 2. Use of orders to show cause shall be limited to adversary proceedings in accordance with D.N.J. LBR 9075-1.
- (f) *Oral Argument.* Unless a party requests oral argument or the Court otherwise directs, all motions shall be decided on the papers. All parties must state their intentions regarding oral argument in the moving or answering papers.
- (g) *Telephone Conference.* The Court, on its own motion or on a party's request, may direct argument of any motion by telephone conference without Court appearance. A verbatim record shall be made of all such telephone arguments.
- (h) *Motion for Reconsideration.* A motion for reconsideration shall be filed within 10 days of the entry of the Court's order or judgment on the original motion. The motion shall be filed with a memorandum setting forth concisely the matters or controlling decisions which the movant believes constitute cause for reconsideration. A timely motion for reconsideration shall be deemed to be a motion under Fed. R. Bankr. P. 8002(b).
- (i) *Testimony.* Unless the Court authorizes or directs otherwise prior to the return date, no testimony shall be taken on a motion except by certification or affidavit under Fed. R. Civ. P. 43(e) and Fed. R. Bankr. P. 9017. Notwithstanding the foregoing, live testimony may be taken on a motion under Code § 363(c) or § 364 without prior authorization from the Court.
- (j) *Consent Order in Lieu of Motion.*
  - (1) Requests to the Court for an order on which all parties who are entitled to notice have affixed their written consent may be presented by application without motion or hearing. The application shall explain the grounds for entry of the order.

- (2) Notwithstanding subsection (j) (1) of this rule, a consent order in lieu of a motion under Code § 363(e) in a chapter 11 case can be filed without the written consent of the 20 largest unsecured creditors if no committee of unsecured creditors has been appointed. In such event, the 20 largest unsecured creditors shall be served with the application and consent order and shall have 5 days to serve an objection. **The proponent of the consent order must simultaneously submit a separate certification of service to the Court indicating service on the 20 largest unsecured creditors.** If a committee of unsecured creditors has been appointed, its written consent must be affixed to a consent order in lieu of a motion under Code § 363(e).
- (k) *Duty to Confer.* If a motion is contested, the movant shall confer with the respondent prior to the hearing to determine whether a consent order may be entered disposing of the motion, or, in the alternative, to stipulate the resolution of as many issues as possible.
- (l) *Duty to Report Settlement or Withdrawal.* If a motion is settled or withdrawn, the movant shall inform the Court immediately by telephone, and send written confirmation promptly thereafter.
- (m) Any motion seeking relief from the automatic stay, the use, sale or lease of property or the assumption, rejection or assignment of executory contracts and unexpired leases shall specifically state in the caption of the motion whether the movant seeks a waiver of the 10 day stay of the effectiveness of any proposed order for the relief sought under Federal Rules of Bankruptcy Procedure 4001(a)(3), 6004(g) or 6006(d). The movant shall bear the burden of establishing cause for the waiver of the 10 day stay provisions and shall detail the cause in its moving papers.

1997 Comment: Formerly Local Rule 3(a) through (h), and (j) through (m).

1999 Comment: Subsection (h) of this rule was amended. The amendment substituted the word "entry" for the word "filing" in the first sentence to be consistent with the federal rules of civil and bankruptcy procedure.

**2004 Comment: Subsection (j)(2) is amended to require that the proponent of the consent order in lieu of motion under Code § 363(e) in a Chapter 11 case, simultaneously submit a separate certification of service to the Court indicating service on the 20 largest unsecured creditors, where the consent order in lieu of motion is filed, without the written consent of the 20 largest unsecured creditors if no committee of unsecured creditors has been appointed, and the 20 largest unsecured creditors have been served with the application and consent order providing 5 days to file and serve an objection.**

Reference: Fed. R. Bankr. P. 5005 Filing and Transmittal of Papers; Fed. R. Bankr. P. 9006 Time; Fed. R. Bankr. P. 9014 Contested Matters; Fed. R. Bankr. P. 9001(7) and 9021.

## D.N.J. LBR 9013-3 CERTIFICATE OF SERVICE - MOTIONS

- (a) All moving papers, answering papers, and cross motions, **including those filed electronically**, must be supported by a certificate of service. The certificate of service shall identify the relationship to the case of each party served.
- (b) **Where service is accomplished through the Notice of Electronic Filing pursuant to D.N.J.LBR 7005-1(b) upon a Participant in the Court's electronic case filing system, the certificate of service must indicate that the document was electronically filed and the manner in which the party was served.**
- (c) **The certificate of service shall be a separate document.**

1997 Comment: This rule is new and is derived from Local Rule 3(c) and (d).

1998 Comment: The second sentence of this rule was added [April 1998]. It is intended to facilitate the court's meaningful review of the certification of service. The service list should identify the name of the party served, the address of the party served, and the party's relationship to the case. For example:

|  |                    |
|--|--------------------|
| John Doe, Esq.                                   | Jane Doe           |
| 123 Main Street                                  | 456 Main Street    |
| Anytown, USA 12345                               | Anytown, USA 12345 |
| Attorney for Secured Creditor,<br>Big Bank, N.A. | Unsecured Creditor |

2001 Comment: This Rule amendment is intended to clarify that where electronic case filing is utilized, a certificate of service may be filed subsequent to the filing of the moving papers, answering papers, and cross motions.

**2004 Comment: This Rule amendment specifies that the Court requires a certificate of service to be filed with respect to documents filed electronically indicating the manner in which the party was served. It also requires the certificate of service to be a separate document, thereby precluding inclusion of the certificate within the pleading.**

Reference: Fed. R. Civ. P. 5 Service and Filing of Pleadings and Other Papers; Fed. R. Bankr. P. 7005 Service and Filing of Pleadings and Other Papers.