

UNITED STATES
BANKRUPTCY COURT

WESTERN DISTRICT
OF NEW YORK

LOCAL RULES

OF

BANKRUPTCY PROCEDURE

May 13, 1997

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF LOCAL RULES
OF BANKRUPTCY PROCEDURE

ORDER

IT IS ORDERED PURSUANT TO RULE 9029 FEDERAL RULES OF BANKRUPTCY PROCEDURE:

That the following Local Rules of Bankruptcy Procedure are adopted, effective May 13, 1997, to govern all cases pending or hereinafter filed in this District under Title 11, U.S.C.

Effective May 13, 1997, this Court hereby abrogates the Local Rules of Bankruptcy Practice adopted February 1, 1988, together with all amendments thereto, and together with all Standing Orders and General Orders entered on the Court Miscellaneous Docket and identified as items 1. through 61. on the Conversion Table appended to the Following Local Rules of Bankruptcy Procedure. General Orders and Standing Orders identified as items 62. through 68. which address procedures applicable to Rochester and Watkins Glen exclusively are incorporated into the new Local Rules of Bankruptcy Procedure and will remain in full force and effect.

SO ORDERED.

FOR THE COURT

Dated: May 6, 1997

/s/ Michael J. Kaplan
MICHAEL J. KAPLAN
CHIEF U.S. BANKRUPTCY JUDGE

Dated: May 13, 1997

/s/ John C. Ninfo, II
JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: May 6, 1997

/s/ Carl L. Bucki
CARL L. BUCKI
U.S. BANKRUPTCY JUDGE

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Rule 1001. SCOPE OF LOCAL RULES OF BANKRUPTCY PROCEDURE1001-1. TITLE AND NUMBERING SEQUENCE *[Former Rule 1]*

These local rules, to be known as the “Local Rules of Bankruptcy Procedure” for the Western District of New York, supplement the Federal Rules of Bankruptcy Procedure, and shall govern bankruptcy practice in the United States District Court and United States Bankruptcy Court for the Western District of New York, and supersede all previous Local Bankruptcy Rules.

Rule 1007. LISTS, SCHEDULES AND STATEMENTS1007-1. NUMBER OF COPIES *[Former Rule 11 A & B] [SO 8/14/85]*

- A. An original and three (3) copies of a petition, lists, schedules and statements under chapter 7 or chapter 13 of the Bankruptcy Code and amendments thereto shall be filed. These documents shall be filed in the order prescribed by the Clerk of the U.S. Bankruptcy Court.
- B. An original and six (6) copies of a petition, lists, schedules and statements under chapter 9, chapter 11, or chapter 12 of the Bankruptcy Code and amendments thereto shall be filed. An original and six (6) copies of chapter 11 disclosure statements and plans shall be filed.

1007-2. MASTER MAILING MATRIX *[Former Rule 18B]*

In addition to the list of creditors required by Rule 1007(a) Fed.R.Bankr.P., in all cases a list of creditors shall be filed by the debtor, or such party as may be ordered, in a form specified by the Bankruptcy Clerk which shall be known as the matrix. The matrix shall be supplemented or modified by the responsible party, to include all parties that are required to be given notice, so the Clerk can rely on the matrix in the performance of his or her duties.

Rule 1009. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES AND STATEMENTS1009-1. AMENDMENTS *[General Orders 3/21/88 & 1/8/92]*

Amendments to voluntary petitions, lists (including the mailing matrix), schedules and statements must have a completed “Amendment Cover Sheet” affixed to the front thereof in a form prescribed by the Clerk. No purported amendment of any type will be acknowledged, recognized or processed as such by the Office of the Clerk in the absence of an Amendment Cover Sheet. The term “amendment” includes the delayed initial filing of a schedule, statement, list or other document that discloses the existence of parties-in-interest who were not disclosed in the list of creditors that accompanied the petition. Guidelines regarding amendments are available in the Bankruptcy Court Clerk’s Office.

Rule 1014. CHANGE OF VENUE1014-1. REASSIGNMENT OF CASES *[Former Rule 10 B]*

If the convenience or best interests of creditors would be served by the scheduling of a case in a geographical area served by another Judge, the assigned Bankruptcy Judge may reassign the case, on application of a party in interest.

Rule 1015. CONSOLIDATION OR JOINT ADMINISTRATION *[Former Rule 17 A thru D]*

- 1015-1. A. Upon the entry of an Order of Joint Administration of two or more related cases, the Clerk shall:
1. Designate any one of said cases to be the lead case for purposes of docketing and filing.
 2. Enter the Order of Joint Administration simultaneously on the dockets of all cases covered by the Order and file a copy of the Order of Joint Administration in the case file of all cases covered by the Order, except the lead case.
 3. File the original of the Order of Joint Administration in the case file of the lead case.
 4. Thereafter, maintain only the lead case file and docket for all activity affecting any of the jointly-administered cases.
- B. The party which obtained the Order for Joint Administration shall, within ten (10) days of the entry of said Order, file with the Court a consolidated matrix comprising a total mailing list of all interested parties in all the jointly administered cases, without duplication.
- C. Adequate safeguards shall be established by the Clerk to assure that parties interested in examining the docket or file of a case that is not the lead case will be directed thereby to the docket and file of the lead case for further matters affecting the case in question. Furthermore, to the extent that a docketable paper or event clearly pertains to less than all of the jointly-administered cases, the docket entry made on the lead docket shall so indicate this to enable parties to more readily examine the activities in any one of the jointly-administered cases.
- D. Notwithstanding the above, the Clerk may require parties in interest, or request the Court to seek, obtain, or execute separate documents for each case where necessary for purposes of clarity, statistical reporting, case closing or other similar cause.

Rule 1019. CONVERSION - PROCEDURE FOLLOWING

1019. [RESERVED] *[Former Rule 20]*

Rule 1020-1. CHAPTER 11 SMALL BUSINESS CASES, GENERAL *[Former Rule 41]*

- 1020-1. A. **ELECTION TO BE CONSIDERED A SMALL BUSINESS IN A CHAPTER 11 REORGANIZATION CASE:** In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the Court, for cause, may fix.
- B. **APPROVAL OF DISCLOSURE STATEMENT:**
1. Conditional Approval: If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the Court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Rule 3016 Fed.R.Bankr.P. On or before conditional approval of the disclosure statement, the Court shall:
 - (a) fix a time within which the holders of claims and interests may accept or

- reject the plan;
 - (b) fix a time for filing objections to the disclosure statement;
 - (c) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
 - (d) fix a date for the hearing on confirmation.
- 2. Application of Rule 3017 Fed.R.Bankr.P.: If the disclosure statement is conditionally approved, Rule 3017(a), (b), (c) and (e) Fed.R.Bankr.P. do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying Rule 3017(d) Fed.R.Bankr.P.
- 3. Objections and Hearing on Final Approval: Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 Fed.R.Bankr.P. and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States Trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the Court at any time before final approval of the disclosure statement or by an earlier date as the Court may fix. If a timely objection to the disclosure statement is filed, the Court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

Rule 1072. PLACES OF HOLDING COURT

1072-1. SESSIONS OF COURT *[Former Rule 8]*

Regular and continuous sessions of the Bankruptcy Court shall be held at Buffalo and Rochester. Special sessions of the Court shall be held at Mayville, Olean, Niagara Falls, Batavia and Watkins Glen at such times as may be necessary.

1072-2. SCHEDULING OF CASES AND PROCEEDINGS AS AMONG PLACES OF HOLDING COURT *[Former Rule 10E]*

Giving due regard to the convenience of a debtor, creditors, and equity holders, as well as to the availability of Court support services, the Judge assigned to the case or, if delegated to the Clerk, the Clerk may schedule hearings and trials in a case at a place of holding Court other than that which is in closest proximity to the debtor's residence or of place of business.

Rule 1073. ASSIGNMENT OF CASES *[Former Rule 10A(1) thru A(5) and Former 10 D]]*

1073-1. ASSIGNMENT OF BANKRUPTCY CASES TO BANKRUPTCY JUDGES

- A. Upon filing, the Clerk shall assign each bankruptcy case to a specific Bankruptcy Judge in accordance with the following directives:
 - 1. As to cases arising in Erie County, assignment shall be made by random selection as between the two Bankruptcy Judges stationed at Buffalo, utilizing a formula assuring an equitable distribution of those cases based upon their total case loads.
 - 2. As to cases arising in Niagara, Orleans, Genesee, and Wyoming Counties, to a Bankruptcy Judge stationed at Buffalo as specified by the Chief Judge.

3. As to cases arising in Chautauqua, Cattaraugus, and Allegany Counties, to a Bankruptcy Judge stationed at Buffalo as specified by the Chief Judge.
4. As to cases arising in Monroe, Chemung, Livingston, Ontario, Schuyler, Seneca, Steuben, Wayne, and Yates Counties, to a Bankruptcy Judge stationed at Rochester.
5. General Provisions:
 - a. For the purposes of these subsections, a business debtor's case shall be deemed to have arisen in the county in which the principal place of business is located if there is a principal place of business within the district.
 - b. If these rules of assignment result in a disproportionate load of cases falling upon a Bankruptcy Judge, they may be changed upon a majority vote of the Judges.
 - c. Any case inadvertently assigned to a Judge in contravention of this rule shall be reassigned by the Chief Judge.

B. Exigencies

To expedite the flow of cases, proceedings or matters, the Judges may agree to the reassignment of cases, matters, or proceedings to meet exigencies arising in the conduct of a given Judge's calendar. In the absence of the Judge assigned to a case, adversary proceeding, or contested matter, any other Judge may act.

Rule 2002. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, UNITED STATES, AND UNITED STATES TRUSTEE [Former Rule 14G] [SO 4/22/86]

- 2002-1. A. A party filing a motion which requires notice to creditors and/or a creditors' committee in addition to service upon adverse parties shall arrange with the Clerk for such noticing and schedule the hearing accordingly.
- B. Notices to creditors required by 2002(a) Fed.R.Bankr.P. in chapter 13 cases will be issued and served by the Standing Chapter 13 Trustee. The Chapter 13 Trustee will file an affidavit of service with the Court to evidence service of each notice. The cost of issuing such notices shall be considered an administrative expense of each Chapter 13 Office.
- C. Debtors-in-Possession (or plan proponent if other than the debtor) are directed to serve the Notice of the Hearing on Confirmation of a Plan complete with a copy of the Disclosure Statement, Plan and Ballot and upon confirmation of a plan, the notice of entry of the Order Confirming the Plan pursuant to the requirements of Rule 2002(d)(6) Fed.R.Bankr.P.

Rule 2007. TRUSTEES AND EXAMINERS

2007-1. [RESERVED] [Former Rule 18]

2007-1.1. ELECTION OF TRUSTEE IN A CHAPTER 11 REORGANIZATION CASE [Rule 40]

- A. REQUEST FOR AN ELECTION: A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization shall be filed and transmitted to the United States Trustee in accordance with Rule 5005 Fed.R.Bankr.P. within the time prescribed by § 1104(b) of the Bankruptcy Code. Pending Court approval of the person elected, a person appointed trustee under § 1104(d) shall serve as trustee.

- B. **MATTER OF ELECTION AND NOTICE:** An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006 Fed.R.Bankr.P. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under 2002(a) Fed.R.Bankr.P. A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any other party entitled to solicit a proxy under Rule 2006 Fed.R.Bankr.P.
- C. **APPLICATION FOR APPROVAL OF APPOINTMENT AND RESOLUTION OF DISPUTES:** If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the Court, the United States Trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under Rule 2001.1(b) Fed.R.Bankr.P., except that the application does not have to contain names of parties in interest with whom the United States Trustee has consulted.

If it is necessary to resolve a dispute regarding the election, the United States Trustee shall promptly file a report informing the Court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after the date of the creditors' meeting called under §1104(b), a person appointed by the United States Trustee in accordance with § 1104(d) of the Code and approved in accordance with Rule 2007(b) Fed.R.Bankr.P. shall serve as trustee.

Rule 2008. NOTICE TO TRUSTEE OF SELECTION [SO 4/23/96]

2008-1. FILING OF BLANKET TRUSTEE DESIGNATION IN CHAPTER 13 CASES

The Court will accept a blanket designation for standing Chapter 13 Trustees in lieu of a separate designation for each chapter 13 case filed in the Western District of New York. A separate designation must be filed in the event of a substitution of trustee so designated under the blanket designation.

Rule 2010. QUALIFICATION BY TRUSTEE; PROCEEDING ON BOND [SO 7/31/90]

2010-1. TRUSTEE'S REIMBURSEMENT OF BLANKET BOND PREMIUMS:

- A. The trustee shall issue one check or money order for the entire bond premium and provide a copy of that check to the Office of the United States Trustee.
- B. The trustee may be reimbursed from that trustee's estates pending on the date of issuance of the premium check, at the bond premium rate, or,
- C. In the alternative, the trustee may allocate the premium paid pro rata to those cases comprising the substantial majority (in dollar amount) of assets under the trustees administration on the date of issuance of the premium check. The trustee shall issue reimbursement checks from the individual estates according to their pro rata share.
- D. In no event shall the aggregate amount of the reimbursement checks exceed the amount of the premium paid.

Rule 2014. EMPLOYMENT OF PROFESSIONALS2014-1. DEFINITION *[Former Rule 5A]*

“Counsel for the estate.” An attorney who has obtained an order of the Court approving his or her employment as attorney for a chapter 11 debtor-in-possession or for a chapter 7, 12, or 13 trustee is counsel for the estate of the debtor. Corporate debtors must be represented by an attorney of record. Papers, including petitions, filed by a corporate debtor which has no attorney of record, may be received but later dismissed, sua sponte, by the Judge to whom the case is assigned.

2014-2. DUTY OF COUNSEL FOR THE ESTATE WITH REGARD TO ESTATE’S EMPLOYMENT OF OTHER PROFESSIONALS *[Former Rule 5 B]*

- A. Appraisers, auctioneers, accountants, brokers, special counsels, consultants, independent managers, and other professional persons employed by the debtors’ estates are often unfamiliar with the requirements of bankruptcy law regarding the need for prior Court approval of their employment; regarding the record keeping and reporting requirements applicable to sustain their claim to subsequent compensation from the estate; and regarding the risk that there may be insufficient assets in the estate to satisfy such claims. Whether or not a professional person is familiar with such considerations, it is necessary and desirable that the responsibility for obtaining Court approval of such employment and for advising professionals of the responsibilities and risks of such employment be placed on the attorney for the estate.
- B. Whenever the estate employs any other professional whose employment requires Court approval under the Bankruptcy Code or Rules, it is the duty of counsel for the estate to ensure that such approval is properly sought, and to advise the professional of the requirements and risks, if any, pertaining to the professional’s ability to subsequently obtain compensation and reimbursement of expenses from the estate.
- C. Estate counsel who fails to satisfy such duties may be determined by the Court to be personally responsible for any compensation and reimbursement of expenses lost to any professional as a result thereof.

2014-3. DUTY OF ATTORNEY COMMENCING A CHAPTER 11 CASE ON BEHALF OF A DEBTOR WHICH IS A CORPORATION. *[Former Rule 5 C]*

- A. A corporation which is a debtor-in-possession must be represented by an attorney duly admitted to practice before this Court and duly approved to serve as counsel for the estate by order of the Court.
- B. It is the duty of an attorney who commences a chapter 11 case (whether by original petition or by obtaining an order of conversion to such chapter) on behalf of a corporate debtor to ensure that the debtor properly seeks approval of estate counsel promptly upon such commencement, or, in the alternative, to file with the Court an affidavit reciting that he or she has advised the debtor that the case would be dismissed or converted for absence of a counsel for the estate, reciting the diligent efforts made by the attorney both before and after the commencement of the chapter 11 case in assisting the debtor in obtaining such counsel, and explaining why such counsel was not obtained.
- C. An attorney who fails in such duties may be found personally liable to any party who is damaged by the failure of the estate to be suitable represented.

Rule 2015. TRUSTEES, DEBTORS-IN-POSSESSION DUTIES

2015-1. [RESERVED] *[Former Rule 18]*

Rule 2016. COMPENSATION OF PROFESSIONALS *[Former Rules 38 & 39] [SO 7/30/90]*

2016-1. PROFESSIONAL PERSONS - COMPENSATION AND REIMBURSEMENT OF EXPENSES

In all cases under Title 11, requests for interim or final compensation shall be in a form prescribed by the Bankruptcy Clerk, who shall, at a minimum, require the applicant to include a one page face sheet bearing the caption of the case, the name and address of the applicant or applicants, the dates upon which the case was filed and the applicant was appointed, the nature and the date or the period of services rendered, a typewritten time sheet with a description of services rendered, and the amount of compensation or expense reimbursement sought. (If both compensation and reimbursement are sought, the amounts shall be separately stated.) The application should also include a statement of prior applications and prior allowances.

- A. All supporting documentation shall be attached to the application and, if it is an application for interim compensation, it shall also contain an affidavit or unsworn declaration reciting why the applicant should not be required to await the filing of a final report in the case. The Court may take judicial notice of any facts of record warranting denial of the application as having been prematurely made.
- B. All applications must be filed at least twenty-five (25) days prior to a calendar at which the application is to be considered.
- C. Non-appearance of an applicant at the scheduled hearing shall be deemed to be a consent to the disposition of the application on the filed papers and record, if any, of the hearing.

To aid the Court and any party in interest in reviewing compensation statements filed by attorneys:

- (a) The “compensation” paid or to be paid to an attorney shall include all legal fees and all charges of whatever character paid or to be paid by the debtor or other entity. Charges shall be identified and, if not self explanatory, justified.
- (b) Basic services to be performed are:
 - (1) Analysis of the financial situation and rendering advice and assistance to the client in determining whether to file a petition under Title 11, United States Code;
 - (2) Preparation and filing of the petition, lists, statements or schedules in a chapter 7 or 13 case;
 - (3) Representation of the debtor at the § 341 meeting;
 - (4) Amend lists, statements or schedules to comport with developments which may have occurred before or at the § 341 meeting;
 - (5) Motions under § 522(f) to avoid liens on exempt property;
 - (6) Motions, such as motions for abandonment, or proceedings to clear title to real property owned by the debtor;
 - (7) Removal of garnishments or wage assignments;

ADDITIONAL SERVICES REQUIRED IN CHAPTER 7 CASES

- (8) Negotiate, prepare and file reaffirmation agreements;

- (9) Motions under § 722 to redeem exempt personal property from liens;

ADDITIONAL SERVICES REQUIRED IN CHAPTER 13 CASES

- (10) Attend confirmation hearings;
- (11) Negotiate valuation of secured claims and/or present evidence thereon at confirmation hearing.

- (c) If, in the attorneys judgment, the performance of the above basic services required or will require unusual expenditures of time he or she should so state and annex time sheets or projections of time supporting the claim.

2016-2. APPLICATIONS FOR FEES BY THE ATTORNEY FOR THE DEBTOR IN CHAPTER 7 CASES
[Former Rule 39] [SO 6/12/84; SO 7/30/90]

- A. The expeditious administration of chapter 7 estates is hindered by the delays by debtors' attorneys in the filing of applications for allowances from the estate under 11 U.S.C. Sec. 330. Therefore, the failure to file any fee allowance application by such an attorney before fifteen (15) days after the mailing of the Rule 2002(f)(9) Fed.R.Bankr.P. notice of the trustee's final report in any case shall be deemed a waiver of the allowance.
- B. All actual compensation and disbursements whether charged by attorneys to the debtor, debtor's estate or any entity paying on behalf of the debtor or debtor's estate prior to or during the pendency of a case must be fully disclosed in a supplemental statement filed in accordance with Rule 2016(b) Fed.R.Bankr.P. [A disclosed fee which is to be charged in the event of a contingent future service, and which is charged, shall be disclosed in a supplemental statement].
- C. Supplemental statements by attorneys as to compensation sought from the estate shall be supported by time sheets and detail as to any disbursements charged and shall be accompanied by a motion [notice thereof to be given by the requesting party to parties in interest in accordance with Rule 2002(a)(7) Fed.R.Bankr.P.].

Rule 2020. SERVICE ON THE OFFICE OF THE UNITED STATES TRUSTEE

2020-1. DUTIES OF CLERK OF COURT [Former Rule 15 A & B]

- A. The Clerk of the Court shall ensure that the Office of the United States Trustee for the district is placed on the mailing matrix in each case filed with the Court and is sent notices (including notices of appeal) issued by the Clerk or such other person as the Court may direct.
- B. The Clerk's office shall collect enough copies of petitions, statements, schedules, and amendments thereof to furnish the Office of the United States Trustee with two (2) copies of each.

2020-2. DUTIES OF PARTIES [Former Rule 15 C]

- A. Parties shall serve a copy of all documents initiating a request for a Court order or judgment, except proofs of claim or interest, on the Office of the United States Trustee. This includes but is not limited to all pleadings in adversary proceedings and contested matters.

Rule 2081 CHAPTER 11 [Former Rule 19]

2081-1. CHAPTER 11 REPORTS [RESERVED]

Rule 2090. ATTORNEYS - ADMISSION TO PRACTICE

- 2090-1. ADMISSION TO BANKRUPTCY PRACTICE AND ATTORNEYS OF RECORD [*Former Rule 2 A thru F; Former Rule 3 A thru E*]
- A. Prior Admission. A person admitted to practice in the United States District Court for the Western District of New York before October 1, 1979, is admitted for bankruptcy practice in the Western District of New York. A person subsequently admitted to bankruptcy practice under prior local bankruptcy rules is admitted for bankruptcy practice in the Western District of New York.
- B. Who may apply. A person admitted to practice before the United States District Court for the Western District of New York.
- C. Verified Petition. Each applicant for admission shall file with the Clerk of the Bankruptcy Court a verified petition for admission stating:
- (1) Applicant's residence and office address;
 - (2) That the applicant has been admitted to practice before the United States District Court for the Western District of New York and the date of said admission;
 - (3) That the applicant has read and is familiar with:
 - (a) The provisions of Judicial Code 28 U.S.C., section 1334, sections 151 through 158, and sections 1408 through 1412, and section 1452, which pertain to jurisdiction over and venue of bankruptcy cases, proceedings and matters.
 - (b) The Bankruptcy Code, Title 11 U.S.C.;
 - (c) The Federal Rules of Bankruptcy Procedure;
 - (d) The Local Rules of Bankruptcy Procedure for the Western District of New York.
- D. Other Admission Prerequisites. Upon the filing of the aforesaid verified petition, taking of the oath, and signing of the attorneys' roll, a person shall be admitted for bankruptcy practice and the Clerk shall issue a certificate to that effect.
- E. Admission Pro Hac Vice. An attorney duly admitted to practice in any state, territory, district, or foreign country may be admitted pro hac vice to participate in a bankruptcy case or proceeding before the District or Bankruptcy Court under such terms or conditions as may be appropriate.
- F. Government Attorneys. An attorney duly appointed to represent the United States is permitted to appear on any matter within the scope of his or her employment.
- G. Only members admitted under LBR 2090 may represent a debtor, be approved for employment as counsel in a bankruptcy case, or appear before the District or Bankruptcy Court in the litigation of adversary proceedings and contested matters.
- H. An attorney who has not obtained District or Bankruptcy Court approval to represent a party when required by Bankruptcy Codes and Rules may not appear in representation of that party.
- I. An attorney who accepts employment by a debtor in connection with the filing of a case under Title 11, United States Code, has the duty to render complete and competent service, to file with the Court a statement disclosing all payments rendered from a debtor or debtor-in-possession, and may not withdraw from that undertaking without the permission of the District or Bankruptcy Court.

- J. Applications to approve employment as attorney of record (whenever Court approval of such employment is required by statute or rule) must include the following:
- (1) an application, signed by the party seeking to retain counsel, which sets forth the reason this attorney should be hired, the services this attorney will provide, the arrangements reached with regard to when and how the attorney will be paid, the prior relationship between the applicant and the attorney, and the fact that no fees are to be paid unless and until there is specific Court approval;
 - (2) an affidavit from the attorney setting forth when he or she was admitted to practice in New York State and to bankruptcy practice in the Western District of New York, his or her qualifications; a statement of disinterestedness sufficient to persuade the Court that there is no conflict of interest; attorney's prior relationship with the debtor-client and the date upon which the petition was filed;
 - (3) an Order appointing counsel which clearly sets forth that no fees are to be paid without Court approval and the date from which the appointment is effective.
- K. An attorney who seeks an order approving employment may do so ex parte unless the initial post-petition services date back more than thirty (30) days. The attorney otherwise shall file a motion and notice all parties in interest of the motion and hearing date. The attorney must submit the application and notice to the Clerk of the Bankruptcy Court and obtain approval that they are adequate as to form and content before mailing the notices. The attorney shall prepare and mail such applications, unless the Court orders otherwise.

2090-2. ATTORNEYS - DISCIPLINE AND DISBARMENT *[Former Rule 4 A & B]*

- A. Any person admitted to bankruptcy practice in the Western District of New York may be disbarred from practice or otherwise disciplined after hearing, after such notice as the District or Bankruptcy Court may direct. Any member of the bar who has been disbarred in a state in which he or she was admitted to practice shall have his or her name stricken from the roll of attorneys or, if suspended from practice for a period at said bar, shall be suspended automatically for a like period from bankruptcy practice in the Western District of New York.
- B. Discipline and/or suspension from practice specifically may be directed against any attorney who conducts himself or herself in a manner demonstrating inability to properly represent his or her clients' interests. [See "Malpractice in Bankruptcy - Observations from the Bench" in Commercial Law Journal (March 1985) pp. 95-100, Hon. Harold Lavien, U.S. Bankruptcy Judge for the District of Mass.]

Rule 2091. ATTORNEYS - WITHDRAWAL

2091-1. WITHDRAWAL *[Former Rule 3 F & G]*

- A. Withdrawal shall be permitted only by order granted upon:
- (1) motion to withdraw, served upon the withdrawing attorney's client and such other parties as the Court directs; or
 - (2) if satisfactory to the Court, stipulation of counsel and parties affected thereby.
- B. An attorney who has appeared in a case under chapters 7 and 13 as the attorney of record for the debtor may be displaced without order of the Court by filing with the Court a Notice of Substitution of Attorney. The successor attorney shall file with the Court a Statement of Compensation pursuant to Rule 2016 Fed.R.Bankr.P. within ten (10) days of the Notice of Substitution of Attorney.

- C. An order granting permission to withdraw or to substitute shall become effective upon ten (10) days notice to all attorneys of record unless the Court specifically directs that the order shall become effective upon entry.

Rule 3001. CLAIMS AND EQUITY SECURITY INTERESTS - GENERAL

3001-1. TRANSFER OR CLAIM [O 7/15/94]

The Clerk of Court is to accept for filing a waiver of notice of a claim other than for security after proof filed when said notice is signed by the transferring entity and further notice need not be made. When said waiver of notice is accompanied by a properly completed assignment of claim form, the Clerk of Court shall substitute the transferee for the transferor.

Rule 3007. OBJECTIONS TO CLAIMS [SO 5/20/93]

- 3007-1. Rochester and Watkins Glen objections to claims may be granted without a hearing after the Court has considered the objection and determined the sufficiency of the claim and the objection, unless a request for a hearing is served and filed within the time permitted. Guidelines designed to comply with this procedure are available in the Bankruptcy Court Clerk's Office.

Rule 4001. RELIEF FROM AUTOMATIC STAY; CASH COLLATERAL AND FINANCING ORDERS [SO 8/4/83]

- 4001-1. A. **Applicability of Local Bankruptcy Rule 9013.** Except as otherwise provided herein, Local Bankruptcy Rule 9013 applies to motions for relief from stay, use of cash collateral, adequate protection, and financing orders.

B. MOTIONS FOR RELIEF FROM STAY

The thirty (30) days within which the Court must preliminarily rule on such a motion under 11U.S.C. § 362(e) shall be computed from the date on which a motion is served on opposing parties and filed with the Court. In addition to those parties listed in Rule 4001 Fed.R.Bankr.P., notice shall be given to the debtor, attorney for the debtor, trustee or examiner, the United States Trustee, to any persons requesting special notice under Rule 2002(i) Fed.R.Bankr.P., and any chapter 11 creditors' committee or other official committee duly appointed in a chapter 11 case.

- 4001-2. [RESERVED] [Former Rules 18 & 24]

CASH COLLATERAL OR ADEQUATE PROTECTION AGREEMENTS [SO 10/30/85]

All requests for orders approving adequate protection or cash collateral agreements or stipulations shall be sought by written motion and notice of motion, and shall be the subject of a hearing. The party seeking the order shall prepare and serve the motion and notice of motion. Notice shall be given to the parties to the agreement, all parties having any other interest in the collateral, and the creditors' committee, if any, and the United States Trustee. If there is no creditors' committee,

- and notice shall be given to the twenty largest creditors. At the hearing, after inquiry into the content consequences of the agreement, the Court may direct a further hearing on notice to all creditors or all parties-in-interest. The Court will entertain without a hearing, requests for an order approving a cash collateral agreement or a stipulation which provides for nothing more than a replacement lien on post-petition assets, in an amount equal to the amount of cash collateral used.

Rule 4008. DISCHARGE AND REAFFIRMATION HEARING [GO 11/21/86]

- 4008-1. Reaffirmation agreements submitted must be accompanied by Form B240 (or a form which

substantially conforms to Form B240) and must be completed and signed. Debtors will no longer be required to attend a discharge hearing, except as provided below. Discharge Hearing Calendars will be conducted on a regular basis throughout the district, at which debtors may present themselves for a full explanation of the meaning of discharge and of reaffirmation. Times and places of such calendars are available from the Clerk.

- A. **Pro Se Debtors.** A discharge hearing must be attended by a pro se debtor filing a reaffirmation agreement. The Clerk will issue an informational letter to the debtor and a form to request a § 524(d) hearing.
- B. **Reaffirmation Agreement Accompanied by Attorney's Declaration.** The debtor shall not be required to attend a discharge hearing if the debtor is represented by an attorney who attaches a declaration prepared pursuant to § 524(c)(3).
- C. **Reaffirmation Agreement Not Accompanied by Attorney's Declaration.** A discharge hearing must be attended by the debtor if a reaffirmation agreement is not accompanied by a completed Attorney's Declaration. The Clerk will issue an information letter to the debtor and a form to request a § 524(d) hearing.

Rule 5073. PHOTOGRAPHY, RECORDING DEVICES & BROADCASTING

5073-1. CAMERAS AND RECORDING DEVICES *[Former Rule 9]*

- A. The taking of photographs, or making of oral or video tape recordings, or radio or television broadcasting in a courtroom during the progress of or in connection with judicial proceedings, whether or not Court is actually in session, is prohibited. None of the foregoing activities is allowed in the jury rooms, the offices of the Judges or Court reporters, or in any room hallway or corridor of the floor of the building in which the courtrooms are located, except with the express consent of the Court.
- B. The Court may except ceremonial and investitive proceedings from this prohibition.
- C. Court reporters are not prohibited by this rule from making sound recordings for the sole purpose of discharging their official duties. No recording made for that purpose shall be used for any other purpose by any person. Likewise, personnel of the Court are not prohibited by Section A of this rule from making sound recordings in the course of their work.

Rule 5080. FEES - GENERAL

5080-1. PAYMENT OF FEES *[Former Rule 22]*

The Bankruptcy Clerk, unless otherwise ordered by the Court, 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 such service is paid in advance and as specified in LBR Rule 5081.

Rule 5081. FEES - FORM OF PAYMENT

5081-1. FORM OF PAYMENTS *[Former Rule 22]*

Fees must be tendered in cash or by certified check, bank draft, or money order. The Clerk may specify other forms of payment.

Rule 6004. USE, SALE OR LEASE OF PROPERTY

6004-1. STATEMENT, FORM, AND NOTICE *[Former Rule 25 and Rule 26 (RESERVED)] [SO 8/9/83]*

- A. Except as to sales in the ordinary course of operating a business, the trustee or debtor in possession shall file with the Bankruptcy Court a statement identifying any estate property proposed to be sold and the date and manner of such sale. The statement shall contain sufficient detail to enable creditors to make an informed judgment as to the wisdom of the proposed disposition. At a minimum, the statement shall contain a description of the property. A statement of sale shall contain a description of the manner and terms of sale, the name of the buyer and purchase price, if known. If the case is a chapter 11 case, a statement as to whether the sale is all or substantially all of the debtor's assets, and the effect the sale will have upon the debtor's ability to reorganize.
- B. Except as provided in Rule 6004(c) Fed.R.Bankr.P., and subdivision C hereof, notice of the filing of the statement and a summary thereof shall be sent to all creditors. The notice also shall advise creditors that they may obtain a hearing on the proposed disposition by filing a written demand for a hearing with the Court within twenty (20) days of the notice date.
- C. Where the statement discloses a sale of all or substantially all of the assets, the Clerk shall set the matter for hearing and notice shall be sent to all creditors.

Rule 6007. ABANDONMENT

6007-1. STATEMENT, FORM AND NOTICE *[Former Rule 25; parts of A & B]*

- A. The trustee or debtor in possession shall file with the Bankruptcy Court a statement identifying any estate property proposed to be abandoned and the date and manner of such abandonment. That statement shall contain sufficient detail to enable creditors to make an informed judgment as to the wisdom of the proposed disposition. At a minimum, the statement shall contain a description of the property.
- B. Notice of the filing of the abandonment statement and a summary thereof shall be sent to all creditors. The notice also shall advise creditors that they may obtain a hearing on the proposed disposition by filing a written demand for a hearing with the Court within twenty (20) days of the notice date.

Rule 6070. TAX RETURNS & TAX REFUNDS *[Former Rule 42]*

- 6070-1. A. In General. The failure of a debtor in an asset case under any chapter of Title 11 of the United States Code to file any required tax return promptly after filing the petition or after conversion may constitute "cause" for dismissal or conversion of the case upon a request by a party in interest and after hearing on notice.
- B. As to "Estimated" Tax Claims. Concurrent with the debtor's duty to file tax returns is the duty to assure that improper distributions are not made upon "estimated" tax claims resulting from the Debtor's failure to file returns.

Overpayment of taxes by allowance of unduly-high "estimated" tax claims may occur to the prejudice of other unsecured creditors, whose percentage distribution may be reduced for the benefit of the excessive "priority" tax claim.

Underpayment of taxes by allowance of unduly-low "estimated" tax claims leaves the Debtor liable for the deficiency after he or she emerges from bankruptcy. And it may have resulted

in a windfall for other creditors.

When the tax claim is an “estimated” claim only because no return was filed, the burden must be placed on the Debtor to take steps to avoid prejudice to other creditors (and the Debtor may wish to take steps to protect himself or herself as well.)

At the least, the Debtor shall within 30 days of service of a copy of an “estimated” tax claim that is “estimated” because of non-filing of returns, object to such claim under Rule 3007 Fed.R.Bankr.P. even if the Debtor does not disagree with the amount. A copy of the proposed return or other evidence of the amount of the liability shall accompany the objection. If the Debtor is not served with a copy of the “estimated claim”, then the objection must be filed within 30 days after the closing of the 180 day opportunity for the filing of tax claims under § 502.

At the hearing on the objection the Debtor shall appear and shall be prepared to tender the tax return thereat or to provide evidence to the Court as to a proper “estimate” of the tax claim, whether higher, lower, or the same as that filed by the taxing entity.

The Court will thus “estimate” the claim for the purpose of allowance but will not at that hearing determine the Debtor’s tax liability under § 505 or the applicable tax laws. The duty to file a return and the risk of additional liability remains at all times on the Debtor, and any discharge shall not discharge the unpaid balance of any actual tax liability, interest or penalties. Determination of tax liability under § 505 requires an Adversary Proceeding.

If the objection required by this rule is not made, the case may on motion on notice to the Debtor and counsel be converted or dismissed, as to the Court appears proper.

The taxing entities may assert other remedies, such as objections to confirmation of a plan. If a plan is confirmed “pending” the estimation of the tax claims as above, then confirmation shall be without prejudice to any objections properly arising out of the hearing on the claim, such as (but not limited to) objections based on feasibility, projected disposable income, or lack of good faith.

Rule 7004. SERVICE OF PROCESS

7004-1. SERVICE UPON THE UNITED STATES IN CONTESTED MATTERS *[Former Rule 16]*

- A. Rule 9014 Fed.R.Bankr.P. requires that a motion be served “in the manner provided for service of a summons and complaint by Rule 7004 Fed.R.Bankr.P.” of those Rules. Rule 7004(a) Fed.R.Bankr.P. [by incorporating Rule 4(d) of the Federal Rules of Civil Procedure and Rule 7004(b)(4), (5)] require:
1. that the United States be served whenever an officer or agency of the United States is served; and
 2. that service upon the United States is obtained by serving the United States Attorney for the District in which the action is brought, together with mailing a copy of the process to the Attorney General of the United States at Washington, D.C.

Rule 7016. PRE-TRIAL PROCEDURES

7016-1. PRE-TRIAL CONFERENCES IN ADVERSARY PROCEEDINGS *[Former Rule 27]*

- A. At the pre-trial conference required by Rule 7016 Fed.R.Bankr.P., counsel shall be prepared

to report on the following matters:

- (1) status of the pleadings and joinder of other parties or actions;
- (2) anticipated discovery proceedings and the time required for the completion thereof;
- (3) unusual problems of law or fact which may arise;
- (4) anticipated motions;
- (5) narrowing of the issues and stipulation as to matters which avoid unnecessary proof;
- (6) the time when the case will be ready for trial;
- (7) such other matters as may aid in disposition of the case.

- B. Upon the completion of the conference, an order will be entered by the Bankruptcy Court setting the time within which all pre-trial motions and discovery are to be completed and imposing such additional requirements as may be appropriate. Thereafter, further discovery shall not be permitted except by leave of the Court for good cause shown.

7016-2. AUTHORITY OF CLERK *[Former Rule 28] [SO 5/7/84]*

The authority of this Court to set pre-trial conferences in adversary proceedings and other disputed matters is hereby delegated non-exclusively to the Clerk, who shall, in directing litigants to appear thereat, give them notice that such direction is by order of the Court and that the Court may impose sanctions, including a default judgment for failure to appear.

Rule 7024. UNCONSTITUTIONALITY, CLAIM OF

7024-2. NOTICE OF CLAIM OF UNCONSTITUTIONALITY *[Former Rule 23]*

If at any time prior to the trial of any adversary proceeding or contested matter, to which neither the United States, an individual state, nor any agency, officer or employee of either is a party, a party draws in question the constitutionality of an Act of Congress or a state statute affecting the public interest, the party shall, in writing, notify the Bankruptcy Court of the existence of such question and specifically identify the statute and the respects in which it is claimed to be unconstitutional. See, 28 U.S.C. § 2403(a) and (b).

Rules 7026. DISCOVERY7026-1. COOPERATION OF COUNSEL *[Former Rule 29]*

No motion for discovery and production of documents under Rules 7026 through 7037 Fed.R.Bankr.P. shall be heard unless and until moving counsel certify that they have attempted to resolve the discovery dispute on their own.

Rule 7040. ASSIGNMENT OF ADVERSARY PROCEEDINGS *[Former Rule 10 C]*

7040-1. The assignment of the bankruptcy case to a Judge includes, subject to LBR 1073-1(B) herein, the assignment of adversary proceedings and contested matters arising in the case.

Rule 7054. COSTS - TAXATION/PAYMENT7054-1. COSTS IN THE BANKRUPTCY CASE *[Former Rule 34]*

A. A party entitled to recover costs shall file with the Bankruptcy Clerk, upon forms provided by the Clerk, a verified bill of costs. The date on which the parties will appear before the Clerk for taxation of the costs and proof of service of a copy upon the party liable for the costs shall be endorsed thereon. The Clerk's action may be reviewed by the Court if a motion to retax the costs is filed within five (5) days after the costs are taxed.

B. Standards for Taxing Costs

- (1) The Clerk's filing fee is allowable if paid by the claimant.
- (2) Fees of the marshal as set forth in 28 U.S.C. § 1921 are allowable to the extent actually incurred. Fees for service of process by someone other than the marshal are allowable to the extent that they do not exceed those permitted by 28 U.S.C. §1921.
- (3) Reporters' transcripts:
 - (a) The cost of transcripts necessarily obtained for an appeal are allowable.
 - (b) The cost of a transcript of a statement by a Judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.
 - (c) The cost of other transcripts is not normally allowable unless, before it is incurred, it is approved by a Judge or stipulated to be recoverable by counsel.
- (4) Depositions:
 - (a) The cost of an original and one copy of any deposition used for any purpose in connection with the case is allowable.
 - (b) The expenses of counsel in attending depositions are not allowable.
 - (c) The cost of reproducing exhibits to depositions is allowable where the cost of the deposition is allowable.
 - (d) Notary fees incurred in connection with taking depositions are allowable.
 - (e) The attendance fee of a reporter when a witness fails to appear is allowable if the claimant made use of available process to compel the attendance of the witness.

- (5) Reproduction and Exemplification:

- (a) The cost of reproducing and certifying or exemplifying government records for use in the case is allowable.
 - (b) The cost of reproducing documents used for any purpose in connection with the trial is allowable.
 - (c) The cost of reproducing copies of motions, pleadings, notices and other routine case papers is not allowable.
 - (d) The cost of reproducing trial exhibits is allowable to the extent that a Judge requires copies to be provided.
 - (e) The cost of preparing charts, diagrams and other visual aids to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the Court in understanding the issues at the trial.
 - (f) The cost of reproducing the required number of copies of the Clerk's record on appeal is allowable.
- (6) Witness Expenses. Per diem, subsistence and mileage payments for witnesses are allowable to the extent reasonably necessary. No other witness expenses, including fees for expert witnesses, are allowable.
 - (7) Such other costs, not heretofore provided for, authorized under Rule 39, Federal Rules of Appellate Procedure, are allowable.
 - (8) Premiums on undertaking bonds and costs of providing security required by law, by order of a Judge, or otherwise necessarily incurred are allowable.
 - (9) The certificate of counsel required by 28 U.S.C. § 1924 shall be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.

Rule 7055. DEFAULT - FAILURE TO PROSECUTE [Former Rule 33] [SO 12/5/83; SO 4/19/84]

7055-1. PROCEDURE FOR GRANTING OF DEFAULT JUDGMENTS

Before seeking default judgment, plaintiff's attorney should make certain that he or she has (1) properly and timely served the defendant, and (2) filed an accurate certificate of service. Then, once the time to answer has expired, he or she may seek entry of default judgment, following the procedures described below.

When the underlying action is a core matter

The Clerk of the Bankruptcy Court may enter the default judgment if:

- A. the underlying action is a core matter; and
- B. the default judgment is for a sum certain.

In order to obtain a default judgment, in this circumstance, the attorney for the plaintiff is to file (1) an application for default judgment addressed to the Clerk of Court; (2) a certificate of default; (3) a request for judgment by default and affidavit of amount due; and (4) an affidavit of non-military service.

When the underlying action is a non-core matter

- A. The Bankruptcy Judge to whom the matter has been assigned may execute a recommendation that default judgment be entered, without requiring a hearing, if the judgment is for a sum certain. When it is a non-core matter at issue, final judgment - even default judgment - must be entered in the District Court.

In order to obtain such a recommendation, the plaintiff's attorney is to file: (1) a recommendation for default judgment addressed to the Bankruptcy Judge; (2) an affidavit of non-military service; (3) an order to transmit record in a non-core proceeding to District Court, combined with findings of fact, conclusions of law and recommendation regarding plaintiff's request for entry of default judgment; (4) an affidavit of amount due; and (5) judgment (for execution by a U.S. District Judge).

- B. When the Bankruptcy Judge, on the basis of the submitted recommendation for default judgment, determines that a hearing is necessary, the Clerk will inform the parties of the date of that hearing. (For example, if the defendant appeared, but did not answer, the defendant has a right to be heard on the question of the amount of damages.) After that hearing, the plaintiff's attorney is to submit a revised order to transmit, a revised affidavit of amount due, and a judgment (for execution by the U.S. District Judge).

Appropriate sample forms are available from the Bankruptcy Court Clerk.

The Clerk of Court shall enter the fact of default in an adversary proceeding only when requested to do so by the nondefaulting party. Upon entry of the fact of default under Fed.R.Civ.P. Rule 55(a), the nondefaulting party may seek judgment by default from the Clerk or the Court as appropriate under Fed.R.Civ.P. Rule 55(b), (d), and (e). Where relief has been sought against multiple parties not all of whom have failed to plead or defend, the fact of default may be entered as to any party who failed to plead or defend, but no judgment by default shall be entered against such party until the case shall have been decided with respect to the nondefaulting parties, unless the Court orders otherwise. A plaintiff entitled to a default for the failure to answer a complaint must request entry of the fact of default, and make suitable request for judgment, within 60 days after the last day to answer. Failure to make these requests will result in the entry of an order placing the proceeding on a calendar for a hearing on the question of why the complaint should not be dismissed for want of prosecution.

Rule 7069. JUDGMENT, PAYMENT OF *[Former Rules 35 & 36 (RESERVED)] [GO 1/3/84]*

- 7069-1. INTEREST ON JUDGMENTS. Interest on Judgments entered in the United States Bankruptcy Court for the Western District of New York shall be based on the rate applicable in the Federal District Court, pursuant to Title 28 U.S.C. § 1961.

SATISFACTION OF JUDGMENTS. [RESERVED]

Rule 8008. APPEALS

- 8008-1. FILING PAPERS - APPEAL *[Former Rule 14 F]*

Upon filing a notice of appeal, the appellant shall furnish the Clerk with a sufficient number of copies thereof for mailing.

Rule 9004. PAPERS9004-1. FORM OF PAPERS *[Former Rule 13 A]*

All pleadings and other papers shall be plainly and legibly written, preferably typewritten, printed or reproduced; shall be without erasures or interlineations materially defacing them; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and fastened in durable covers.

9004-2. CAPTION *[Former Rule 13 B]*

All pleadings and other papers shall be captioned with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a description of their nature. All pleadings and other papers, unless excepted under Rule 9011 Fed.R.Bankr.P., shall be dated, signed and have thereon the name, address and telephone number of each attorney, or if no attorney, then the litigant appearing.

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the effectiveness of any such papers shall be subject to determination of the Court. *[Former Rule 13 D]***Rule 9006. TIME PERIODS** *[Former Rule 14D]*

9006-1. REDUCTION. If a party wishes to shorten the notice requirements prescribed by Rule 9013 Fed.R.Bankr.P., the party must make written application to the appropriate Judge for an expedited hearing.

Rule 9010. ATTORNEYS - NOTICE OF APPEARANCE9010-1. STUDENT LAW CLERKS *[Former Rule 6]*

- A. An eligible law student may, with the approval of his or her law school dean or a member of the law school faculty and of a Bankruptcy Judge of the Western District of New York, serve as a part-time student law clerk to that Bankruptcy Judge.
- B. In order to so serve, the law student shall:
- (1) be duly enrolled in a law school approved by the American Bar Association;
 - (2) have completed legal studies amounting to at least two semesters or the equivalent;
 - (3) be enrolled in a course or program at his or her law school offering academic credit for serving as a part-time law clerk to a Judge or be certified by the dean of his or her law school for non-credit clinical experience;
 - (4) be supervised by a member of a law school faculty. This faculty advisor shall, to the extent possible, review all aspects of the student's work before it is submitted to the Judge;
 - (5) be certified by the dean or a faculty member of his or her law school as being of good character and competent legal ability. This certification may be withdrawn by the certifier at any time by mailing a notice to the Judge supervising the student. Termination of certification by the certifier shall not reflect on a student's character or ability unless otherwise specified. A copy of such certification and decertification shall be filed with the Clerk of the Court;
 - (6) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as a part-time law clerk to a Judge;

- (7) certify in writing, which certification shall be filed with the Clerk of the Bankruptcy Court, that he or she:
 - (a) has read and is familiar with and will comply with the Code of Professional Responsibility, and relevant provisions of the Code of Judicial Conduct for United States Judges, and
 - (b) will abstain from revealing any information and making any comment at any time, except to his or her faculty advisor or to the Court personnel as specifically permitted by the Judge to whom he or she is assigned, concerning any proceeding pending or impending in this Court while he or she is serving as a part-time clerk.
- C. A Judge supervising a part-time clerk may terminate or limit the clerk's duties at any time without notice or hearing and without showing of cause. Such termination or limitation shall not be considered a reflection on the character or ability of the part-time clerk unless otherwise specified.
- D. An attorney in a pending proceeding may at any time request that a part-time clerk not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the clerk's contact with the proceeding.
- E. For the purpose of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for United States Judges, a part-time law clerk is deemed to be a member of the Court's personnel.
- F. Forms for designating compliance with the rule are available in the Clerk's office.

9010-2. STUDENT PRACTICE *[Former Rule 7]*

- A. An eligible law student, with the Court's approval, under supervision of an attorney, may appear on behalf of any person, including the United States Attorney, who has consented in writing.
- B. The attorney who supervises a student shall:
 - (1) be admitted to bankruptcy practice in the United States District and Bankruptcy Courts for the Western District of New York;
 - (2) assume personal professional responsibility for the student's work;
 - (3) assist the student to the extent necessary;
 - (4) appear with the student in all proceedings before the Court;
 - (5) indicate in writing his or her consent to supervise the student.
- C. In order to appear, the student shall:
 - (1) be duly enrolled in a law school approved by the American Bar Association;
 - (2) have completed legal studies amounting to at least two semesters or the equivalent;
 - (3) be certified by either the dean or a faculty member of his or her law school as qualified to provide the legal representation permitted by these rules. This certification may be withdrawn by the certifier at any time by mailing a notice to the Clerk or by termination by the Judge presiding in the case in which the student appears without notice or hearing and without showing of cause. The loss of certification by action of a Judge shall not be considered a reflection on the character or ability of the student;
 - (4) be introduced to the Court by an attorney admitted to bankruptcy practice before the Court;
 - (5) neither ask for nor receive any compensation or remuneration of any kind for his or

her services from the person on whose behalf he or she renders services, but this shall not prevent an attorney, legal aid bureau, law school, a state or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services;

- (6) certify in writing that he or she is familiar with and will comply with the Code of Professional Responsibility of the American Bar Association;
- (7) certify in writing that he or she is familiar with the procedural and evidentiary rules relevant to the action in which he or she is appearing.

D. The law student, supervised in accordance with these rules, may:

- (1) appear as counsel in Court or at other proceeding when written consent of the client (on the form available in the Clerk's Office) or of the United States Attorney, when the client is the United States, and the supervising attorney have been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits;
- (2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with any matter in which he or she had met the conditions of "1" above; each such document also shall be signed by the supervising attorney.

E. Forms for designating compliance with this rule shall be available in the Bankruptcy Court Clerk's Office. Completed forms shall be filed with the Bankruptcy Clerk.

F. Participation by students under the rule shall not be deemed a violation in connection with the rules for admission to the bar of any jurisdiction concerning practice of law before admission to that bar.

Rule 9013. MOTIONS: FORM AND SERVICE *[Former Rule 14 A & C] [SO 8/4/93; SO 8/5/92; SO 3/9/93, SO 3/9/93, SO 4/13/93; SO 7/25/94; SO 7/26/95]*

- 9013-1. A. All pleadings, notices and other papers shall be served and filed in accordance with the Federal Rules of Bankruptcy Procedure and these Local Rules.
- B. Except as otherwise provided by rule or ordered by the Court, notices of motion along with supporting affidavits and memoranda shall be served on the parties and filed with the Bankruptcy Clerk at least five (5) days prior to the return date of the motion [eight (8) days if served by mail]. Motion dates may be obtained from the Clerk. Discretionary responses to motions (those not required by order) shall be filed and served upon the adverse party or parties as soon as practicable.
- C. Rochester and Watkins Glen motions filed pursuant to, including but not limited to §362, §554, §522(f), §722 and §1229 and §1339 Modification motions may be granted by the Court by default without a hearing. Sample forms and guidelines designed to comply with this procedure are available in the Bankruptcy Court Clerk's Office.

Rule 9014. CONTESTED MATTERS

9014-1. **OBJECTIONS TO TRUSTEE'S FINAL REPORT AND ACCOUNT IN A CHAPTER 7 CASE**
[Former Rule 37; Former Rule 13C]

- A. Parties to whom a summary of the trustee's final report and account have been sent in a chapter 7 case pursuant to Rule 2002(f)(9) Fed.R.Bankr.P. may object to the final report and account by written objection filed with the Bankruptcy Clerk and served on the Office of the United States Trustee within fifteen (15) days of the date of the summary so sent. Unless the Court orders otherwise, no trustee shall distribute dividends unless and until said fifteen (15) days have elapsed without the filing of an objection.

An objection to the trustee's final report and account is a contested matter governed by Rule 9014 Fed.R.Bankr.P.

If the summary of the final report and account is coupled with a notice of a hearing on allowances, an objection to the allowances sought may be made at or before the hearing. The party objecting shall serve a copy of the objection upon or give notice of an intention to object to the Office of the United States Trustee.

- B. Responses to written questions or demands, including answers to interrogatories, depositions upon written questions, letters interrogatory or a notice demanding admissions, shall set forth each question or demand verbatim with the party's response set forth immediately thereafter. Objections to interrogatories should set forth the question, the answer and the objection thereto. Objections to responses to interrogatories should set forth the question, the answer, and the objection thereto.
- C. An objection to a trustee's final report and account is a contested matter governed by Rule 9014 Fed.R.Bankr.P. Parties to whom a summary of the trustee's final report and account have been sent in a chapter 7 case pursuant to Rule 2002(f)(9) Fed.R.Bankr.P. may object to the final report and account by written objection filed with the Bankruptcy Clerk and served on the Office of the United States Trustee within fifteen (15) days of the date of the summary so sent. Unless the Court orders otherwise, no trustee shall distribute dividends unless and until said fifteen (15) days have elapsed without the filing of an objection.

If the summary of the final report and account is coupled with a notice of a hearing on allowances, an objection to the allowances sought may be made at or before the hearing. The party objecting shall serve a copy of the objection upon or give notice of an intention to object to the Office of the United States Trustee.

Rule 9015. JURY TRIALS *[Former Rule 31]*

- A. APPLICABILITY OF CERTAIN FEDERAL RULES OF CIVIL PROCEDURE:
RULES 38, 39 AND 47-51 Fed.R.Civ.P. and Rule 81(c) Fed.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) Fed.R.Civ.P. shall be filed in accordance with Rule 5005 Fed.R.Bankr.P.
- B. CONSENT TO HAVE TRIAL CONDUCTED BY BANKRUPTCY JUDGE:
If the right to a jury trial applies, a timely demand has been filed under Rule 38(b) Fed.R.Civ.P., and the Bankruptcy Judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a Bankruptcy Judge under 38 USC § 157(e) by jointly or separately filing a statement of consent.

Rule 9022. JUDGMENTS AND ORDERS, NOTICE OF *[Former Rule 14 E]*

- 9022-1. **NUMBER OF COPIES.** All orders and judgments shall be filed in duplicate by the party who secures them if such party desires a conformed copy be returned to them. The copies will be placed at the intake counter for pickup unless accompanied by a postage-paid, self-addressed envelope. Such party also shall furnish the Clerk with a sufficient number of additional copies thereof for mailing with the notice of entry, whenever notice of entry is required. All orders, whether made on notice or ex parte, together with the papers on which they were granted, shall be filed forthwith or within the time otherwise permitted by law.

Rule 9024. RELIEF FROM JUDGMENT OR ORDER *[GO 9/14/88]*

General reference regarding proceedings to set aside judgments of the District Court in "Non-Core" Bankruptcy Proceedings under 28 U.S.C. § 157 is covered in the General Order regarding same

entered in the U.S. District Court on September 14, 1988.

Rule 9070. EXHIBITS *[Former Rule 30 A thru C]*

- 9070-1. A. In an adversary proceeding or a contested matter, the exhibits shall be marked by counsel or the parties prior to trial or hearing.
- B. Unless the Bankruptcy Court otherwise directs, exhibits (except those produced by non-parties) shall not be filed with the Bankruptcy Court Clerk but shall be retained in the custody of the respective attorneys or persons who produce them in Court. Upon submission to the trier of fact, all exhibits which were received into evidence shall be delivered to the Court. Following decision or verdict, exhibits will be returned to the parties. In the case of an appeal or other review by an appellate Court, all exhibits necessary to perfect the appeal shall be made available for inclusion in the record on appeal.
- C. Exhibits produced by non-parties may be held by the Clerk or a party as the Court may direct. Whenever practicable, copies of such exhibits shall be substituted for originals. Upon expiration of the time allowed for appeal, or following an appeal, any originals retained by the Court or a party shall be returned to non parties.

Rule 9071. STIPULATIONS *[Former Rule 32]*

- 9071-1. A. Stipulations. All stipulations affecting an adversary proceeding before this Court, except stipulations which are made in open Court and recorded by the court reporter, shall be in writing and signed, and shall be filed. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given in effect.
- B. Settlements. When an adversary proceeding is settled, the parties shall file within thirty (30) days a signed agreement for judgment or stipulation for dismissal as appropriate. If no such agreement is filed, the Court may enter an order dismissing the adversary proceeding as settled, with prejudice and without costs.

**CONVERSION TABLE OF FORMER BANKRUPTCY RULES, STANDING ORDERS, AND
GENERAL ORDERS TO CURRENT LOCAL RULES OF BANKRUPTCY PROCEDURE**

	Former Local Bankruptcy Rule, General and/or Standing Order	New Local Bankruptcy Rule
1.	Rule 1	LBR 1001-1
2.	Rule 2	LBR 2090-1
3.	Rule 3	LBR 2090-1
4.	Rule 4	LBR 2090-1
5.	Rule 5	LBR 2014-1; 2014-2; 2014-3
6.	Rule 6	LBR 9010-1
7.	Rule 7	LBR 9010-2
8.	Rule 8	LBR 1072-1
9.	Rule 9	LBR 5073-1
10.	Rule 10	LBR 1014-1; 1072-2; 1073-1; 1073-2; 7040-1
11.	Rule 11	LBR 1007-1
12.	Rule 12	ABROGATED
13.	Rule 13	LBR 9004-1; 9004-2; 9004-3; 9014-1
14.	Rule 14	LBR 2002; 8008-1; 9006; 9013-1; 9022-1
15.	Rule 15	LBR 2020-1; 2020-2
16.	Rule 16	LBR 7004-1
17.	Rule 17	LBR 1015-1
18.	Rule 18	LBR 1007-2 2007-1; 2015-1; 2015-2; 2015-4; 2015-5; 4001-2
19.	Rule 19	LBR 2081
20.	Rule 20	LBR 1019
21.	Rule 21	LBR 1019
22.	Rule 22	LBR 5080-1; 5081-1
23.	Rule 23	LBR 7024-2
24.	Rule 24	LBR 4001-2
25.	Rule 25	LBR 6004-1; 6007-1
26.	Rule 26	LBR 6004-1
27.	Rule 27	LBR 7016-1

28.	Rule 28	LBR 7016-2
29.	Rule 29	LBR 7026-1
30.	Rule 30	LBR 9070-1
31.	Rule 31	LBR 9015-1
32.	Rule 32	LBR 9071
33.	Rule 33	LBR 7055-1
34.	Rule 34	LBR 7054-1
35.	Rule 35	LBR 7069-1
36.	Rule 36	LBR 7069-1
37.	Rule 37	LBR 9014-1
38.	Rule 38	LBR 2016-1
39.	Rule 39	LBR 2016-2
40.	Rule 40	LBR 2007-1
41.	Rule 41	LBR 1020-1
42.	Rule 42	LBR 6070
43.	Standing Order 8/4/83; Motions Under 11 U.S.C. §362(d) Seeking Relief from an Automatic Stay	LBR 4001; 9013
44.	Standing Order 8/9/83; The Content of a Debtor-in-Possession's Statement of Intent to Sell Property Outside the Ordinary Course of Business	LBR 6004
45.	Standing Order 12/5/83; Defaults in Adversary Proceedings	LBR 7055
46.	General Order 1/3/84; Interest on Judgments	LBR 7069
47.	Standing Order 4/19/84; Defaults in Adversary Proceedings	LBR 7055
48.	Standing Order 5/7/84; Directing Litigants to Appear at Pre-Trial Conferences	LBR 7016-1
49.	Standing Order 6/12/84; Applications for Fees by the Attorney for the Debtor in Chapter 7 Cases	LBR 2016-1
50.	Standing Order 8/14/85; Number of copies required in Chapter 11 cases	LBR 1007
51.	Standing Order 10/30/85; Cash Collateral or Adequate Protection Agreements	LBR 4001-2
52.	Standing Order 4/22/86; Issuing Notices by the Standing Chapter 13 Trustee	LBR 2002

53.	General Order 11/21/86; Discharge Hearings and Reaffirmation Agreements Under the 1986 Amendments to 11 U.S.C. 524(c) and (d)	LBR 4008
54.	Standing Order 4/29/87; Petitions: Number of copies to be filed in the Bankruptcy Court and Minimum Filing Requirements	LBR 1007-1
55.	General Order 3/21/88; Amendments to Petitions, Lists, Schedules, and Statements	LBR 1009
56.	General Order 9/14/88; Proceedings to Set Aside Judgments of the District Court in "Non-Core" Bankruptcy Proceedings Under 18 U.S.C. §157	LBR 9024
57.	Standing Order 7/30/90; Trustee's Reimbursement of Blanket Bond Premiums	LBR 2016-1; 2016-2
58.	Standing Order 7/31/90; Compensation in Chapter 7 & 13 Cases	LBR 2010
59.	General Order & Notice 1/8/92; Amendments to Petitions, Lists, Schedules, and Statements	LBR 1009-1
60.	Standing Order 7/15/94; Waiver of Notice of Claim	LBR 3001(e)(2)
61.	Standing Order 4/23/96; Blanket Trustee Designation in Chapter 13 Cases	LBR 2008
62.	Standing Order 8/5/92; Section 362 Motions in Chapter 7 and Chapter 13 Cases in Rochester and Watkins Glen	LBR 9013
63.	Standing Order 3/9/93; Section 554 Motions in Rochester and Watkins Glen	LBR 9013
64.	Standing Order 3/9/93; Section 522(f) Motions in Rochester and Watkins Glen	LBR 9013
65.	Standing Order 4/13/93; Revised re: Section 522(f) Motions in Rochester and Watkins Glen	LBR 9013
66.	Standing Order 5/20/93; Rule 3007 - Objections to Claims- Procedure in Rochester and Watkins Glen	LBR 3007
67.	Standing Order 7/25/94; Section 722 Motions in Rochester and Watkins Glen	LBR 9013
68.	Standing Order 7/26/95; Section 1229 and 1329 Modification Motions in Rochester and Watkins Glen	LBR 9013

PROCEDURE FOR THE HANDLING OF CASES
UNDER AND PROCEEDINGS ARISING UNDER,
AND PROCEEDINGS ARISING IN OR RELATED
TO A CASE UNDER TITLE 11 U.S.C.

Pursuant to § 157(a), Title 28, U.S.C., added by § 104(a) of the Act of July 10, 1984, Public Law 98-353, and subject to the remaining provisions of § 157,

IT IS ORDERED that all cases under Title 11, U.S.C. and all proceedings arising under Title 11, U.S.C. or arising in or related to a case under Title 11, U.S.C. pending on June 27, 1984 or filed on or after June 28, 1984 are referred to the bankruptcy judges for this District, to be assigned in accordance with their assignment rules.

Dated: Buffalo, NY
July 13, 1984

/s/ John T. Curtin
Hon. John T. Curtin,
Chief Judge

/s/ John T. Elfvin
Hon. John T. Elfvin
U.S.D.J.

/s/ Michael A. Telesca
Hon. Michael A. Telesca
U.S.D.J.

**IMPLEMENTATION OF THE ACT
OF JULY 10, 1984, PUBLIC LAW 98-353**

Supplementing this Court's Order dated July 13, 1984 which provided "Procedure for the Handling of Cases Under and Proceedings Arising Under, and Proceedings Arising in or Related to a Case Under Title 11 U.S.C." and by way of further implementation of the Act of July 10, 1984, Public Law 98-353, it is

ORDERED, pursuant to § 154(b), Title 28, United States Code, that Beryl E. McGuire is designated Chief Judge of the Bankruptcy Court for the Western District of New York, and it is

FURTHER ORDERED that the Bankruptcy Judges of this District are authorized to promulgate local rules consistent with and necessary to the implementation of Public Law 98-353; the provisions of Title 11, United States Code, as amended; and the provisions of the Rules of Bankruptcy Procedure, as amended; and it is

FURTHER ORDERED, pursuant to §157(b)(5), Title 28, United States Code, that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Dated: September 18, 1984

/s/ John T. Curtin
Hon. John T. Curtin,
Chief Judge

/s/ John T. Elfvin
Hon. John T. Elfvin,
U.S.D.J.

/s/ Michael A. Telesca
Hon. Michael A. Telesca,
U.S.D.J.

**REAFFIRMATION OF THE ORDERS IMPLEMENTING
THE ACT OF JULY 10, 1984, PUBLIC LAW 98-353**

In reaffirmation of the Order of this Court dated July 13, 1984, which provided "Procedure for the Handling of Cases Under and Proceedings Arising Under, and Proceedings Arising in or Related to a Case Under Title 11 U.S.C." and the Order of this Court dated September 18, 1984, which further implemented the Act of July 10, 1984, Public Law 98-353, it is

ORDERED, pursuant to § 154(b), Title 28, United States Code, that Beryl E. McGuire is designated Chief Judge of the Bankruptcy Court for the Western District of New York, and it is

FURTHER ORDERED that the Bankruptcy Judges of this District are authorized to promulgate local rules consistent with and necessary to the implementation of Public Law 98-353; the provisions of Title 11, United States Code, as amended; and the provisions of the Rules of Bankruptcy Procedure, as amended; and it is

FURTHER ORDERED, pursuant to § 157 (b) (5), Title 28, United States Code, that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Dated: May 20, 1992

/s/ Michael A. Telesca
Hon. Michael A. Telesca
Chief Judge

/s/ David G. Larimer
Hon. David G. Larimer,
U.S.D.J.

/s/ Richard J. Arcara
Hon. Richard J. Arcara
U.S.D.J.

/s/ William M. Skretny
Hon. William M. Skretny,
U.S.D.J.

/s/ John T. Curtin
Hon. John T. Curtin,
U.S.D.J.

/s/ John T. Elfvin
Hon. John T. Elfvin,
U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE APPOINTMENT
OF CHIEF JUDGE, BANKRUPTCY COURT,
WESTERN DISTRICT OF NEW YORK

ORDER OF
APPOINTMENT OF
CHIEF BANKRUPTCY JUDGE

The Court having been advised by the Honorable Beryl E. McGuire that he intends to resign as Chief Judge of the Bankruptcy Court for the Western District of New York effective January 1, 1993, and the Court having selected the Honorable Michael J. Kaplan as his successor pursuant to 28 U.S.C. § 154(b), it is hereby

ORDERED, that the Honorable Michael J. Kaplan is appointed Chief Judge of the Bankruptcy Court for the

Western District of New York commencing January 1, 1993, and expiring December 31, 1999.

SO ORDERED.

DATED: Rochester, New York
December 21, 1992

/s/ Michael A. Telesca
Chief Judge
United States District Court