

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

ORDER ADOPTING LOCAL RULES )  
AND RESCINDING SUPERSEDED ) GENERAL ORDER NO. 10-0004  
GENERAL ORDERS )

**ORDER**

The proposed new Local Rules of this Court were previously published for comment on November 10, 2009. The comment period has now expired. The Court has considered the comments, made minor changes to the proposed rules, and now ORDERS as follows:

1. The Local Rules attached hereto are adopted, effective June 1st, 2010, and except as noted herein apply to all cases pending on that date or filed thereafter. However, any changes to procedures resulting from these new rules will not affect the treatment of motions pending as of May 31, 2010, except that the amended version of B-1015-1, Consolidation and Joint Administration, will apply to any pending motion for consolidation or joint administration. B-1007-2, Noticing, Balloting, and Claims Agents applies only to Chapter 11 cases filed on or after June 1, 2010.

2. On the effective date of the new rules, the following General Orders are RESCINDED, as their content has been captured in the Local Rules:

- 09-0007: Hearings on Motions to Extend/Impose the Stay (now part of L.R. B-4001-1)
- 08-0001: Fees Charged to Chapter 13 Trustees for Filing Motions to Convert (now part of L.R. B-1019-1)
- 06-0003: Motions to Reopen Case To Set Aside Notice of No Discharge (now part of L.R. B-4004-2)
- 06-0001: "Automatic" Dismissal Pursuant to 11 U.S.C. §512(i)(1) (now part of L.R. B-1017-1)
- 05-0005: Chapter 13 Confirmation Hearings (now part of L.R. B-30151-3)
- 05-0004: Pre-Confirmation Payments Pursuant to 11 U.S.C. §1326 (now part of L.R. B-3015-3)
- [unnumbered general order dated 8/9/91] Registry Funds (now part of L.R. B-7067-1)
- 98-1: General Order Authorizing Recovery of Noticing Costs in Chapter 13 Cases (now part of L.R. B-2002-1)

Date: May 11, 2010

[Attachment]

  
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ANTHONY J. METZ III  
CHIEF BANKRUPTCY JUDGE



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA**

**LOCAL RULES**  
**Effective June 1, 2010**

**Chief Judge Anthony J. Metz, III**  
**Judge James K. Coachys**  
**Judge Frank J. Otte**  
**Judge Basil H. Lorch, III**

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## **INTRODUCTION**

This newest version of the local rules focuses on capturing the procedural changes that have evolved since the arrival of electronic filing and BAPCPA. Many of the current general orders become new rules or are incorporated into existing rules. The rules join the Court's Procedures Manual and its ECF Administrative Policies and Procedures Manual as the third source of guidance on how bankruptcy cases and proceedings are handled.

The rules follow the national numbering system for local rules, which in turn closely parallels the numbering system for the Federal Rules of Bankruptcy Procedure. The rules are accompanied by an expanded table of contents, to make searching for a specific topic simpler.

## **B-1000-1. ABBREVIATIONS AND DEFINITIONS**

### (a) Abbreviations Applicable to All Rules

- (1) Clerk: the Clerk of the Court.
- (2) Court: the United States Bankruptcy Court for the Southern District of Indiana.
- (3) “Fed.R.Bankr.P.” refers to the Federal Rules of Bankruptcy Procedure.
- (4) “S.D.Ind. B- \_\_\_”: refers to a local rule of the United States Bankruptcy Court for the Southern District of Indiana.
- (5) “S.D.Ind. L.R. \_\_\_”: refers to a local rule of the United States District Court for the Southern District of Indiana.
- (6) Fed.R.Civ.P.: refers to the Federal Rules of Civil Procedure.
- (7) UST: the United States Trustee for Region 10.
- (8) U.S.C.: refers to the United States Code.
- (9) SSN: Social Security Number.
- (10) ITIN: Individual Taxpayer Identification Number.

### (b) Definitions Applicable to All Rules

- (1) Debtor: Includes both debtors in a joint case and a debtor-in-possession in a Chapter 11 case. Except as to official forms which must be signed by the debtor (or debtor's representative in a non-individual case), a requirement imposed upon the "Debtor" by these rules shall be performed by counsel for the debtor, if any.
- (2) Trustee or trustee: refers to the trustee appointed in a bankruptcy case under 11 U.S.C. §§701, 702, 1104, 1202, or 1302.
- (3) Notice List: the Service List and parties required to receive notice pursuant to Fed.R.Bankr.P. 2002, unless the Debtor has obtained an order limiting notice.
- (4) Service List: Debtor, Debtor's counsel, the twenty largest unsecured creditors in a Chapter 11 case or, if applicable, the unsecured creditors' committee, the UST, all secured creditors, any indenture trustee, any other committee appointed under 11 U.S.C. § 1102 or 1114, and any counsel or party that has filed an appearance pursuant to S.D.Ind. B-9010-1. If counsel appears for any party listed above, then such counsel shall be substituted for the party for purpose of this definition, absent a specific request by the party that it be retained on the Service List.
- (5) Non-electronically in reference to filing means delivery of documents on paper, and includes CDs and diskettes.
- (6) Non-electronically in reference to service means other than by electronic means and in accordance with Fed.R.Bankr.P. 7004.
- (7) Court's website: refers to the Court's website located at <http://www.insb.uscourts.gov>.

## **B-1002-1. FILING REQUIREMENTS TO COMMENCE A VOLUNTARY CASE**

### (a) Initial Filing

A voluntary case is commenced by the filing of a voluntary petition along with the lists, schedules, statements and other documents required by Fed.R.Bankr.P. 1002, 1007 and

11 U.S.C. §§301 and 521 or by subparagraph (b) of this rule. Filings can be made either electronically or non-electronically in accordance with S.D. Ind. B-5005-1(c) and B-5005-4.

(b) Emergency Filing; Minimum Required

Any voluntary petition filed without the lists, schedules, statements and other documents required by Fed.R.Bankr.P. 1007 and 11 U.S.C. §521 must be accompanied by:

- (1) if the Debtor is an individual, Exhibit D (Official Form B1D) with a certificate of counseling from the course provider or, if the certificate is not filed, Exhibit D (Official Form B1D) and, if applicable, a motion seeking a deferral or waiver of the credit counseling requirement pursuant to 11 U.S.C. §109(h);
- (2) if the Debtor is an individual, a Statement of Social Security Number (Official Form B21);
- (3) the appropriate filing fee, an Application to Pay Filing Fee in Installments (Official Form B3A) or, if a Chapter 7, an application requesting waiver of the filing fee (Official Form B3B);
- (4) Uploaded creditor information necessary to provide proper notice to all scheduled creditors or, if filed non-electronically, the CD or diskette required by S.D.Ind. B-1007-1(b); and
- (5) in a Chapter 11 case, the list of the twenty largest unsecured creditors and a list of creditors who have or claim to have a secured claim.

Failure to submit the above required items at the time of filing or within three (3) days thereafter may result in dismissal of the case pursuant to S.D. Ind. B-1017-1(b). Any request for an extension of time to file the other documents required by this rule must comply with Fed.R.Bankr.P. 1007.

(c) Filing a Case Non-Electronically

For cases filed non-electronically, the filing party shall comply with the filing requirements in S.D.Ind. B-5005-1(c).

(d) Place of Filing

For cases filed non-electronically, all petitions, lists, schedules, statements and other documents required by the Bankruptcy Court to commence a case shall be filed with the office of the Clerk in the division where the principal place of business, domicile, residence, or principal assets of the Debtor have been located for such period of time as required by 28 U.S.C. §1408. If the Court determines that a case has been filed in the incorrect division, the Court may transfer the case to the correct division without notice. All papers tendered for filing after the commencement of a case shall be filed with the office of the Clerk in the division where the case is pending.

## **B-1006-1. PAYMENT OF FILING FEE IN INSTALLMENTS**

(a) Application Form

The application shall substantially conform to Official Form B3A.

(b) Payment Schedule

A Debtor filing an application to pay initial filing fees in installments shall propose a payment plan in accordance with the installment fee schedule maintained by the Clerk and available on the Court's website.

(c) Payment Due Dates

Unless otherwise ordered by the Court, payments shall be due on the same day of the month on which the petition was filed. If the installment due date falls on a day when the Court is closed, payment is due no later than the next business day.

(d) Installment Fees in Chapter 13 Cases

Installment fees authorized in a Chapter 13 case shall be paid directly by the Debtor to the office of the Clerk in the division where the case is pending and not through the Chapter 13 plan.

## **B-1007-1. LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS**

(a) Additional Requirements

In addition to complying with the Federal Rules of Bankruptcy Procedure and Official Forms, all schedules and statements shall:

- (1) contain a response to each request for information on the statement of affairs and the schedules, even if such response is, "no", "none", or "not applicable";
- (2) specifically describe and itemize all property claimed as exempt, and state the statutory reference and section number of the statute under which such exemption is claimed;
- (3) list the creditors on each schedule in alphabetical order, including the full mailing address and zip code for each listed creditor, or statement that the address is unknown; and
- (4) provide on Schedule E the name and address of any entity holding a domestic support obligation, and identify that entity as the holder of a domestic support obligation, even if the Debtor is current on that obligation when the case is filed.

(b) Providing Creditor Information for Cases Filed Non-electronically

All cases and any amendment that adds creditors, filed non-electronically, must be accompanied by a CD or diskette listing the complete names and addresses of the creditors listed in the filing. In Chapter 11 cases, the CD or diskette must include equity security holders, if applicable. An exception to the requirement will be considered by the Court if a request for waiver is filed with the petition.

(c) Extensions of Time

(1) Requests Generally

Any request for an extension of time to file the initial lists, schedules, statements and other documents required to commence a new case shall be treated by the Court as a request for the maximum allowable extension of time for each applicable chapter and the Clerk will provide notice of the opportunity to object except as described in subparagraphs (2) and (3) below.

(2) Presumption of No Objection

Unless the Debtor is a “small business” filing under Chapter 11, as defined by 11 U.S.C. §101(51D), the UST and any trustee appointed in a case are deemed to have no objection to any original request for extension of time within which to file schedules or related documents if that request seeks an extension to no more than forty-five (45) days after the date the petition is filed. If the Debtor is a small business filing under Chapter 11, then the UST is deemed to have no objection to any original request for an extension of time within which to file schedules or related documents if that request seeks an extension to no more than thirty (30) days after the date the petition is filed.

(3) Debtor’s Waiver of Objection to Timeliness of Notice of Presumed Abuse

If the new date for filing documents is extended beyond the deadline in 11 U.S.C. §704(b)(1), then the Debtor is deemed to have waived any objection to the timeliness of a notice of presumed abuse which is filed no later than fourteen (14) days after the missing documents are filed or after the meeting of creditors has been concluded, whichever is later.

**B-1007-2. NOTICING, BALLOTING AND CLAIMS AGENTS**

(a) Noticing, Balloting, and Claims in Chapter 11 Cases with More than 300 Creditors

Unless excused by order of the Court, if the number of scheduled creditors in any Chapter 11 case exceeds 300, the Debtor or trustee in a Chapter 11 case shall propose the retention pursuant to 28 U.S.C. §156(c) of an entity to handle noticing (the “Noticing Agent”), an entity to receive and process claims (the “Claims Agent”), and an entity to process plan ballots (the “Balloting Agent”). One entity may serve in all three capacities (the “Agent”). Prior to employment, the proposed Agent shall meet with the Clerk or the Clerk’s designee and agree on terms establishing the interactions between the Agent and the Clerk, which shall

be incorporated in the order authorizing the employment of the Agent (“the Employment Order”) or in a written agreement between the Clerk and the Agent (“the Agreement”) that shall be made part of the record.

(b) Noticing Agent

A Noticing Agent shall distribute notices as directed by the Court and provide proof of service information to the Debtor. That information shall be filed as established by the Agreement or the Employment Order.

(c) Claims Agent

If a Claims Agent is to be employed, then the Agreement or Employment Order shall address each of the following areas:

(1) Delivery of Claims Received by the Court

The Agreement or the Employment Order should establish procedures for handling of claims filed with the Clerk prior to and after the employment of the Claims Agent.

(2) Mailing of Proof of Claim Forms and Notice of Bar Date

Proofs of Claim with a notice of bar date should be mailed by the Claims Agent and should reflect the scheduled amount of the creditor’s claim. Unless alterations are approved by the Court, after notice to any committee and the UST, the forms shall comply substantially with Official Form B10. The forms will instruct claimants to send claims to the Claims Agent and not the Court.

(3) Handling of Claims

Generally, upon receipt of a claim, the Claims Agent should promptly date-stamp it, assign a claim number, scan the original, retain originals in a fire-proof safe or vault, and return a date-stamped copy to the claimant (if a self-addressed, postage paid envelope was provided).

(4) Maintenance of the Claims Register

Usually, the Claims Register should be maintained by the Claims Agent. The Claims Agent should list the claim on the register within three days of receipt, in alphabetical order, according to the name of the claimant (last name for individuals) and include the claimant’s address, claim number assigned, date received, dollar amount claimed, and classification of claim.

(5) Audits of Claims Records

The Agreement or the Employment Order may provide for the periodic audit of claims information by the Clerk, a representative of the creditors’ committee, or some other entity.

(6) Transmission of Claims Register

The Agreement or Employment Order should provide the mechanism and timing for delivery of updated Claims Registers to the Clerk. (Example: the register may be transmitted in both an electronic and paper format, bi-weekly, until the claims bar date and then monthly thereafter).

(7) Mailing List

In addition to the Claims Register, the Claims Agent should maintain a separate mailing list including the claimants' addresses, edited to reflect any notice of change of address.

(8) Transfers of Claims

The Agreement or the Employment Order should establish responsibility and method for processing transfers of claims.

(9) Retention/Destruction of Documents

The Agreement or Employment Order should provide for delivery of a final Claims Register and for the retention or destruction of documents received by the Claims Agent.

(d) Balloting Agent

The Balloting Agent will receive, record and tabulate ballots. The Agreement or Employment Order should provide for filing of a declaration showing the results of balloting and provide for the retention or destruction of original ballots.

**B-1009-1. AMENDMENTS OF VOLUNTARY PETITIONS, LISTS, SCHEDULES, AND STATEMENTS OF FINANCIAL AFFAIRS**

(a) Form of Amendments

All amendments to voluntary petitions, lists, schedules, statements and other documents shall comply with Fed.R.Bankr.P. 1009 and S.D.Ind. B-1007-1, and shall be accompanied by the appropriate filing fee. Any amendment which adds a creditor shall state the date the debt was incurred. Each amendment shall also be verified and signed by the Debtor under penalty of perjury. If an amendment changes the totals on any schedule then the Debtor shall also file an Amended Summary of Schedules and an Amended Statistical Summary of Certain Liabilities. An amendment which adds creditors and is filed non-electronically shall be accompanied by a CD or diskette listing the added creditors only.

(b) Amendments Adding Creditors: Notice Requirements

- (1) If an amendment adds creditors, the Debtor shall also upload creditor information at the time of filing or, if filed non-electronically, shall provide a new CD or diskette pursuant to S.D. Ind. B-1007-1(c).
- (2) The Debtor shall give notice to added creditors and provide copies of notices and documents in the case as appropriate, including the notice of the meeting of creditors with full SSN or ITIN, notice of the bar date, the most recent plan or amended plan, and confirmation hearing notice and shall file a certificate of service pursuant to S.D. Ind. B-9013-2. If the Debtor asserts that no notice is required, the Debtor shall file a statement in lieu of notice. A sample form is available on the Court's website.

(c) Amendments to Social Security Number or Individual Taxpayer Identification Number: Notice Requirements

If a SSN or ITIN is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect SSN or ITIN, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (1) If the SSN or ITIN on any Statement of Social Security Number (Official Form B21) is incorrect, the Debtor shall submit an amended statement to the Clerk.
- (2) If the last four digits of the SSN or ITIN listed on the first page of the voluntary petition are incorrect, the Debtor shall file an amended petition with the correct last four digits of the SSN or ITIN.
- (3) The Debtor shall serve notice of the corrected SSN or ITIN on all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service pursuant to S.D. Ind. B-9013-2.

(d) Amendments Changing Debtor's Name: Notice Requirements

If the Debtor's name is incorrect and the notice of the creditors' meeting has not been issued, the Debtor shall alert the Clerk by telephone to determine the necessary steps to correct the error prior to issuance of the meeting notice. If the notice of the creditors' meeting was issued with an incorrect Debtor name, the Debtor shall contact the Court and complete steps (1) through (4) below, as applicable.

- (1) If the Debtor's name on the petition is incorrect, the Debtor shall submit an amended petition.
- (2) If the Debtor's name used for any electronic signature is incorrect, the Debtor shall file a declaration under penalty of perjury affirming that the documents filed with the incorrect electronic signature were signed in the original by the debtor using the correct name, and that the documents are true and correct to the best of

the debtor's knowledge, information, and belief. A sample declaration is available on the Court's website.

- (3) The Debtor shall serve notice of the corrected name on all creditors, trustee, and the UST.
- (4) The Debtor shall file a certificate of service pursuant to S.D. Ind. B-9013-2.

**B-1010-1. INVOLUNTARY PETITIONS COMMENCED BY NON-ATTORNEYS.**

(a) Seal Upon Initial Filing

If an involuntary petition is commenced by a party who is not represented by counsel, the Clerk shall assign a number to the case and seal the name, the petition, and any documents filed with the petition.

(b) Review of and Continuation or Termination of Seal

Within seven (7) days of the initial filing, the Court shall review the petition and supporting documents and determine whether the seal should be continued, lifted or modified and, if necessary, hold a hearing on same.

(c) Notice to UST

Immediately upon filing of any involuntary petition subject to this Rule the Clerk shall provide telephonic notice of the case to the UST.

**B-1015-1. CONSOLIDATION OR JOINT ADMINISTRATION OF CASES PENDING IN SAME COURT**

(a) Joint Cases

Unless otherwise ordered by the Court, a joint case commenced pursuant to 11 U.S.C. §302(a) shall be jointly administered. The separate estates of Debtors in a joint case will only be consolidated upon motion, after notice.

(b) Manner of Joint Administration.

Unless otherwise ordered, jointly administered cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the "Lead Case".

(2) Caption

All papers, except for Proofs of Claim and notices of meetings of creditors pursuant to 11 U.S.C. §341, shall be captioned under the Lead Case name and number followed by the words “Jointly Administered”. A proof of claim shall indicate only the case name and number of the case in which the claim is asserted. The caption shall not include the word “Consolidated” to refer to joint administration.

(3) Docket

A single case docket shall be maintained after the entry of the order for joint administration under the case number of the Lead Case. If joint administration is terminated, documents filed after the order terminating joint administration shall be filed and docketed in the separate cases.

(4) Claims

A separate claims register shall be maintained for each case. Claims shall be filed only in the name and case number of the Debtor against which the claim is asserted. A separate claim must be filed in each jointly administered case in which a claim is asserted.

(5) Ballots

Ballots shall be styled only in the case name and number of the member case for which the plan being voted on was filed.

(c) Substantive Consolidation

Unless otherwise ordered, substantively consolidated cases shall be administered as follows:

(1) Designation of Lead Case

The case with the lowest number shall be designated as the “Lead Case”.

(2) Caption

All papers in substantively consolidated cases shall contain in the caption only the name and case number of the Lead Case, unless one of those cases is for an individual Debtor; then the caption shall include the Lead Case and the case name for any individual Debtor.

(3) Docket

A single case docket shall be maintained after the entry of the order for consolidation. If consolidation is later terminated, then documents filed after the order terminating consolidation shall be filed and docketed in the separate cases.

(4) Claims

After consolidation all claims shall be filed in the Lead Case. Any claim filed and docketed prior to the consolidation shall be considered as if filed in the substantively consolidated cases but shall remain on the claims register of the originally filed case.

## **B-1017-1. CONVERSION AND DISMISSAL**

### (a) “Automatic” Dismissal

- (1) Notwithstanding 11 U.S.C. §521(i)(1), no case shall be deemed dismissed except upon entry of an order of dismissal.
- (2) If a party moves for dismissal pursuant to §521(i)(2) and if such motion specifically requests dismissal within seven (7) days, the Court may dismiss the case without further notice or hearing if the docket is missing one of the items identified in 11 U.S.C. §521(a)(1)(A) and (a)(1)(B)(i) through (v). If the docket contains a filing denominated as such but which the moving party contends fails to include all the required contents, the motion shall identify the alleged deficiency. The movant shall serve the motion on the Debtor, trustee, and UST along with a notice requiring a response to be filed within fourteen (14) days of service. If no such response is timely filed, the Court may dismiss the case without further notice or hearing. If a response is timely filed, the Court will either rule on the motion or set the matter for hearing.
- (3) The Court may also dismiss a case pursuant to 11 U.S.C. §521(i)(1) on its own motion.

### (b) Dismissal for Failure to File Required Documents or Pay Filing Fee

- (1) In any case where the lists, schedules, statements and other documents described in Fed.R.Bankr.P. 1007(b)(1), (4), (5) and (6) are not filed with the voluntary petition, within fourteen (14) days thereafter or within such other period set by Court order, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.
- (2) The Court shall also enter an order of dismissal without further notice or hearing unless the documents required by Fed.R.Bankr.P. 1007(b)(3) (credit counseling documentation or request for waiver under 11 U.S.C. §109(h)(4)) and by Fed.R.Bankr.P. 1007(f) (SSN statement, Official Form B21) are filed with the voluntary petition or within three (3) days thereafter.
- (3) In any case where the filing fee has not been paid at the time of filing or within three (3) days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless an application to pay the filing fee in installments, or, if a Chapter 7, an application to waive the filing fee, has been filed prior to the expiration of the period. If a Debtor fails to pay a fee installment when due, the Court shall dismiss the case without further notice or hearing.

- (4) In any case where creditor information has not been provided at the time of filing or within three (3) days thereafter, the Court shall enter an order of dismissal without further notice or hearing unless a motion for extension of time has been filed prior to the expiration of the period.

(c) Obtaining Relief from Dismissal Order

(1) Reopening Case

If a dismissed case has been closed, any party seeking relief from the dismissal order must first file a motion to reopen and pay the required fee. Then the party shall file a motion for relief from the dismissal order pursuant to Fed.R.Bankr.P. 9024 as set out in (2). (That motion for relief can be filed contemporaneously with the motion to reopen.)

(2) Requirement of Motion for Relief from Dismissal Order

If the dismissed case has not been closed or it has been reopened, then the party shall file the motion for relief from dismissal order (unless it was filed with the motion to reopen). If the case was dismissed because of a failure to file required documents, contemporaneously with the motion(s), the movant must submit the documents required, file a motion seeking an extension of time for submitting those documents, or file a notice of submission stating that the documents are no longer required. If the case was dismissed for failure to pay the filing fee or an installment, then the movant must, contemporaneously with the motion for relief from dismissal order, pay the filing fee or any missed fee installment, or file a motion seeking an extension of time to pay the fees. If the movant fails to comply with these requirements the motion for relief from dismissal order will not be considered.

(3) Refund of Reopening Fee

If the motion to reopen or for relief from the dismissal order is denied, the Court may direct the refund of the filing fee for the motion to reopen only.

(d) Conversion

A Debtor seeking to convert from Chapter 12 or 13 to any other chapter shall file a notice of conversion pursuant to Fed.R.Bankr.P. 1017(f)(3). A Debtor's motion to convert pursuant to Fed.R.Bankr.P. 1017(f)(2) shall be served on the trustee, if any, and the UST.

(e) Service of Motion to Dismiss

A Debtor's motion to dismiss pursuant to Fed.R.Bankr.P. 1017(f)(2) shall be served on the trustee, if any; the UST; and counsel of record.

### **B-1017-3. EFFECT OF DISMISSAL ON ADVERSARY PROCEEDINGS**

Whenever a case under the Bankruptcy Code is dismissed, any adversary proceeding arising under, arising in, or related to the case then pending will be dismissed without prejudice unless otherwise ordered by the Court either in the order dismissing the case or by separate order. Cases that have been removed to the Court shall be remanded to the Courts from which they were removed.

### **B-1019-1. CONVERSION OF CHAPTER 11, CHAPTER 12, OR CHAPTER 13 CASE TO CHAPTER 7 CASE**

(a) Schedule of Post-Petition Debts

The schedule of post-petition debts required by Fed.R.Bankr.P. 1019 shall comply with the requirements of S.D.Ind. B-1007-1(a).

(b) Service of Notice of Bar Dates and Meeting of Creditors; Certificate of Service

The Debtor shall send to added creditors the following:

- (1) A notice providing twenty-one (21) days for the filing of a motion for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend has been mailed in accordance with Fed.R.Bankr.P. 2002(e), the time for filing a claim of a kind specified in 11 U.S.C. §348(d) (A form notice is available on the Court's website);
- (2) Unless the schedule of post-petition debts was filed and creditors were added before issuance of the notice of the meeting of creditors under the new chapter, a copy of the notice of the meeting of creditors under the new chapter with the Debtor's full SSN or ITIN.

Debtor shall file a certificate of service as to these documents in compliance with S.D.Ind. B-9013-2.

(c) No Delay of First Meeting

Failure of the trustee or the Debtor to comply with Fed.R.Bankr.P. 1019 shall not delay the scheduling of the 11 U.S.C. §341 meeting for the Chapter 7 case.

(d) Waiver of Conversion Fee for Chapter 13 Trustees

The conversion fee is waived for any motion to convert filed by a Chapter 13 trustee in a case to which that trustee has been assigned.

## **B-2002-1. NOTICES TO CREDITORS, EQUITY SECURITY HOLDERS, AND UNITED STATES TRUSTEE**

### (a) Obtaining Service of Pleadings and/or Notices

Interested parties or their counsel who wish to receive copies of pleadings and documents (other than proofs of claim) shall file with the Clerk and serve the Debtor with an appearance in accordance with S.D. Ind. B-9010-1. A 'Request for Notice' or similar pleading will be considered a request pursuant to Fed.R.Bankr.P. 2002(g) and will not entitle the filer to service of pleadings or of notices other than those to which the filer is already entitled, nor will the address on the request be deemed the appropriate address for service of process unless the pleading so states.

### (b) Limited Notice in Chapter 7 Cases

In Chapter 7 cases, after all time periods for filing proofs of claim have expired, all notices required by Fed.R.Bankr.P. 2002(a), except the notice of the final report and of dismissal or denial of discharge, shall be mailed only to the trustee, the UST, creditors who have filed claims and creditors, if any, who are still permitted to file claims by reason of an extension granted under Fed.R.Bankr.P. 3002(c)(1) or (2).

### (c) Authorization for Chapter 13 Trustee to Recover Noticing Costs from Estate

If the Chapter 13 trustee uses the services of an independent contractor for noticing, the trustee may recover the actual costs of noticing charged by that contractor from each estate. If noticing is performed by the trustee, the trustee may recover from each estate the actual costs of postage plus \$.18 (eighteen cents) for each notice or as otherwise ordered by the Court. These noticing fees can be recovered from the first and any subsequent monies received from the Debtor, whether before or after confirmation. The Chapter 13 trustee shall list expenses charged for noticing in each case and separately identify the notices sent in the final report.

### (d) Returned and Undeliverable Mail

#### (1) Designation of Debtor as Return Addressee

The Clerk may instruct the Court's noticing agent to designate the Debtor as the return addressee for orders and notices, including the notice of the commencement of the case and meeting of creditors and any order confirming a plan, dismissing a case, or discharging a Debtor.

#### (2) Duty to Provide Accurate Address

The Debtor shall file a Notice of Change of Address for any creditor or party in interest whose address appears undeliverable based either on the Debtor's receipt of returned mail or information received from the Court's noticing agent. In addition, the Debtor shall serve the documents required by S.D.Ind. B-1009-1(b)(2). If the Debtor is unable to determine a correct address for a creditor or

party in interest, the Debtor may file a notice specifying the creditor's name and reporting that a correct address cannot be located. Upon the filing of such a notice, the Clerk shall code the address so that no further notices or orders are sent to that creditor or party in interest.

(3) Returned Mail Received by the Clerk, Undeliverable Addresses Identified by Clerk's Noticing Agent and Duty to Correct

Unless otherwise ordered, the Clerk shall docket any returned mail received by the Court in an open case. The Clerk shall code the address for any creditor whose mail was returned or any creditor whose address is identified on the first certificate filed by the Clerk's noticing agent as undeliverable so that no further notices or orders are sent to that creditor or party in interest. The Debtor shall file a Notice of Change of Address for any such creditor, if the correct address can be identified, and shall serve the documents required by S.D.Ind. B-1009-1(b). Returned mail received in a closed case shall be discarded.

**B-2003-1. NOTICE OF CONTINUED MEETING OF CREDITORS**

(a) Notice When Meeting Continued Before Convened.

A Debtor's request to continue a meeting of creditors should be directed to the trustee in a Chapter 7, 12, or 13 case, and to the UST in a Chapter 11 case. The request should not be filed with the Court. The Debtor shall seek a continuance when the cause necessitating the continuance becomes known to the Debtor. When the continuance is sought before the meeting has been convened, and the trustee grants the request, the Debtor shall send notice of the continued meeting to all creditors, parties in interest, the trustee and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2. If a trustee continues a meeting before it has been convened, then the trustee shall send notice of the continued meeting to all creditors, parties in interest and the UST, and shall file a certificate of service of that notice in accordance with S.D.Ind. B-9013-2.

(b) Notice When Meeting Continued After Convened

When a meeting is continued after it has been convened, the trustee or UST shall provide oral notice of the continued date, time, and location of the first meeting, and shall file notice of the continued meeting date, time, and location with the Court. No further distribution of notice is required.

**B-2014-1. EMPLOYMENT OF PROFESSIONAL PERSONS AND TREATMENT OF RETAINERS IN CHAPTER 11 CASES**

(a) Employment Application

In a Chapter 11 case any person (the "Applicant") seeking Court approval of the employment of a professional person (the "Professional") pursuant to 11 U.S.C. §§327, 1103(a) or 1114 shall file with the Court an application and a supporting affidavit or

verified statement of the professional complying with Fed.R.Bankr.P. 2014 (an “Employment Application”), and a proposed order on the Employment Application. Promptly after discovering any additional material information relating to such employment (such as additional potential or actual conflicts of interest) the Applicant and Professional shall file and serve a supplemental affidavit disclosing the additional information.

(b) Service of Notice and Hearing

The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be served on the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must, on or before the objection deadline provided in the notice, file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline the Court may grant the Employment Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

(c) Conflicts

If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client, the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest (“waivers”) shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

(d) Disclosure of Compensation and Retainers

As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval from the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional’s fees and expenses. Those financial arrangements may include provisions similar to the following:

- (1) The retainer shall be applied to satisfy the Professional’s fees and expenses as they are approved by the Court pursuant to 11 U.S.C. §§330 and 331;
- (2) The Professional may hold the entire retainer without any application for payment of fees and expenses until final approval by the Court of such Professional’s final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;
- (3) Pursuant to subparagraph (e) of this Rule, the Professional may draw against the retainer at specified intervals prior to the award of fees and expenses by the Court; and,

(4) Any other arrangement approved by the Court.

(e) Periodic Payment Procedure

Subject to prior Court approval, the Professional and the Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. "Payment" includes any transfer of funds from the Debtor to the Professional after the filing date. Any proposed procedure shall provide for payment of no more than 80% of requested fees but may provide for payment of 100% of expenses.

- (1) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.
- (2) A copy of the Notice of Draw shall be served upon the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to the draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

**B-2015-1. REPORT OF OPERATIONS**

(a) Monthly Operating Reports

For all cases filed under Chapter 7 in which the trustee operates a business, and for cases under Chapters 11 and 12 in which a plan is not confirmed, the trustee or the Debtor shall file a monthly report of operations. For Chapter 13 cases in which the Debtor operates a business, the Debtor shall file reports of operations as required by the trustee. For Chapter 7 and Chapter 11 cases, the report shall be in a form acceptable to the UST. For Chapter 12 and Chapter 13 cases, the report shall be in a form acceptable to the trustee. Reports required by this rule shall be filed no later than fourteen (14) days after the end of the reporting period.

(b) Service

The report shall be served upon the UST, the Debtor, any trustee and counsel for the trustee, the Service List in a Chapter 11 case, and any party requesting service of the reports.

(c) Penalties for Failure to File

The failure to file operating reports may constitute cause for the conversion or dismissal of the case, or for the appointment (or removal) of a trustee.

### **B-2015-3. TRUSTEES: REPORTS AND DISPOSITION OF RECORDS**

Except as otherwise required by the United States Code, the UST, or other applicable law, six months after the filing of the trustee's final account, the entry of an order dismissing a Chapter 11 case following the sale of substantially all assets, or the entry of a final decree in a liquidating Chapter 11 case, the trustee or the Debtor may destroy or otherwise dispose of the books and records of the Debtor in the trustee's or the Debtor's possession, after advising the Debtor, taxing agencies, counsel for any committee, and any other entity designated by the Court, unless an earlier disposition is authorized by the Court after notice and a hearing.

### **B-2016-1. APPLICATIONS FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES**

(a) Generally

Applications for compensation and reimbursement of expenses shall comply with the national fee guidelines promulgated on March 22, 1995, by the Executive Office for United States Trustee pursuant to 28 U.S.C. § 586(a)(3)(A)(i) and the Policy of the United States Trustee for Region 10 for Implementation of Fee Guidelines dated January 30, 1997, including any amendments. Applications for compensation and reimbursement of expenses shall be filed separately for the trustee and each professional.

(b) Chapter 13 Cases

The following are guidelines for the circumstances under which the Court will, as part of the Chapter 13 plan confirmation process, approve fees of attorneys representing a Chapter 13 Debtor ("Counsel"). Counsel shall file a proof of claim both for fees awarded pursuant to these guidelines and for fees awarded after application.

Counsel may decline to seek approval of compensation pursuant to these guidelines. If Counsel so declines, compensation shall be disclosed, reviewed, and approved in accordance with applicable authority including, without limitation, 11 U.S.C. §§329 and 330 and Fed.R.Bankr.P. 2002, 2016 and 2017. This authority requires, at a minimum, that payments on account of post petition services be held in trust until the Court approves the fees and expenses of the attorney.

Alternatively, Counsel may have fees approved and paid as part of the Chapter 13 plan confirmation process if they comply with the following guidelines.

- (1) Counsel may seek approval for fees up to the amounts set forth in section (2) without filing a detailed application if:
  - (A) Counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," available on the Court's website.
  - (B) No objection to the requested fees has been raised.

- (C) A proof of claim has been filed with the Court by Counsel and served upon the trustee.
- (2) The maximum fee which can be approved through the procedure described in section (1) is set by general order.
  - (3) If Counsel does not wish to obtain approval of fees in accordance with these guidelines, if an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys” is not filed, if Counsel requests fees in excess of the amounts in section (2), or if there is an objection to use of these guidelines, fees will not be automatically approved upon plan confirmation pursuant to these guidelines. In such cases, Counsel must deposit all advance payment of post petition fees in trust, must apply for all fees, and shall comply with 11 U.S.C. §§ 329 and 330 and Fed.R.Bankr.P. 2002, 2016 and 2017.
  - (4) If Counsel has filed an executed copy of the “Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys,” but the maximum fee in (b)(2) above is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees.
  - (5) Except for pre-petition retainers, all fees shall be paid through the plan unless otherwise ordered. Absent Court authorization, Counsel may not receive fees directly from the Debtor other than the pre-petition retainer. After plan confirmation, the trustee shall pay Counsel until the fee is paid in full.
  - (6) If Counsel has elected to be compensated pursuant to these guidelines but the case is converted or dismissed prior to confirmation of a plan, absent contrary orders, the trustee shall pay to the Counsel, to the extent funds are available and subject to the trustee’s percentage fee, an administrative claim equal to 50% of the unpaid fee balance if a properly documented fee claim (for the entire fee balance) has been filed by Counsel and served upon the trustee. Under appropriate circumstances, Counsel may file a motion (within fourteen [14] days of the dismissal or conversion) for allowance and payment of additional fees. Counsel shall not collect, receive, or demand additional fees from the Debtor for work already performed unless authorized by the Court, even after dismissal.
  - (7) On its own motion or the motion of any party in interest at any time prior to entry of a final decree, the Court may order a hearing to review any fee paid or to be paid.

## **B-2081-2. PREPACKAGED CHAPTER 11 CASES**

“Prepackaged” Chapter 11 cases are governed by General Order 03-11, as it may be subsequently amended or superseded.

## **B-3001-1. PROOF OF CLAIM**

(a) Method of Filing

A Proof of Claim may be filed non-electronically or electronically and shall substantially conform to Official Form B10 available on the Court's website. Entities which are registered users of CM/ECF shall file claims electronically.

(b) Copies

Any entity filing a proof of claim non-electronically shall comply with S.D. Ind. B-5005-1(c).

(c) Redaction of Personal Identifiers

Any claimant shall redact, on the proof of claim and any attached documents filed with the Clerk, all personal identifiers as required by Fed.R.Bankr.P. 9037.

(d) Wage Claimant

A proof of claim for wages or salary shall include only the last four digits of the claimant's SSN or ITIN. The claimant shall provide the trustee or Debtor-in-possession the full SSN or ITIN and a telephone number.

(e) Summary in Lieu of Supporting Documents

When supporting documentation is voluminous, a claimant may attach a summary to the proof of claim. However, the claimant shall make all documents available to the Debtor, trustee or UST upon request.

## **B-3010-1. SMALL DIVIDENDS AND PAYMENTS**

Trustees in Chapters 7, 12, and 13 cases are authorized to distribute dividends and payments to creditors in any amount, and need not hold such funds or deposit them with the Court.

## **B-3011-1. UNCLAIMED FUNDS**

Applications for payment of unclaimed funds shall comply with instructions from and be submitted on forms made available by the Clerk.

## **B-3015-1. FILING OF CHAPTER 13 PLAN**

### (a) Form of Plan

Chapter 13 plans and amended plans shall use the applicable Model Plan form approved by the Court. The Model Plan is available on the Court's website.

### (b) Extension of Time to File Plan

A motion to extend the time to file a Chapter 13 plan must be filed within fourteen (14) days after the commencement of the case.

## **B-3015-3. PRE-CONFIRMATION PAYMENTS AND CONFIRMATION HEARINGS.**

### (a) Pre-confirmation Payments as Adequate Protection

For all cases filed on or after October 17, 2005, "adequate protection" under 11 U.S.C. §1326(a)(1)(C) shall be paid directly to the trustee, as a portion of the payment made under 11 U.S.C. §1326(a)(1), in an amount equal to one percent (1%) of the secured creditor's allowed secured claim. Such amount shall be presumed to constitute adequate protection although that presumption may be rebutted. The trustee shall disburse adequate protection payments to the secured creditor as soon as practicable after receiving them from the Debtor. All adequate protection payments shall be subject to the trustee's percentage fee as set by the UST.

### (b) Confirmation Hearings

Consistent with 11 U.S.C. §1324(b), absent a contrary order or objection, the Court finds that it is in the best interests of creditors and the bankruptcy estate to hold a confirmation hearing, in cases filed on or after October 17, 2005, prior to twenty-one (21) days after the 11 U.S.C. §341(a) meeting of creditors.

## **B-3017- 2. CONSIDERATION OF DISCLOSURE STATEMENTS IN SMALL BUSINESS CASES AND CONFIRMATION DEADLINES**

### (a) Expedited Processing of Disclosure Statement

If the proponent of a plan in a small business case would like the Court to:

- (1) determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;
- (2) approve a disclosure statement submitted on an approved official form; or

- (3) conditionally approve a disclosure statement subject to final approval at a hearing where the Court will also consider confirmation of the proposed plan,

the proponent shall file a notice at the same time as the proposed plan or disclosure statement is filed. Such notice shall state, with particularity, why a separate disclosure statement is not needed, why a separate hearing to consider the adequacy of a disclosure statement is not necessary, or why the filing of the plan should be deferred. A sample notice form is available on the Court's website.

(b) Absence of Notice Results in Hearing

Absent a notice submitted in accordance with subparagraph (a), the Court will schedule the case for such proceedings as it deems appropriate.

(c) Deadlines

At any hearing where the Court is to consider the adequacy of a proposed disclosure statement the Court may also, either on its own initiative or at the request of a party in interest, consider whether any applicable deadline for confirming a proposed plan should be extended.

## **B-3018-1. BALLOTS; VOTING ON PLAN - CHAPTER 11**

(a) Distribution of Plan

Upon the approval or conditional approval of the disclosure statement, unless otherwise ordered by the Court, within seven (7) days the party filing the plan (the "Plan Proponent") shall serve copies of the plan, the disclosure statement (unless none is required under 11 U.S.C. § 1125(f)(1)), and ballot(s) on all creditors and parties in interest, along with the notice of the hearing on confirmation. The Plan Proponent shall file within fourteen (14) days after the approval or conditional approval of the disclosure statement a certificate of service in compliance with S.D. Ind. B-9013-2.

(b) Submission of Ballots and Balloting Report

(1) Delivery and Retention of Ballots

Except as otherwise ordered and as provided in S.D. Ind. B-1007-2, all ballots shall be delivered to the Plan Proponent. Any original ballots received by the Clerk shall be forwarded to the Plan Proponent. The Plan Proponent shall establish an appropriate method for noting the date the ballot was received. Unless otherwise ordered by the Court, the Plan Proponent shall retain copies of the ballots in accordance with the Electronic Case Filing Administrative Policies and Procedures Manual.

(2) Tabulation; Report and Certification

The Plan Proponent shall tabulate the ballots and prepare a balloting report. The tabulation shall list, for each class, the total number of claims voting, total dollar amount of claims accepting, and percentages of claims voting that accept the plan. The report shall also indicate, for each class, whether it is impaired or unimpaired and whether or not the requisite vote has been attained in each class. A sample report form is available on the Court's website. The balloting report form shall be certified by the plan proponent. A sample certification form is available on the Court's website.

(3) Filing and Service

The certification and the balloting report shall be filed with the Court at least three (3) days before the confirmation hearing. Copies of the report shall be served on the UST, the Service List, and parties filing objections to the plan.

(c) Form of Ballot

Unless a different ballot form has been approved by the Court, the Plan Proponent shall use the form of a ballot available on the Court's website. The ballot shall be distributed to creditors, shall include the address of the Plan Proponent or the party designated to receive ballots, and shall indicate that ballots should be received no later than the deadline established by order of the Court.

(d) Rules for Tabulating Ballots

In tabulating the ballots, the following rules shall apply:

- (1) Ballots that are not signed will not be counted either as an acceptance or rejection.
- (2) Where the amount shown as owed on the ballot differs from the schedules, the amount shown on the schedules or, if a proof of claim has been filed and allowed or deemed allowed, the amount shown on the proof of claim will be used for the purpose of determining the amount voting unless the Court orders otherwise.
- (3) Unless the Court orders otherwise, ballots that do not show a choice of either acceptance or rejection will not be counted either as an acceptance or rejection.
- (4) Unless the Court orders otherwise, ballots that are received after the last date set for filing ballots will not be counted as either an acceptance or rejection.

**B-3022-1. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS NOT AN INDIVIDUAL**

After the estate has been fully administered, the Plan Proponent or other entity administering the confirmed plan shall file an application for a final decree. The application shall be accompanied by a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1 that includes the percentage paid or proposed to be paid to general unsecured creditors in the plan.

**B-3022-2. FINAL DECREE IN CHAPTER 11 CASES WHERE DEBTOR IS AN INDIVIDUAL**

(a) Report in Addition to Application for Final Decree

If the Debtor in a Chapter 11 case is an individual, and has completed all plan payments, then the Debtor shall file an application for final decree. With the application for final decree, the Debtor or the Plan Proponent shall file a final quarterly or monthly financial report pursuant to S.D. Ind. B-2015-1 that includes the percentage paid to general unsecured creditors in the plan. If the Debtor is otherwise eligible, the Court shall issue a discharge as soon as practicable.

(b) Request for Discharge under 11 U.S.C. § 1141(d)(5)(B)

If a discharge is sought under 11 U.S.C. § 1141(d)(5)(B), the Debtor shall request entry of discharge by filing a motion for discharge, which shall be a contested matter governed by Fed.R.Bankr.P. 9014. If the motion is granted, and if the Debtor is otherwise eligible, the Clerk shall issue the discharge and the final decree, and close the case.

(c) Closing Case Before Plan Payments Completed

If the Debtor proposes to close the case before plan payments have been completed, and intends to reopen the case after plan completion to obtain a discharge, then the Debtor shall file a motion to close the case and include in that motion a statement of the debtor's intent to reopen. If such documentation is provided, the Clerk shall not issue the Notice of No Discharge as required by Fed.R.Bankr.P. 4006 or the final decree at the time the case is closed. Upon the filing of a motion to reopen, the Debtor shall be required to pay any fees due for reopening the case. After reopening, the Debtor shall file the Application for Final Decree and supporting documentation as required in subparagraph (a).

**B-4001-1. MOTIONS FOR RELIEF FROM STAY AND MOTIONS TO EXTEND OR IMPOSE THE STAY**

(a) Relief from Stay or Co-debtor Stay

(1) Contents of Motion

A motion for relief from the automatic stay or relief from the stay as to a co-debtor pursuant to 11 U.S.C. §1301 shall include the following information to the extent applicable:

- (A) a description of the property as to which stay relief is sought;
- (B) the amount of principal and interest due as of the date of the motion;

- (C) documents upon which the movant relies to establish its lien or security interest (or incorporate by reference the movant’s proof of claim if documentation attached);
- (D) evidence of perfection of the movant’s lien or security interest (or incorporate by reference the movant’s proof of claim if documentation attached);
- (E) if the case is pending under Chapter 13 and a post-petition default is alleged, a post-petition payment history;
- (F) if the motion seeks relief from the co-debtor stay, the name of the co-debtor.

A sample form motion is available on the Court’s website. The movant may include in the motion a waiver of the 30-day hearing requirement in 11 U.S.C. §362(e), and shall note that waiver by including in the caption, the statement, “with 30-day waiver.” The motion may be combined with the notice required by subparagraph (a)(2).

(2) Notice; Disposition

(A) Chapters 7, 11, 12, and 13

In cases pending under any chapter except Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any trustee, and the UST, except as otherwise provided by S.D.Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the notice, the moving party shall file a copy of the motion and a certificate of service listing the name and address of each entity served and the date and manner of service. A sample notice is available at the Court’s website. If no proper response to the motion is filed the Court may grant relief from the stay without further notice or hearing. At any hearing on the motion the Debtor or objecting party has the burden of establishing any payment alleged to have been made but not set forth in the payment history.

(B) Chapter 11

In cases pending under Chapter 11, notice of the motion shall be served by the movant on the Debtor, parties that have entered an appearance, any creditors committee or if no committee has been appointed, the twenty largest unsecured creditors, any trustee, and the UST, except as otherwise provided by S.D. Ind. B-2002-1(b). If the motion also seeks abandonment, notice must be sent to all creditors and parties in interest. Notice of the motion shall be issued by the Clerk, unless otherwise ordered by the Court or unless counsel for the movant contacts the Court, obtains a hearing date, and provides the notice according to subparagraph (A), above.

(b) Extend or Impose the Stay

(1) Motion Filed Ten Days or Less After Filing Date

- (A) The Motion will be set for hearing, and notice of that hearing and the deadline for objections will be issued by the Court.
- (B) If, by the deadline, the debtor has filed an affidavit with sufficient facts to support the motion and no objection has been filed, then the Court may, in its discretion, rule on the motion without hearing, conduct a telephonic hearing, or make such other arrangements as will be most efficient for the Court and the debtor, including but not limited to excusing the debtor from appearing in person.

(2) Motion Filed More than Ten Days After Filing Date

- (A) The movant shall contact the Courtroom Deputy for the Judge assigned to the case and obtain a hearing date.
- (B) The movant shall send notice of the Motion and the hearing to those creditors as to whom it is proposed that the stay be imposed or extended.
- (C) The movant shall file a certificate of service establishing such notice on or before the hearing date.
- (D) Debtor's attendance at the hearing may be required, even if no objection is filed.

**B-4001-2. MOTIONS TO USE CASH COLLATERAL AND TO OBTAIN CREDIT**

(a) Contents of Motion to Use Cash Collateral

In addition to the requirements of Fed.R.Bankr.P. 4001(b)(1)(B), motions to use cash collateral shall also comply with the requirements of Fed.R.Bankr.P. 4001(c)(1)(B) unless otherwise directed by the Court.

(b) Other Provisions to Be Disclosed

In addition to the provisions listed in Fed.R.Bankr.P. 4001(b)(1)(B) and (c)(1)(B), any motion to use cash collateral or motion to obtain credit (collectively "Financing Motions") must also disclose as a "material provision" any provision of the type indicated below:

(1) Cross-Collateralization of Pre-Petition Debt

Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the pre-petition secured creditor, i.e., clauses

that secure pre-petition debt by post-petition assets in which the secured creditor does not assert a valid, perfected security interest by virtue of its pre-petition security agreement or applicable non-bankruptcy law, and provisions that deem pre-petition secured debt to be post-petition debt or that use post-petition loans from a pre-petition secured lender to pay all or part of that lender's pre-petition claim, other than as provided in 11 U.S.C. §552(b);

(2) Professional Fee Provisions

Provisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the Debtor with respect to a professional fee carve-out (payment from a secured creditor's collateral);

(3) Priming of Existing Liens

Provisions that prime any secured lien without the consent of the holder of that lien;

(4) Loan Documentation Costs

Provisions that call for the payment of fees or costs by the Debtor other than reasonable attorney's fees for loan documentation; and

(5) Plan Restrictions

Provisions that limit, restrict, or otherwise affect the terms of a proposed plan of reorganization.

(c) Summary of Essential Terms

All Financing Motions must also set forth, unless good cause is shown, the total dollar amount requested, the Debtor's proposed budget for the use of the funds, an estimate of the value of the collateral which secures the creditor's asserted interest, the maximum borrowing available on an interim and final basis, the borrowing conditions, interest rate, fees, costs or other expenses to be borne by the Debtor, maturity, limitations on the use of the funds, events of default and the protections afforded under 11 U.S.C. §§363 and 364.

(d) Interim Relief

When Financing Motions are filed as First Day Motions, the Court may grant interim relief pending review by the interested parties of the proposed arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. Absent extraordinary circumstances, the Court may not enter interim orders that include any of the provisions identified in subparagraph (b), above, or any provision listed in Fed.R.Bankr.P. 4001(c)(1)(B)(ii)-(xi).

### **B-4001-3. OBTAINING CREDIT IN CHAPTER 13 CASES**

(a) Dollar Limits

The Debtor may incur non-emergency consumer debt up to one thousand dollars (\$1,000.00), including the refinancing of real property debt, without written approval of the trustee or order of the Court. Non-emergency consumer debt of more than one thousand dollars (\$1,000) requires the approval of the trustee or an order of the Court, under the procedures set forth in subparagraphs (b) through (d) of this Rule.

(b) Request Directed to Trustee

If the proposed debt is unsecured or to be secured by personal property, the Debtor shall first request approval to incur debt by written application to the trustee. Such request shall not be filed with the Clerk. If approved by the trustee, the Debtor may incur the debt in accordance with the terms and conditions approved by the trustee. If the trustee has not directed use of a specific form, the application shall include the following information:

- (1) a statement in support of the feasibility of the request;
- (2) a description of the item to be purchased or the collateral affected by the credit to be obtained;
- (3) a description of the interest held by any other entity in any collateral affected by the credit;
- (4) the reasons for which the Debtor has the need for the credit;
- (5) the terms of any financing involved, including the interest rate;
- (6) a description of any method or proposal by which the interest held by any other entity in the collateral affected by the credit may be protected; and
- (7) copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the unavailability.

(c) Filing Approved Request with the Court

If the Debtor seeks an order from the Court on a request that has been approved by the trustee, the Debtor may file the approved request with the Court and provide an order.

(d) Motion Directed to Court

If the proposed debt is greater than \$1000 and is to be secured by real property or if Debtor's request under subparagraph (b) is not approved by the trustee, the Debtor may file a motion to incur such debt. The motion shall contain all of the information required for the request by subparagraph (b) and, if applicable, a copy of the trustee's denial of the request, and be served on the trustee.

## **B-4002-1. DEBTOR'S DUTIES**

### (a) Notice to Other Tribunals

Immediately upon the entry of an order for relief, the Debtor shall give written notice to any Court or tribunal where an action is pending against the Debtor and to the parties and counsel involved in that action. If an action is commenced subsequent to the date of the order for relief, the Debtor shall give similar written notice to the Court or tribunal and to all parties and counsel involved.

### (b) Notice to Garnishing Creditor and Garnishee Defendants

Immediately upon the entry of an order for relief, the Debtor shall give written notice to any creditor with a garnishment order, any garnishee defendant other than the Debtor's employer, and to any creditor whom the Debtor anticipates may seek a garnishment order.

### (c) Notice to Employer

If the Debtor has authorized deductions from the Debtor's employment compensation in repayment of an unsecured claim or if the Debtor's employment compensation is subject to an involuntary garnishment, then upon the entry of an order for relief, the Debtor shall notify the employer and the entity authorized to receive any voluntary deduction that such deduction shall cease as of the date of the entry of the order for relief. If the employer or the entity authorized to receive a voluntary deduction is notified orally, the Debtor shall send to the employer, within three (3) days thereafter, a written notice which includes copies of the petition and that portion of the schedules listing the creditor receiving the deductions. If the Debtor has authorized the deduction from the Debtor's compensation for repayment of a secured claim which the Debtor intends to reaffirm, or the withholding of income governed by 11 U.S.C. §362(b)(19), or if the Debtor's compensation is subject to garnishment for a debt not dischargeable pursuant to 11 U.S.C. §523(a)(5), then the Debtor may elect not to provide the notice required by this subsection.

### (d) Production of Business Records

In Chapter 13 cases, if a Debtor is engaged in business, as defined in 11 U.S.C. §1304, the Debtor must produce any documents concerning the business requested by the trustee at or before the meeting of creditors.

### (e) Additional Documents Upon Request

In addition to the documents required by Fed.R.Bankr.P. 4002, the Debtor shall produce such other documents as the trustee or UST requests.

## **B-4003-2. LIEN AVOIDANCE MOTIONS**

### (a) Requirements

Any Debtor seeking to avoid a lien pursuant to either 11 U.S.C. §§522(f) or 1322(b) shall file a separate written motion as to each alleged lien holder. The motion shall identify:

- (1) the lien to be avoided, its amount, and the date the debt that the lien secures was incurred;
- (2) the amount, listed separately, of all other liens on the property;
- (3) if applicable, the amount of the impaired exemption; and
- (4) the value of the subject collateral.

Motions to avoid judicial liens shall also include the case number and the Court where the underlying judgment was entered, the date of the judgment, and list the common address of any real property affected by the lien. The motion may be combined with the notice required by subparagraph (c). A sample notice and motion are available on the Court's website.

### (b) Nonpossessory, Nonpurchase Money Security Interests in Household Goods

Motions to avoid a nonpossessory, nonpurchase money security interest in household goods under 11 U.S.C. §522(f)(1)(B) must, in addition to the requirements in paragraph (a), specifically identify the household goods that are subject to the security interest sought to be avoided, referring to the definition of "household goods" provided in 11 U.S.C. §522(f)(4).

### (c) Service and Notice

The Debtor shall serve the motion and notice thereof on the lien holder, in accordance with Fed.R.Bankr.P. 9014(b) and 7004. The notice shall allow at least twenty-one (21) days from the date of service to file objections.

### (d) Filing and Certificate of Service

Along with the motion, the Debtor shall file with the Court a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2.

## **B-4004-1. DISCHARGE IN CHAPTER 13 CASES**

### (a) Trustee's Notice of Completion

For all chapter 13 cases filed on or after October 17, 2005, the Chapter 13 trustee shall file a Notice of Chapter 13 Plan Completion after all payments have been received. Sample forms are available on the Court's website.

(b) Debtor's Required Pleadings

Within thirty (30) days after the trustee files the notice of completion, the Debtor shall file a Motion for Entry of Chapter 13 Discharge and a Certification of Eligibility for Chapter 13 Discharge. Each debtor in a joint case shall file a separate Certification. Sample forms are available on the Court's website.

(c) Closing and Reopening

If no motion for entry of chapter 13 discharge is filed, the case may be closed without entry of a discharge after filing of the trustee's final report, or thirty (30) days after filing of the trustee's notice of plan completion, whichever is later. If the motion for entry of chapter 13 discharge is filed after the case has been closed, the Debtor must also file a motion to reopen the case. A filing fee to reopen the case must be paid with the motion.

(d) Denial of Discharge

If a notice of ineligibility for discharge has been filed by an interested party or a similar notice is placed on the docket by the Court, asserting that the Debtor is not eligible for a discharge because of 11 U.S.C. §1328(f), then the Court shall not issue a discharge to the Debtor at the conclusion of the case, unless the Debtor has objected to the notice of ineligibility and the Court has determined that the notice is incorrect.

**B-4004-2. OBTAINING DISCHARGE AFTER CASE CLOSED WITHOUT DISCHARGE FOR FAILURE TO FILE FINANCIAL MANAGEMENT REPORT**

A debtor may file a motion to reopen a case in order to obtain a discharge after a Notice of No Discharge where the discharge was not entered solely because the debtor failed to file a statement regarding completion of a course in personal financial management pursuant to Fed.R.Bankr.P. 1007(b)(7) and (c). In order for the motion to reopen to be granted, the debtor must pay the fee due to reopen the case and, contemporaneously with the Motion to Reopen, file the required statement of completion using the appropriate Official Form B23.

**B-5005-1. FILING OF PAPERS: GENERAL REQUIREMENTS**

(a) Method of Filing

Except as provided by S.D. Ind. B-5005-4 and the Electronic Case Filing Administrative Policies and Procedures Manual (available on the Court's website), which requires electronic filing by attorneys and certain limited users, the Court will accept for filing paper documents that comply with the Rules.

(b) Form

All petitions, pleadings and other papers offered for filing shall meet the following requirements of form:

(1) Legibility

Papers shall be plainly and legibly typewritten, printed, or reproduced on one side of the paper only.

(2) Caption: Official Forms

The caption and form of all petitions, pleadings, schedules and other papers shall be in substantial compliance with the Federal Rules of Bankruptcy Procedure, Official Forms, or Local Rules for the Southern District of Indiana. Each paper or set of papers filed shall bear the name of the Debtor and chapter of the case. Each paper other than the petition shall also have the case number.

(3) Signature

Every pleading, whether filed electronically or on paper, shall be signed. Any pleading lacking a signature shall be stricken from the record, if not corrected after notice to the filer.

(c) Filing Non-Electronically: Original And Copy Required

(1) Over the Counter

A party filing a document over the counter shall provide a signed original and a copy (or two originals). The file-marked original will be returned to the filer, and shall be retained by the filer as required by the Court's Electronic Case Filing Administrative Policies and Procedures Manual available on the Court's website.

(2) By Mail

For documents submitted by mail, the filer shall provide a signed original, a copy (or two originals), and a self-addressed, stamped envelope. A file-marked original will be returned to the filer and shall be retained by the filer as required by the Electronic Case Filing Administrative Policies and Procedures Manual, available on the Court's website.

(3) Failure to Provide Copy or Self-Addressed, Stamped Envelope

A party who fails to provide a copy (or second original) or a self-addressed, stamped envelope for pleadings submitted by mail shall be presumed to have retained an original as required by the Electronic Case Filing Administrative Policies and Procedures Manual (available on the Court's website). The Clerk shall not return the original to the filer. Documents that are not returned to the filer will be discarded by the Clerk after scanning.

### **B-5005-3. SIZE OF PAPERS.**

Papers submitted for filing shall be no larger than 8 ½" by 11" in size.

### **B-5005-4. ELECTRONIC FILING**

The Court has adopted Electronic Case Filing Administrative Policies and Procedures to permit filing, signing, service, and verification of documents by electronic means. These Administrative Policies and Procedures, as described in the Manual, are incorporated into this Local Rule.

### **B-5011-1. WITHDRAWAL OF REFERENCE**

(a) Form of Request; Place of Filing

A withdrawal of reference in whole or part shall be filed by motion. In addition, all such motions shall clearly and conspicuously state that “relief is sought from a U.S. District Judge.”

(b) Stay

The filing of a motion to withdraw the reference does not stay the proceedings in the Bankruptcy Court. Fed.R.Bankr.P. 8005 governs requests for a stay pending decision on withdrawal of reference.

(c) Designation of Record

The moving party shall serve and file, together with the motion to withdraw the reference, a designation of those portions of the record believed to be necessary or pertinent to the District Court’s consideration of the motion. Within fourteen (14) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. All designated documents shall be identified by document number as noted on the docket. If the record designated by any party includes a transcript of any proceeding, that party shall file a written request for the transcript and include with the request the fee for preparation of the transcript.

(d) Responses to Motions to Withdraw Reference; Reply

Opposing parties shall file with the Clerk, and serve all parties to the matter, their written responses to the motion within fourteen (14) days after being served a copy of the motion. The moving party may serve and file a reply within fourteen (14) days after service of a response.

(e) Transmittal of Record to District Court

When the record is complete, the Clerk of the Bankruptcy Court shall transmit to the Clerk of the District Court the motion and the portions of the record designated. After the

opening of the docket in the District Court, documents pertaining to the matter under review by the District Court shall be filed with the Clerk of the District Court.

### **B-5080-3. DEFERRAL OF FILING FEES DUE FROM TRUSTEE**

In an adversary proceeding, if the trustee certifies to the Clerk that the estate lacks the funds necessary to pay a filing fee, the Clerk shall defer the filing fee without Court order and enter the deferral on the docket. If the estate later receives funds sufficient to pay the deferred fees, the trustee shall pay the fee no later than the date the trustee makes distribution to creditors.

### **B-6004-1. PROCEDURE FOR SALE OF ASSETS OUTSIDE THE ORDINARY COURSE PURSUANT TO 11 U.S.C. §363**

(a) Motion to Sell

A motion to approve the sale of assets, outside the ordinary course, pursuant to 11 U.S.C. §363 (the “Motion to Sell”) shall include the following information, where applicable:

(1) Proceeds of Sale

If the Debtor has identified a prospective purchaser (a “Prospective Purchaser”), an estimate of the gross proceeds anticipated from the sale, an estimate of the net proceeds coming to the estate, and an itemization of all expenses to be incurred in connection with the proposed sale.

(2) Sale Contingencies

A brief summary of all material contingencies to the sale agreement, together with a copy of the agreement, if available.

(3) Debt Structure of the Debtor

If schedules have not been filed by the Debtor, a summary of the Debtor’s debt structure, including the amount of the Debtor’s secured debt, priority claims, and general unsecured claims.

(4) Marketing of Assets

A description of the manner in which the assets were marketed for sale, and where there is a Prospective Purchaser, a description of any other offers to purchase.

(5) Topping Fees and Break-up Fees

Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of any

other entity that expressed to the Debtor an interest in the purchase of all or a material portion of the assets to be sold within ninety (90) days prior to the filing of the sale motion, the offers made by them (if any), and the nature of the offer.

(6) Relationship of Buyer

Where there is a Prospective Purchaser, a statement identifying the buyer and setting forth all of the known relationships between the buyer and its insiders and the Debtor and its insiders.

(7) Post Sale Relationship with the Debtor

Where there is a Prospective Purchaser, a statement setting forth any relationship or connection the Debtor (including its insiders) will have with the buyer after the consummation of the sale, assuming it is approved.

(8) Creditors' Committee

If a creditors' committee, or its equivalent, existed pre-petition, the identity of the members of the committee and the companies with which they are affiliated and the identity of any counsel.

(9) Personally Identifiable Information

Disclose if the property to be sold contains personally identifiable information and, if so, state what measures will be taken to comply with 11 U.S.C. §363(b)(1).

(b) Motion for Bid Procedures

If the Motion to Sell contemplates competitive bidding, a motion to establish bid procedures ("Motion for Bid Procedures") must be filed separately and on the same day as the Motion to Sell.

(1) Notice

The notice for the hearing on a motion for bid procedures must describe the proposed bidding procedures and must contain a deadline for filing objections. If there is an existing proposed purchase agreement, the moving party shall describe the terms of the sale proposed, when a copy of the actual agreement will be available, and from whom it may be obtained. The notice shall be served upon the Notice List and any Potential Purchaser.

(2) Objections to Motion for Bid Procedures

Any objection to the Motion for Bid Procedures shall be served on all parties on the Service List and, to the extent known, to the objecting party and to any Potential Purchaser (or their counsel, if applicable). Where possible, the objection to Motion for Bid Procedures shall be served at least one day prior to the hearing

on the Motion for Bid Procedures. A copy of the objection shall be delivered or e-mailed to chambers at the time of filing.

(c) Hearing on Motion for Bid Procedures

A hearing on a Motion for Bid Procedures may be scheduled on an expedited basis pursuant to Fed.R.Bankr.P. 9006(c).

(d) Hearing on Motion to Sell

If bid procedures are to be approved by the Court, the hearing on the Motion to Sell shall be scheduled, if practicable, no more than thirty (30) days following the Court's approval of bid procedures.

(e) Service of Motion to Sell and the Motion for Bid Procedures

The Motion to Sell and the Motion for Bid Procedures, if any, shall be delivered as soon as possible to all parties on the Service List, to any Potential Purchaser (or their counsel, where applicable) identified in the Motion to Sell, and to any party that has requested a copy.

(f) Financial Ability to Close

Unless the Court orders otherwise, any purchaser pursuant to a Motion to Sell, or bidder pursuant to a Motion for Bid Procedures, must be prepared to demonstrate through an evidentiary hearing, its ability to consummate the transaction if it is the successful purchaser or bidder, along with evidence regarding any financial contingencies to closing the transaction.

## **B-6005-1. LIQUIDATORS/AUCTIONEERS AND APPRAISERS**

(a) Bond Required

All liquidators/auctioneers retained by a trustee or Debtor in any case who will come into possession or control of the assets or proceeds of assets of an estate shall either participate in the bond program administered by the UST or post a bond with the United States as obligee for the full value of the assets in the possession or control of the liquidator/auctioneer, unless otherwise ordered by the Court.

(b) Report of Sale

The liquidator/auctioneer shall file a report of sale within seven (7) days of any sale and transmit a copy of the report to the UST and to the trustee or Debtor. The report must provide an itemized list of the property sold, the name of each purchaser, and the price received for each item or lot of inventory. If the Court authorizes the deduction of the liquidator/auctioneer's commission and costs of sale from the sale proceeds, the liquidator/auctioneer shall file with the report an affidavit or declaration listing the commission received and costs reimbursed.

(c) Remittance of Gross Proceeds

Unless otherwise ordered by the Court, all gross proceeds shall be remitted to the trustee or Debtor within fourteen (14) days of the sale. Upon motion of any party in interest and for good cause shown, the Court may authorize the liquidator/auctioneer to submit net proceeds or to turn over to a secured creditor the net proceeds realized from the sale of that creditor's collateral.

(d) Validity of Checks

The validity of any checks or bank drafts accepted by the liquidator/auctioneer shall be the sole responsibility of the liquidator/auctioneer.

(e) Separate Escrow Account

If the liquidator/auctioneer does not make an immediate settlement with the trustee or Debtor in any case, and the proceeds of the property sold are \$50,000.00 or more, the auctioneer shall open a segregated escrow or trust account for deposit of the sale proceeds. This account shall be designated by the bankruptcy estate case name and shall require the co-signature of the trustee for any withdrawals. If the proceeds of the sale are less than \$50,000.00, the proceeds may be deposited in the auctioneer's trust or client fund account.

(f) Appraiser Serving as Liquidator/Auctioneer

No appraiser, agent, or employee of an appraiser who has been employed in a bankruptcy case may serve as the liquidator/auctioneer in that same case without the approval of the Court.

(g) Liquidator/Auctioneer Purchasing at Sale

No liquidator/auctioneer, or any agent or employee of a liquidator/auctioneer employed in a case may purchase an asset from the estate.

**B-6007-1. ABANDONMENT OF PROPERTY**

(a) Trustee's Notice of Possible Assets and Abandonment

In Chapter 7 cases where the trustee files a notice of possible assets and abandonment, the Clerk shall give notice to all creditors and parties in interest of those assets which are not being abandoned by the trustee, and of the proposed abandonment of all other assets.

(b) Trustee's Notice of Abandonment

In Chapter 7 cases where the trustee files a notice of abandonment more than one day after filing a notice of possible assets, the trustee shall serve the notice on parties in interest and all creditors, except as otherwise provided in S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the

notice, the trustee shall file a certificate of service in compliance with S.D.Ind. B-9013-2. A sample notice is available on the Court's website.

(c) Motion to Abandon Filed by Party in Interest

A motion to abandon filed by a party in interest shall be served on the Debtor and parties in interest. Notice of the motion shall be served on the Debtor, parties in interest, and all creditors, except as otherwise provided by S.D.Ind. B-2002-1(b). The notice shall allow at least fourteen (14) days from the date of service to file objections. Along with the motion, the moving party shall file a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2. A sample notice is available on the Court's website.

**B-6008-1. REDEMPTION OF PROPERTY**

(a) Service

The Debtor shall serve the motion and notice thereof on the lien holder, in accordance with Fed.R.Bankr.P. 9014(b) and 7004 The notice shall allow at least twenty-one (21) days from the date of service to file objections. The motion and notice may be combined in one document. A sample combined motion and notice is available on the Court's website.

(b) Filing and Certificate of Service

Along with the motion, the Debtor must file with the Court a copy of the notice and a certificate of service in compliance with S.D.Ind. B-9013-2.

**B-7005-2. FILING OF DISCOVERY MATERIALS**

S.D.Ind. L.R. 26.2 applies in adversary proceedings, unless otherwise ordered by the Court.

**B-7006-1. EXTENSIONS OF TIME**

(a) Initial Extensions

In every adversary proceeding pending in this Court in which a party wishes to obtain an initial extension of time not exceeding thirty (30) days within which to file a responsive pleading or a response to a written request for discovery or request for admission, or response to a motion, the party shall contact counsel for the opposing party, or if the opposing party is not represented by counsel, the opposing party, and solicit that person's agreement to the extension. In the event that person does not object to the extension or cannot with due diligence be reached, the party requesting the extension shall file a notice with the Court reciting the lack of objection to the extension or the fact that the person could not with due diligence be reached. The notice shall state the original due date and the date to which the time is extended. No further filings with the Court nor action by the Court shall be required for the extension.

(b) Other Extensions

Any other request for an extension of time, unless made in open Court or at a telephonic pre-trial conference, shall be made by written motion. If the opposing counsel or *pro se* litigant objects to the request for extension, the party seeking the same shall recite in the motion the effort to obtain the agreement.

**B-7007-1. FRBP 7012 MOTION PRACTICE**

S.D.Ind. L.R. 7.1(a), (b) and (c), concerning motions under Fed.R.Civ.P. 12, applies in adversary proceedings, unless otherwise ordered by the Court.

**B-7016-1. PRE-TRIAL PROCEDURES IN ADVERSARY PROCEEDINGS**

(a) Use of Pre-Trial or Pre-Hearing Conferences

The Court may conduct a pre-trial or a pre-hearing conference in any adversary proceeding, at the Court's discretion, upon notice to parties in interest.

(b) Applicability of S.D.Ind. L.R. 16.1

The Court may determine on its own motion or on the request of any party in interest which provisions of S.D.Ind. L.R. 16.1 shall apply to an adversary proceeding governed by Fed.R.Bankr.P. 7001, et seq.

(c) Telephonic Pre-Hearing or Pre-Trial Conference

No later than twenty-four (24) hours before the time scheduled for a pre-hearing or pre-trial conference, any party to the conference may request that the conference be conducted by telephone or that the party be allowed to participate by telephone. Such request may be made in writing, directed to chambers, or by telephone. At the time of the request, the requesting party shall advise the Court whether any other party to the conference has objected to the request. The request may be granted or denied at the sole discretion of the Court.

**B-7026-1. DISCOVERY DISCLOSURES AND CONFERENCES**

Unless otherwise ordered by the Court, Fed.R.Civ.P. 26(a), concerning initial disclosures, and 26(f), concerning discovery conferences, do not apply in adversary proceedings.

**B-7026-2. FORM OF CERTAIN DISCOVERY DOCUMENTS**

S.D.Ind. L.R. 26.1 applies in adversary proceedings, unless otherwise ordered by the Court.

**B-7027-1. DEPOSITIONS, REQUESTS FOR ADMISSIONS, AND EXAMINATIONS IN ADVERSARY PROCEEDINGS**

S.D.Ind. L.R. 30.1, 36.1, 37.1, and 37.3 apply in adversary proceedings, unless otherwise ordered by the Court.

**B-7041-1. DISMISSAL FOR FAILURE TO PROSECUTE**

S.D.Ind. L.R. 41.1 applies to adversary proceedings.

**B-7041-2. COMPLAINTS TO DENY OR REVOKE DISCHARGE: DISMISSAL OR SETTLEMENT**

- (a) Contents and Service of Notice of, Motion for, or Stipulation Regarding Voluntary Dismissal of Complaint to Deny or Revoke Discharge

Any dismissal, whether by notice, motion or stipulation, of a complaint to deny or revoke the Debtor's discharge pursuant to 11 U.S.C. §727, shall be served upon the UST, any trustee, counsel of record, and any party that has intervened in the adversary proceeding pursuant to Fed.R.Bankr.P. 7024. The notice, motion or stipulation shall contain a recital concerning the consideration, if any, for the dismissal or the terms and conditions of any agreement concerning the dismissal.

- (b) Objection to Dismissal

Unless the UST, the trustee, or another entity seeks to intervene or to be substituted for the plaintiff in the proceeding or objects to the dismissal within twenty-one (21) days following service of the motion, the Court may dismiss the complaint and/or close the adversary proceeding, upon such terms and conditions as it deems proper, without further notice or hearing.

**B-7055-1. DEFAULT**

- (a) Motions Required

Notwithstanding Fed.R.Bankr.P. 7055, a party seeking the entry of a default judgment shall file a motion that shall be considered by the Judge. If an entry for default judgment is presented to the Clerk, the Clerk shall not, unless otherwise ordered by the Judge, enter the default judgment but shall direct the judgment to the Judge for entry.

- (b) Proof of Service and Affidavit

A motion for default judgment must be accompanied by proof of service and an affidavit stating that the defendant(s) is not protected by the Servicemembers Civil Relief Act, P.L. 108-189; and is not an infant or incompetent person.

(c) Determining Amount of Judgment

If the claim to which no response was made is for a “sum certain,” then the motion shall be accompanied by affidavit showing the principal amount due and owing, not exceeding the amount sought in the claim, plus interest, if any computed by the movant, with credit for all payments received to date clearly set forth, and costs, if any, pursuant to 28 U.S.C. §1920. If the amount of the claim is not readily ascertainable or if the amount requested in the motion exceeds the amount stated in the claim, the Court may conduct a hearing on the motion for default judgment.

**B-7056-1. SUMMARY JUDGMENT PROCEDURE**

S.D.Ind. L.R. 56.1 applies to adversary proceedings.

**B-7065-2. MOTIONS FOR PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS**

S.D.Ind. L.R. 65.2 applies to adversary proceedings.

**B-7067-1. REGISTRY FUNDS**

(a) Interpleader and Other Deposit Motions: Contents

Any action in interpleader or that seeks to deposit funds with the Clerk pursuant to Fed.R.Bankr.P. 7067 shall include the filer’s certification that the proposed deposit has been discussed with the Clerk or the Clerk’s financial supervisor and that the filer understands the terms and conditions that will be imposed upon the deposit.

(b) Fees Charged Against Deposits

The Clerk shall deduct from income earned on registry funds invested in interest-bearing accounts or instruments a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the U.S. Courts in accordance with the schedule which shall be published periodically by the Director in the Federal Register. The fee shall be withdrawn whenever income earned becomes available for deduction and shall be deposited in the United States Treasury without further order of the Court. This assessment shall apply to all registry funds invested in interest-bearing accounts held outside the United States Treasury. Funds deposited with the Court pursuant to 11 U.S.C. §347(a) are not subject to this rule.

## **B-7069-1. EXECUTION/ENFORCEMENT OF JUDGMENTS**

### (a) Availability of Enforcement Remedies

A trustee or Debtor who seeks to enforce a judgment in an adversary proceeding or an order of turnover for the benefit of the bankruptcy estate may pursue collection in the Bankruptcy Court.

### (b) Applicability of District Court Rules

S.D.Ind. L.R. 69.1 (Execution), S.D.Ind. L.R. 69.2 (Discovery in Aid of Judgment or Execution), and S.D.Ind. L.R. 69.3 (Final Orders in Wage Garnishment) apply to adversary proceedings and to orders directing a Debtor to turn over property. Answers to Interrogatories should not be filed with the Court but should be sent to the trustee or Debtor only.

## **B-8006-1. RECORD AND ISSUES ON APPEAL**

### (a) Designating Record on Appeal

If the parties fail to file a timely designation of record with the Clerk pursuant to Fed.R.Bankr.P. 8006, the Clerk shall forward a certification that no designation of record was filed.

### (b) Copies of Record

The party filing the designation of items to be included in the record on appeal shall list the items with the Court's document numbers as displayed on the docket.

## **B-9006-1. PROCEDURE FOR OBTAINING SHORTENED AND/OR LIMITED NOTICE OF NON-FIRST DAY MOTIONS**

### (a) General Application

This provision shall govern the procedures to be followed for any matter as to which shortened notice or shortened notice and expedited hearing is requested pursuant to Fed.R.Bankr.P. 9006(c) (a "9006(c) Request") except for any First Day Motion as defined by S.D.Ind. B-9013-2. The 9006(c) Request shall be considered by the Court without a hearing. If granted, the Court will issue an Order Shortening Notice and/or Setting Expedited Hearing.

### (b) Filing Requirements

A 9006(c) Request shall be made by separate written motion and shall clearly refer to the non-First Day Motion or the contested matter to which it pertains (the "Underlying Motion"), shall specifically state the nature of the emergency or why the need for

expedited treatment, and shall state the time by which the notice is to be shortened or the requested expedited hearing is to be held. The movant shall notify the chambers of the Judge assigned to the case of the filing of the 9006(c) Request and shall upload or otherwise tender an Order Shortening Notice and/or Setting Expedited Hearing as described below.

(c) Content of Order Shortening Notice and/or Setting Expedited Hearing

The Order Shortening Notice and/or Setting Expedited Hearing shall provide:

- (1) the date and time of the hearing, if any;
- (2) a brief description of the relief requested in the Underlying Motion;
- (3) the last date to object to the Underlying Motion, and if no objection date is established, that objections are due immediately before the hearing;
- (4) that any objection must be in writing and filed with the Clerk,
- (5) that a copy of the written objection must also be served upon counsel for the movant, or the movant if not represented by counsel; and
- (6) the Clerk's address for the division in which the case is pending;
- (7) if no hearing was set in the initial notice, a statement that if any objection is filed, a hearing will be scheduled on the Underlying Motion and objections thereto by separate notice;
- (8) if objections are due immediately before the hearing, that telephonic notice of the filing of the objection shall be given to the chambers of the Judge to whom the case is assigned.

(d) Service and Distribution of 9006(c) Request, Underlying Motion and Order Shortening Notice and/or Setting Expedited Hearing

The movant shall serve, by fax, e-mail or hand delivery, the 9006(c) Request and the Underlying Motion, along with the Order Shortening Notice and/or Setting Expedited Hearing, on the Service List, any party that has, or claims to have, an interest in the property to be affected by the relief requested in the Underlying Motion, parties required to receive notice under the applicable Federal Rule of Bankruptcy Procedure, and any other party as directed by the Court. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with instructions for obtaining all documents on the movant's website or by e-mail. If the matter is a contested matter within an adversary proceeding, service of the 9006(c) Request and the Underlying Motion shall be made in the manner described above but only upon the parties to the adversary proceeding and any other party as directed by the Court.

(e) Certificate of Notice

Prior to the hearing on, or the deadline for filing objections to, the Underlying Motion, the movant shall file a certificate of notice, certifying that copies of the 9006(c) Request, Underlying Motion and Order Setting Emergency Hearing and/or Expedited Notice were sent to all parties required to receive notice. The certificate of notice shall have attached as an exhibit to it a list of the parties to whom such copies were sent, at what address, and in what manner.

(f) Motion to Limit Notice

If expedited service on the parties required to receive under the Federal Rules of Bankruptcy Procedure is impractical or cost-prohibitive, the movant may also seek to limit notice by filing a separate Motion to Limit Notice. Unless otherwise directed, notice may be limited to the UST, Debtor, the Unsecured Creditors Committee or its counsel if applicable, or if there is no Committee, the List of 20 Largest Unsecured Creditors, the Chapter 7, 11 or 13 trustee if applicable, any party that has or claims to have an interest in the property to be affected by the Underlying Motion, and all other counsel of record. \

## **B-9010-1. APPEARANCES**

(a) Appearances

(1) Requirement in Bankruptcy Cases

Each attorney representing a party, whether in person or by filing any document (other than a proof of claim, a reaffirmation agreement, request pursuant to Fed.R.Bankr.P. 2002(g), or creditor change of address), must file a separate Appearance for such party. Only those attorneys who have filed an Appearance in a pending action shall be entitled to receive service of case documents. An attorney who files a case for a Debtor using the Court's electronic filing system and is designated as counsel for the Debtor in that process need not file a separate appearance for that case.

(2) Requirement in Adversary Proceedings

Counsel for the plaintiff shall file an appearance with the complaint. Counsel for a defendant, including Debtor's counsel, shall file an appearance before filing any other pleading.

(3) Content of Appearance; Service

The appearance shall include the attorney's address, telephone number, fax number, and an e-mail address for electronic service. Any change to an appearance shall be filed with the Clerk and served upon all counsel of record and the Debtor if not represented by counsel.

(b) Removed and Transferred Cases

Any attorney of record whose name does not appear on this Court's docket following the removal of a case must file an Appearance or a copy of the appearance as previously filed in the other venue.

Within twenty-one (21) days of removal or transfer of a case to this Court, any attorney of record who is not admitted to practice before this Court must either comply with this Court's admission policy, as set forth in S.D. Ind. B-9010-2, or withdraw his/her appearance, as permitted under section (c) of this rule.

(c) Withdrawal of Appearance

(1) Successor Counsel Has Not Appeared

Counsel desiring to withdraw his/her appearance in any action shall file a motion requesting leave to do so. Such motion shall fix a date for such withdrawal and shall include satisfactory evidence of either a written request to withdraw by counsel's client or a written notice regarding the withdrawal from counsel to counsel's client at least seven (7) days in advance of the withdrawal date.

(2) Successor Counsel Has Appeared

No advance notice to client is required if an Appearance by co-counsel, who will remain in the case, or if an Appearance by successor counsel, is filed prior to or concurrently with a request to withdraw.

**B-9010-2. BAR ADMISSION**

- (a) The bar of this Court shall consist of those persons admitted to practice in the Southern District of Indiana.
- (b) In all matters and proceedings before this Court, a person not a member of the bar of the Southern District of Indiana shall not be permitted to practice in this Court or before any officer thereof as an attorney, unless
  - (1) such person appears on his or her own behalf as a party;
  - (2) such person is admitted to practice in any other United States Court or the highest Court of any state, is not currently under suspension or subject to other disciplinary action, and is, on motion to this Court pursuant to subparagraph (c), granted leave to appear in a specific action; or
  - (3) such person appears as an attorney for the United States.

However, for the purposes of filing any document as to which an appearance is not required under S.D. Ind 9010-1(a)(1) or participating in a meeting conducted pursuant to 11 U.S.C. §341, a creditor need not be represented or appear by an attorney.

- (c) In order to obtain leave of this Court to appear in a specific action, an attorney must file with the Court a Motion to Appear *pro hac vice*. A separate motion for each attorney shall be filed, shall be in a form that complies substantially with the form available on the Court's website, and shall be accompanied by:
  - (1) a check payable to, "Clerk, United States District Court", in the required amount (the amount of such fee is available at [www.insd.uscourts.gov](http://www.insd.uscourts.gov)), or contact the Clerk of the District Court to arrange payment by credit card;
  - (2) if not admitted to practice in the State of Indiana, an affidavit that substantially complies with the form available on the Court's website; and
  - (3) a proposed form of order granting the motion.
- (d) The Court may refuse to consider or act upon any request for relief filed by an attorney who is required to obtain leave to appear and has failed to do so.
- (e) Whenever necessary to facilitate the conduct of the case, the Court may require any attorney appearing in any action in this Court to retain as local counsel a member of the bar of the Southern District of Indiana who maintains an office in this district.
- (f) The Rules of Professional Conduct, as adopted by the Indiana Supreme Court, shall provide the rules governing conduct for those practicing in this Court.

## **B-9013-1. MOTION PRACTICE; OBJECTIONS TO MOTIONS**

### (a) Separate Motions and Objections

Every application, motion, or other request for an order from the Court, including motions initiating contested matters, shall be filed separately, except that requests for alternative relief may be filed together, subject to paragraphs (b) and (c). All such requests shall be named in the caption, shall state with particularity the order or relief sought, and contain a short and plain statement concerning the factual basis or grounds for the motion. If the alternative relief requested has varying requirements for notice, the notice must provide the longest of the alternative periods. Objections to separately filed motions must also be filed separately.

### (b) Stay Relief or Adequate Protection Motions

Motions seeking relief from the automatic stay or adequate protection may not be joined with any other objection or request for relief except abandonment.

### (c) Motions Where Hearing Scheduled by "Block Scheduling"

Where the hearing for the relief sought in the motion is subject to the "block scheduling" procedure established by the Court, the motion shall request only that type of relief, and a request for alternative relief may not be sought in the motion.

(d) Content of Objections

As to any matter in which the Court may grant relief without a hearing in the absence of a timely objection, objections to the motion, application, or request shall contain a short, plain statement concerning the factual or legal basis for the objection. The failure to state a sufficient legal or factual basis for the objection may result in the objection being overruled without a hearing.

(e) 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 on as many facts and issues as possible.

**B-9013-2. CERTIFICATE OF SERVICE**

(a) Filing

All pleadings and papers filed in a bankruptcy case pursuant to Fed.R.Bankr.P. 9013 or 9014 shall comply with Fed.R.Bankr.P. 7005(d).

(b) Requirements

In addition to identifying the pleading or paper served, certificates of service shall conform substantially to the certificate of service form adopted with the Electronic Case Filing Policies and Procedures Manual and available on the Court's website.

(c) Failure to Comply

On its own motion, the Court may refuse consideration of or strike any pleading or paper for which a certificate of service has not been filed or which lacks the information required by the Court's forms.

**B-9013-3. FIRST DAY MOTIONS IN CHAPTER 11 CASES**

(a) Motions Included

In order to qualify as a First Day Motion, the motion must be filed with the petition, or within two (2) days thereafter, state in its caption that it is a First Day Motion, and be one of the motions included on the list below. The First Day Motions listed in (f) below shall be scheduled for an expedited hearing without any formal request by the Debtor. Other motions will only be set for hearing on an expedited basis if accompanied by a request for expedited hearing which establishes sufficient cause for such treatment.

(b) Procedure Prior to Filing

Prior to filing, the Debtor shall endeavor to confer with and provide copies of any First Day Motions to the UST. Counsel shall include in any First Day Motion, or in a separate pleading, a statement of efforts made to meet with the UST and affected parties prior to filing when possible. The Debtor shall also contact the Court's senior courtroom deputy to advise that a case with First Day Motions will be filed.

(c) Procedure Upon Filing

Upon filing, the Debtor shall contact the courtroom deputy for the Judge assigned. The Judge assigned, or a designated replacement, shall schedule and conduct a hearing on the First Day Motions within two (2) days of their filing, if possible, unless the Debtor requests a later hearing date.

(d) Service of First Day Motions and Notice

The Debtor shall serve copies of all First Day Motions and notice of the hearing on the initial Service List, known counsel for any party, and named respondents. Notice of the hearing and copies of the First Day Motions shall be served by fax, e-mail, or hand delivery. If the documents are more than three (3) pages in length, the movant may fax the first page of the motion with a statement as to the total number of pages in the document and instructions for obtaining all documents on the movant's website or by e-mail. Prior to the hearing, the Debtor shall file a certificate of service in compliance with S.D.Ind. B-9013-2. Failure to give timely notice may result in relief being denied or the hearing continued.

(e) Contents of Notice

The notice of hearing on the First Day Motions shall provide:

- (1) the date and time of the hearing;
- (2) a list by title of the First Day Motions; and
- (3) the correct mailing address, fax number, telephone number, and e-mail address of the Debtor's counsel.

(f) List of Included Motions

The following shall be treated by the Court as First Day Motions if filed with the petition or within two (2) days thereafter:

- (1) motion for joint administration;
- (2) motion for use of cash collateral (interim hearing only) (see S.D.Ind. B-4001-2);
- (3) motion for post-petition financing (interim hearing only) (see S.D.Ind. B-4001-2);
- (4) motion to pay pre-petition employee wage claims (to the limit provided by 11 U.S.C. § 507);
- (5) motion to limit notice generally;
- (6) motion to provide adequate assurance to utilities;
- (7) motion to pay pre-petition trust fund taxes;
- (8) motion to honor pre-petition obligations to customers (to the limit provided by 11 U.S.C. § 507);

- (9) motion to vary UST financial requirements, such as motion to authorize maintenance of existing bank accounts, existing business forms, cash management system, investment procedures, etc.;
- (10) motion for authority to pay pre-petition claims of alleged critical vendors;
- (11) motion to reject leases and contracts; and
- (12) motion to not appoint a creditors' committee pursuant to 11 U.S.C. § 1102(a)(3).

## **B-9014-1. APPLICABILITY OF OTHER COURT RULES TO CONTESTED MATTERS**

Unless otherwise ordered by the Court, the following District Court rules apply in contested matters other than motions to dismiss or convert a case:

- 7.1 Motion practice, length, form, and schedule of briefs
- 26.1 Form of certain discovery documents
- 26.2 Filing of discovery materials
- 30.1 Conduct of depositions
- 36.1 Request for admissions
- 37.1 Informal conference to settle discovery disputes
- 37.3 Mode of raising discovery disputes with the Court
- 41.1 Dismissal for failure to prosecute
- 56.1 Summary judgment procedures

## **B-9015-1. JURY TRIALS**

### (a) Authorization

Pursuant to S.D.Ind. L.R. 39.1, the District Court has authorized the Bankruptcy Judges of this District to conduct jury trials with the express consent of all parties.

### (b) Applicability of District Court Rules

The following District Court rules concerning jury trials apply unless otherwise ordered by the Court:

- 38.1 Notation of a jury demand in a pleading
- 42.1 Juror costs
- 47.1 Voir dire
- 47.2 Attorney communication with jurors
- 47.4 Six-member juries

### (c) Time for Consent

Unless within 30 days after the demand for jury trial is filed the other parties to the proceeding file a consent, the Bankruptcy Judge shall request that the District Court withdraw the reference of the matter. Even if all parties consent, the Bankruptcy Judge will determine whether the request for a jury trial is proper.

## **B-9019-1. STIPULATIONS AND SETTLEMENTS**

(a) Notice to Court When Hearing Set

When parties reach a settlement in a matter that has been set for hearing, the parties shall promptly notify the Court of the settlement and, within the time promised or as required by the Court, shall file the appropriate pleading and any proposed order concerning the settlement. The Court may extend the time for filing upon request. Failure to file the settlement pleading may result in dismissal of the matter at issue.

(b) Agreements Changing Chapter 13 Plan Terms Pre-Confirmation.

Any agreement between the Debtor and the trustee or a creditor that changes the terms of the plan pre-confirmation, whether filed as an agreed entry, stipulation, or immaterial modification, will not result in a separate order, as the subsequent confirmation order will be deemed an approval of the plan as modified by the agreement.

(c) Adversary Proceedings

(1) Generally

Except as set forth in (3) of this section, if an adversary proceeding is settled before an answer has been filed, the parties may file a stipulation of dismissal. No Court order is entered on that stipulation. However, if the agreement of the parties resulting in dismissal contains conditions precedent or subsequent, then the parties shall file an agreed judgment. The Court shall enter a separate order on that judgment, after notice, if required.

(2) Settlements Under Fed.R.Bankr.P. 9019(a) or (b)

When approval of a settlement or compromise is required by Fed.R.Bankr.P. 9019(a) or (b), the trustee or Debtor shall file a motion to approve the settlement in the bankruptcy case and, unless otherwise ordered, the Clerk shall issue notice. Once the motion is granted, the parties to the adversary proceeding shall then dismiss the adversary proceeding or file an agreed judgment so that the adversary may be closed.

(3) Settlements of Complaints to Deny or Revoke Discharge

Settlements of complaints to deny or revoke discharge are governed by S.D. Ind. B-7041-2.

## **B-9019-2. ALTERNATIVE DISPUTE RESOLUTION**

### (a) Procedure

#### (1) Motion

Any contested matter or adversary proceeding (“controversy”) may be referred to mediation (“mediation”) by the Court or upon motion filed by any party. If the motion filed by a party certifies that all parties to the controversy consent to mediation and have been served with the motion, and the Court finds the motion to be appropriate under the circumstances, the Court may grant the motion without further notice or hearing. If the motion filed by a party does not so certify, or if the Court finds that the motion is not appropriate, the motion shall be subject to the procedures for contested motions.

#### (2) Proposed Order

The motion of a party shall be accompanied by a proposed order which shall set out any filing deadlines or hearings that may need to be rescheduled to accommodate the mediation and shall make such reasonable scheduling changes as are necessary to allow the mediation to proceed. The proposed order shall also include provisions governing the confidentiality of the mediation process in accordance with section (d) herein. If the parties have selected a mediator in accordance with section (b)(2) herein, the proposed order shall identify the mediator and provide for compensation in accordance with the requirements of section (b)(4) herein.

#### (3) Pendency of Matter

Unless otherwise ordered by the Court, the parties shall remain responsible for complying with all pleading, discovery, or Court-imposed deadlines and any other applicable scheduling requirement established for the timely disposition of the controversy.

### (b) The Mediator

#### (1) Qualification; Disqualification

Subject to approval by the Court, in its sole discretion, any person may be selected to serve as a mediator under this rule. Any person selected to serve as a mediator may be disqualified for bias or prejudice in the same manner that a judge may be disqualified under 28 U.S.C. §144. Any person selected to serve as a mediator shall be disqualified in any matter where 28 U.S.C. §455 would require disqualification if that person were a judge.

#### (2) Selection

If a proposed mediator has been agreed upon by the parties prior to the filing of the motion of a party requesting referral, the motion shall designate the name of the proposed mediator and shall be accompanied by the affidavit required by section (b)(3) herein. If the Court finds that the proposed mediator is qualified to serve, and the motion is appropriate, then the proposed mediator will be approved at the time of entry of the order referring the controversy to mediation.

If the parties have not selected a mediator or the Court disapproves their selection, the parties shall have fourteen (14) days from the entry of the Court's order referring the controversy to mediation to file a motion for retention of a mediator accompanied by the affidavit of proposed mediator as aforesaid, certifying that all parties to the controversy have agreed to the selection, which motion may be granted without further notice or hearing. In the event the parties cannot agree on a mediator or their new selection is not approved by the Court, the Court will designate three (3) mediators and each side, alternately, shall strike the name of one (1) mediator. The side initiating the controversy will strike first. The mediator remaining after the striking process will be deemed the selected mediator. The parties shall complete the striking process within seven (7) days of the Court's designation and shall file a notice of selection of the proposed mediator with the Court accompanied by the affidavit of the selected mediator. In the event that a mediator chooses not to serve, or becomes disqualified for any reason or the Court decides to replace the mediator, the selection process will be repeated.

(3) Affidavit

A person proposed for selection as a mediator shall prepare an affidavit disclosing any connections with the parties or counsel involved with the controversy which in any way could affect the neutrality or partiality of the mediator and setting forth any other reason which could result in disqualification under section (b)(1) of this rule. The affidavit shall summarize the qualifications and the anticipated rate of compensation and terms of payment of the proposed mediator. If the parties have selected a proposed mediator, the affidavit shall be filed with the motion of a party as referred to in section (a)(1). Otherwise, the affidavit shall be filed with the motion for retention of the proposed mediator or with the notice of selection from the mediators proposed by the Court, whichever is applicable.

(4) Compensation

Subject to such other terms and conditions as the Court may impose, the mediator shall be compensated at his or her customary per diem or hourly rate for matters of comparable complexity, with such compensation and reasonable costs to be borne equally by the parties to the controversy unless otherwise agreed by the parties. Any disputes regarding the reasonableness of such fees and costs shall be determined by the Court upon motion of any party. In any controversy involving the Debtor or the estate of a Debtor as a party, the order referring the controversy to mediation may approve such party's share of payment to the mediator for up to fifteen (15) hours of time plus reasonable costs. Additional payment of compensation to the mediator by the Debtor or the estate shall be subject to the approval of the Court upon application therefore; provided, however, that such

application, and any objection thereto or any motion disputing compensation, shall not, in keeping with the confidentiality of the mediation as provided in section (d) below, disclose the substance of confidential communications made during the course of the mediation.

(5) Oath

Before serving as a mediator, each person designated as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. §453, as if the person were a judge.

(c) The Mediation

(1) Control of the Mediation

With appropriate consideration of the interests of the parties and counsel involved in the controversy, the mediator shall control all procedural aspects of the mediation, including but not limited to: setting dates, times, and places for conducting sessions of the mediation; requiring the submission of confidential statements; requiring the attendance of representatives of each party with sufficient authority to negotiate and settle all disputed issues and amounts; designing and conducting the mediation sessions; and establishing a deadline for the parties to act upon a settlement proposal.

(2) Failure to Attend

Willful failure to attend any mediation conference, and any other material violation of this rule, shall be reported to the Court by the mediator and may result in the imposition of sanctions by the Court.

(3) Conclusion of the Mediation

(A) If the mediation results in a settlement of the contested matter or adversary proceeding, the mediator shall promptly file a report so advising the Court, signed by all parties to the controversy and their counsel. Within a reasonable time thereafter, the parties shall submit to the Court an agreed order or judgment or motion for approval of compromise of controversy, as the case may be, and provide such notice as is otherwise required.

(B) If the mediation does not result in a settlement, and the mediator, after appropriate consultation with the parties and their counsel, is reasonably satisfied that no further mediation effort is feasible at that time, then the mediator shall file a final report with the Court, serving all parties to the controversy, limited solely to that finding.

(C) Upon the filing of the settlement pleadings under section (c)(3)(A) or the mediator's report under section (c)(3)(B), the mediation shall be deemed concluded and the mediator shall be thereby relieved of all further duties or responsibilities other than approval of compensation as herein provided.

(d) Confidentiality

(1) Protection of Information Disclosed at Mediation

The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties or by witnesses in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial, or other proceedings evidence pertaining to any aspect of the mediation effort, including but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; proposals made or views expressed by the mediator; statements or admissions made by a party in the course of the mediation; and documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule, common law, or judicial precedent relating to the privileged nature of settlement discussions, mediation, or other alternative dispute resolution procedure shall apply. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in a mediation. These provisions shall not preclude a party, its counsel, or the mediator from responding in confidence to appropriately conducted inquiries or surveys concerning the use of mediation generally.

(2) Discovery from Mediator

The mediator shall not be compelled to disclose to the Court or to any person outside the mediation conference any of the records, reports, summaries, notes, communications, or other documents received or made by a mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation in connection with any arbitral, judicial, or other proceeding. The mediator shall not be a necessary party in any proceeding relating to the mediation. Nothing contained in this subsection shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, or from complying with the obligations set forth in section (c) of this rule.

(3) Protection of Proprietary Information

The parties, the mediator, and all mediation participants shall protect proprietary information during and after the mediation conference.

(4) Preservation of Privileges

The disclosure by a party of privileged information to the mediator or to another party during the mediation process does not waive or otherwise adversely affect the privileged nature of the information.

## **B-9027-1. REMOVAL**

(a) Removal When Bankruptcy Case Pending in this District

Removal of a matter pending in state Court or in a District other than the Southern District of Indiana is accomplished by filing a notice of removal as an adversary proceeding in the bankruptcy case. If the matter is filed or pending before the District Court for this District, then a request to refer the matter to the Bankruptcy Court should be filed with the District Court.

(b) Removal When Bankruptcy Case Pending in a Different District

A party seeking to remove a matter related to a bankruptcy case pending in another District should provide telephonic notice to the Bankruptcy Clerk of Court for the Southern District of Indiana to receive the case number in which the removal should be filed.

(c) Court Review of Removal

The Bankruptcy Court may set a hearing, upon notice to the parties, to determine the propriety of the removal and whether the Court should abstain or remand.

## **B-9029-1. LOCAL RULES: GENERAL**

(a) Title and Citation

These rules shall be known as the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana, and may be cited as “S.D.Ind. B-\_\_\_\_.”

(b) Effective Date

These rules become effective on June 1, 2010.

(c) Scope of Rules

These rules shall govern all bankruptcy cases and proceedings pending or commenced in the Southern District of Indiana on or after that date.

(d) Relationship to Prior Rules; Actions Pending on Effective Date

These rules supersede all previous rules promulgated by this Court or any Judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect, and shall apply to all pending proceedings at the time they take effect, except to the extent that the Court determines that application thereof would not be feasible or would work injustice, in which event the former rules shall govern.

(e) Modification or Suspension of Rules

In individual cases or proceedings, the Court, upon its own motion or the motion of any party, may suspend or modify any of these rules if the interests of justice so require.

(f) Conflicts Between S.D.Ind. L.R., Local and National Bankruptcy Rules

To the extent that any provision of the Local Rules for the United States District Court for the Southern District of Indiana (S.D.Ind. L.R.) differs from any provision of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana or the Federal Rules of Bankruptcy Procedure, or the Interim Bankruptcy Rules, then that provision of the S.D.Ind. L.R. shall not apply.

**B-9037-1. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT**

The Court may rule upon a motion for a protective order filed pursuant to Fed.R.Bankr.P. 9037(d) or a motion to withdraw a document without notice or hearing.

**B-9070-1. DISPOSITION OF EXHIBITS**

S.D.Ind. L.R. 79.1 applies to exhibits submitted in adversary proceedings and contested matters.