Idaho Local Bankruptcy Rules Packet

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LOCAL BANKRUPTCY RULES OF PROCEDURE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

LBR 1001.1	Scope, Applicability and Promulgation of Local Rules
LBR 1001.2	Establishment of Business Hours
LBR 1002.1	Petitions
LBR 1006.1	Filing Fees
LBR 1007.1	Master Mailing List (MML)
LBR 1007.2	Extension of Time
LBR 1007.3	Tax Returns
LBR 1007.4	Payment Advices
LBR 1007.5	Statement of Domestic Support Obligations
LBR 1009.1	Amendments of Petitions, Lists, Schedules, and Statement of Financial Affairs
LBR 1017.1	Conversion or Dismissal of Case
LBR 1019.1	Conversions
LBR 2002.1	Sale of Property of the Estate
LBR 2002.2	Notice and Hearing
LBR 2002.3	Filing and Service of Plans
LBR 2002.4	Filing and Confirmation of Chapter 12 Plan
LBR 2002.5	Filing and Confirmation of Chapter 13 Plan
LBR 2002.6	Payment of Chapter 7 Administrative Expenses
LBR 2003.1	Section 341(a) Meeting of Creditors
LBR 2004.1	Examinations
LBR 2014.1	Approval of Employment of Professional Persons
LBR 2016.1	Chapter 13 Representation and Compensation
LBR 3003.1	Filing Proofs of Claim in Chapter 11 Cases
LBR 3007.1	Procedures and Hearings for Objections to Claims
LBR 3011.1	Unclaimed Funds
LBR 3018.1	Chapter 11 Ballots - Voting on Plans
LBR 3020.1	Chapter 11 Preconfirmation Reports
LBR 3022.1	Final Decree in Chapter 11 Reorganization Case
LBR 4001.1	Use of Cash Collateral and Obtaining Post Petition Credit
LBR 4001.2	Motions Requesting Relief from the Automatic Stay
LBR 4002.1	Property in Need of Attention or Protection and Turnover of Information and Property

LBR 4003.1	Exemptions
LBR 4003.2	Avoidance of Liens on Exempt Property
LBR 4004.1	Requesting Entry of a Discharge for an Individual Chapter 11 Debtor
LBR 5003.1	Electronic Case Filing
LBR 5003.2	Sealed Documents and Public Access
LBR 5005.2	Documents for Filing or Administering
LBR 5007.1	Files, Records and Exhibits
LBR 5009.1	Closing of Cases
LBR 5010.1	Reopening Fees and Procedures
LBR 6006.1	Assumption, Rejection or Assignment of an Executory Contract or Unexpired Lease
LBR 6007.1	Motions for Abandonment
LBR 7003.1	Commencement of Adversary Proceedings
LBR 7005.1	Non-Filing of Discovery and Limitations on Discovery
LBR 7026.1	Discovery Rules not Applicable in Adversary Proceedings
LBR 7037.1	Discovery Motions
LBR 7041.1	Dismissal of Inactive Adversary Proceedings
LBR 7041.2	Dismissal of Adversary Proceedings Contesting Discharge
LBR 7054.1	Taxation of Costs
LBR 7056.1	Motions for Summary Judgment and Proceedings Thereon
LBR 7067.1	Deposits (Registry Fund)
LBR 7067.2	Withdrawal of a Deposit
LBR 8001.1	Rules Applicable to Bankruptcy Appeals
LBR 9004.1	Form of Orders
LBR 9010.1	Attorneys
LBR 9011.1	Fairness and Civility
LBR 9014.1	Witness Testimony at Hearings on Contested Matters
LBR 9015.1	Jury Trials
LBR 9024.1	Changes to Judgments or Orders
LBR 9034.1	Transmittal of Documents to United States Trustee
LBR 9037.1	Privacy Protection for Filings made with the Court
LBR Appendix I	Guidelines regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations regarding the Same
LBR Appendix II	Model Retention Agreement

ANNOUNCEMENT TO ATTORNEYS AND THE PUBLIC

LOCAL RULES OF BANKRUPTCY PRACTICE

Revised and adopted December 1, 2017

The local rules are available for public viewing at each Federal Courthouse in Idaho (Boise, Pocatello, and Coeur d'Alene).

Local rules, among other documents, are available on the court's Internet website at http://www.id.uscourts.gov/. If you do not have access to the Internet, local rules can be provided at the Federal Courthouse closest to you. You can also send your request, with a return addressed and stamped mailer, to:

Clerk, U.S. Bankruptcy Court
550 W Fort St.
Boise, ID 83724

We welcome your comments and suggestions. Please e-mail them to: **Bankruptcy Local Rules Committee** (local_rulesBK@id.uscourts.gov)

SCOPE, APPLICABILITY AND PROMULGATION OF LOCAL RULES

(a) **Scope**.

These local bankruptcy rules govern practice and procedure in the United States Bankruptcy Court for the District of Idaho. These rules shall be cited as "LBR ____." The term "judge," as used in these rules, includes a U.S. Bankruptcy Judge, a U.S. District Judge, or any other judicial officer to which a bankruptcy case or proceeding has been referred.

(b) **Applicability**.

Unless otherwise indicated, each of these local rules applies to cases commenced under chapters 7, 9, 11, 12, and 13 of the Bankruptcy Code and in all adversary proceedings. In the event of an appeal to the district court, or a withdrawal of reference under 28 U.S.C. § 157, the District Court may in its discretion direct that the District of Idaho Local Civil Rules (D.Id.L.Civ.R.) shall replace or supplement the provisions of the local bankruptcy rules in such matters.

(c) **Promulgation**.

Promulgation of local rules shall be made by the U.S. District Court in accord with Fed. R. Bankr. P. 9029, and shall be made with the advice of the U.S. Bankruptcy Court Advisory Committee on local rules unless the U.S. District Court determines cause exists for emergency promulgation.

RELATED AUTHORITY

28 U.S.C. §§ 151, 154, 157
Fed. R. Bankr. P. 9029

Advisory Committee Notes:

These local rules are subject to clarification and interpretation by the courts of this district.

These local rules were promulgated to address certain areas where the Bankruptcy Code and Federal Rules of Bankruptcy Procedure are vague or incomplete, or where experience dictated a need for further clarification or modification of practice in this district. The Local Bankruptcy Rules are based upon prior local rules, the local rules of other districts, and the efforts of the court and practitioners to improve the quality and efficiency of bankruptcy practice.

The "Advisory Committee Notes" following the rules are designated to provide explanation regarding the need for, as well as guidance regarding the anticipated operation of, the local rules. Constructions of the rules as contained in such Advisory Committee Notes, however, are not controlling, and in some instances may not reflect unanimity of belief by the members of the Advisory Committee.

Local rules, forms, guidelines, fees, and other information can be viewed at: www.id.uscourts.gov

Bankruptcy Local Rule 1001.2 Back to Top

ESTABLISHMENT OF BUSINESS HOURS

The standard business hours for the intake counters of the office of the clerk of court will be from 9:00 a.m. to 4:00 p.m. local time, every day except Saturdays, Sundays, legal holidays, and other days so ordered by the Court.

RELATED AUTHORITY

None

Advisory Committee Notes:

Clerk's office staff is available for telephone assistance between the hours of 8:00 a.m. and 5:00 p.m., and to handle any emergency matters as needed.

PETITIONS

(a) Petitions

All petitions shall be submitted in Electronic Case Filing, (hereinafter “ECF”) unless otherwise ordered by the court or exempted by ECF Procedures.

(b) Caption of petitions and identity of debtors

In regard to all cases filed under 11 U.S.C. §§ 301 and 302 of the Code, the caption of such cases shall be in the following style:

(1) If the debtor is an individual, not filing a joint petition with his/her spouse: "John A. Doe" or “Doe, John A.”

(2) If the debtor is an individual filing a joint petition with his/her spouse: "John A. Doe and Mary A. Doe" or “Doe, John A. and Doe, Mary A.”

(3) If the debtor is a general [or limited] partnership: "Name of entity, a general [limited] partnership."

(4) If the debtor is a corporation: "Name of entity, a corporation" (unless the word "Inc.," "Incorporated" or "Corporation" is a part of the name).

(5) If the debtor is a limited liability company or similar entity: “Name of entity, a Limited Liability Company,” or “L.L.C.” or similar designations.

(c) Petition filed by a corporation, partnership, or other entity

Although a corporation, general partnership, limited partnership, limited liability company or other entity may file a voluntary petition, it must be executed by an authorized corporate officer, general partner, or designated manager and must include a resolution or other evidence of entity authorization for the petition. Further, an attorney shall represent these entities, and such attorney shall also sign the petition.

(d) Voluntary petition and other documents signed by a representative on behalf of an individual debtor

If a voluntary petition for an individual debtor or other document is signed on behalf of the debtor by someone other than the debtor, the name and capacity of the person signing on behalf of the debtor must be clearly stated under the signature line. An attorney must also sign and file such a petition. In addition, a copy of documentation evidencing authority of the signer to act on behalf of the debtor must be filed at the same time as the petition. If there is no such documentation, then a statement explaining how the petition complies with Fed. R. Bankr. P. 1004.1 must be filed with the petition. A certificate of service showing service on the non-signing debtor of a copy of the filed petition and the notice of the bankruptcy case meeting of creditors and deadlines shall be filed with the court no later than 14 days after the case has commenced.

RELATED AUTHORITY

11 U.S.C. §§ 101(9), 109, 301, 302

Fed. R. Bankr. P. 1002, 1004, 1005, 1006(a), 1007, 9010 and 9011(f)

Advisory Committee Notes:

ECF is defined in this Rule and that abbreviation is used throughout the balance of the Rules.

This rule attempts to address the problems caused by petitions either improperly or confusingly captioned, as well as those caused by petitions improperly purporting to be "joint" petitions outside the limited authority of § 302 of the Code -- i.e., an individual and a corporation.

The rule in (c) addresses the problem of so-called "pro se" corporate or partnership cases. Also see LBR 9010.1(e)(3) regarding appearances for such entities.

The rule in (d) does not confer authority on others to file petitions or other documents, such as schedules, reaffirmation agreements, etc., on behalf of a debtor. See L.B.R. 9010.1(b) &(e). It is designed to make it clear when documents are signed by a representative such as a general guardian, committee, conservator, or similar fiduciary on behalf of a debtor so that parties in interest may determine whether it was appropriate. This rule is also designed to protect debtors. Attorneys filing such petition should review applicable law and rules of professional conduct.

FILING FEES

(a) For pleadings and documents filed in ECF which require a filing fee, the filing party must use a credit card and submit payment in accord with ECF Procedures.

(b) For pleadings and documents submitted other than through ECF, payment shall be made in the form of cash, cashier's check, money order, or an attorney's check. Two party checks or personal checks of the debtor(s) will not be accepted.

(c) An application requesting waiver of the filing fee, or an application for permission to pay filing fees in installments, shall be submitted on the Official Form prescribed for that purpose.

RELATED AUTHORITY

11 U.S.C. §§ 301, 302
28 U.S.C. § 1930
Fed. R. Bankr. P. 1006

Advisory Committee Notes:

This rule addresses an obvious problem encountered by the clerk when debtors present petitions for filing. A fee schedule may be obtained at the court's website www.id.uscourts.gov or from the clerk's office. Official Forms (Form 103A for installments, and Form 103B for *in forma pauperis* or IFP applications) can be obtained at the court's website or can be obtained from the clerk's office.

MASTER MAILING LIST (MML)

(a) **Filing of Master Mailing List (MML)**

At the time of filing a petition initiating a proceeding under the Bankruptcy Code, a Master Mailing List (MML) shall accompany the petition, which list shall include the name, address, and zip code of every scheduled creditor and other parties in interest. The MML shall not include the names or addresses of the debtor, joint debtor, or counsel for the debtor(s). Also, the MML shall not include the account numbers between the creditor(s) and debtor(s).

(b) **Form of Master Mailing List**

The MML shall be prepared in the form as required by the clerk of the court.

(c) **Accuracy of Master Mailing List**

The clerk and/or the Bankruptcy Noticing Center (BNC) need not check to ensure that the MML accurately reflects the names and addresses of creditors, equity security holders, and/or parties in interest listed on the debtor's schedules. For purposes of notice by the clerk; the BNC or by any party in interest, an error or omission on the MML shall be deemed an error or omission on the debtor's schedules, unless such creditor or party in interest should have been added as a result of a filed proof of claim or a written request to the court. The clerk's office or the BNC will forward returned mail to the debtor's attorney (or the debtor if pro se). It will be the responsibility of the attorney (or debtor if pro se) to provide the court with a current address of those creditors whose mail was undeliverable. It will also be the responsibility of the debtor's attorney (or debtor if pro se), to send a § 341(a) notice to those creditors whose mail was not delivered and to provide proof to the court that notice was sent.

(d) **Amendments to Master Mailing List**

Any additions to the MML subsequent to its initial filing shall include only those names added in the MML format required by the clerk and shall be accompanied by the amendment fee. Any deletions from the MML are to be done through an appropriate ECF event, or if by a pro se debtor, they must be set forth in a letter to the clerk of court. A party may not delete names from the MML by submitting a new MML with the names deleted.

(e) **Creditor's case specific preferred address per 11 U.S.C. § 342(e)**

A creditor who wishes a specific address to be used solely in a particular case under 11 U.S.C. § 342(e) must either electronically file notice of such request using the appropriate event, or clearly mark on a paper document that it is a **"Notice for Use of Specified Address in this Case Only"**. The filed notice must contain the debtor's name; case number; the party's name and address on file with the court; and the party's complete new service address for that particular case. A failure to use the proper electronic filing event, specifically note on a paper document the information required above, or provide all the other information required above will not result in the override of any nationally preferred address submitted pursuant to 11 U.S.C. § 342(f) and pursuant to the other subsections of this particular LBR.

(f) **Preferred address per 11 U.S.C. § 342(f)**

Notice of a preferred address pursuant to 11 U.S.C. § 342(f) must be filed directly with the National Creditor Registration Service (NCRS) established by the court's notice provider and the Administrative Office of the U.S. Courts for this purpose. Such filing will constitute the filing of that notice with the court.

RELATED AUTHORITY

11 U.S.C. § 521
Fed. R. Bankr. P. 1007, 2002(g)

Advisory Committee Notes:

This rule has been modified consistent with internal changes in the clerk's office. The clerk has detailed information on how to prepare an MML so that the MML can be read by the court's equipment. This information will be provided by the clerk upon request, or can be viewed at www.id.uscourts.gov. *See* LBR 1009.1 and Miscellaneous Fee Schedule regarding assessment of an amendment fee when creditors are added to schedules or lists.

The NCRS website for registration of preferred address under 11 U.S.C. § 342(f) and the filing of notices is https://ncrs.uscourts.gov/, and its toll-free support line number is 877 837-3424.

EXTENSION OF TIME

Except as provided in 11 U.S.C. § 1116(3), an extension of time under Fed. R. Bankr. P. 1007(c) for filing schedules, statement of affairs, or other required documents will not be granted beyond the date set for the meeting of creditors under § 341(a) unless a judge orders otherwise for cause shown. Any motion for extension of time filed under this rule shall (a) state the date of extension requested and (b) identify the date currently set for the § 341(a) meeting or, alternatively, affirmatively allege that no such date has yet been set. An extension beyond the date set for the § 341(a) meeting will not be granted unless the debtor has also been granted a continuance of the § 341(a) meeting, pursuant to LBR 2003.1, and the confirmation hearing if applicable, and provided appropriate notice thereof.

RELATED AUTHORITY

11 U.S.C. § 521
Fed. R. Bankr. P. 1007

Advisory Committee Notes:

It is the responsibility of the U.S. Trustee to make a request for dismissal when the filing requirements are not met. *See* 11 U.S.C. § 707(a)(3), § 1112(e), § 1208 and § 1307(c)(9) and (10).

TAX RETURNS

(a) **Restrictions regarding debtor's tax information.**

Tax information filed with the court and that which is provided to creditors and trustees is subject to the Administrative Office's guidance regarding tax information as from time to time promulgated. Any person receiving copies of the debtor's tax information shall treat the information as confidential and shall not disseminate it except as appropriate under the circumstances of the case.

(b) **Filing tax returns.**

Except where the court orders otherwise for good cause shown, a debtor must file all required tax returns with the proper taxing authority and provide the trustee a copy of any tax return for the tax years subject to the *Income Tax Turnover Order,* in accordance with 11 U.S.C. § 521, § 1116, § 1308, and § 1325. Failure to do so may be grounds for dismissal.

RELATED AUTHORITY

11 U.S.C. § 521, § 1116, § 1308, § 1325
Fed. R. Bankr. P. 4002

Advisory Committee Notes:

Current tax returns submitted by debtor: Pursuant to the time periods and terms of Fed. R. Bankr. P. 4002(b)(3), (b)(4), and (b)(5); 11 U.S.C. § 521(e); and § 1116(1)(A), as applicable, the debtor shall provide to the trustee, and upon request, to a creditor, a copy of the federal income tax return for the most recent tax year ending immediately before the commencement of the case. While the Bankruptcy Code addresses federal returns, it is also important to provide the state tax returns to the trustee prior to the Creditors Meeting. Failure to do so may be grounds for dismissal.

As the Administrative Office's Guidance may change, please refer to the court's website at www.id.uscourts.gov for the most recent version. (Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521)

PAYMENT ADVICES AND STATEMENT OF SOCIAL SECURITY NUMBER

(a) **Filing of payment advices and Statement of Social Security Number**

Except where the court orders otherwise for good cause shown, debtors shall file payment advices as required by 11 U.S.C. § 521(a)(1)(B)(iv) with the court, and shall simultaneously serve a complete and unredacted copy thereof on the trustee appointed in that debtor's case. The payment advices and Statement of Social Security Number filed with the court shall be maintained as sealed documents absent order of the court to the contrary for cause shown. The trustee and the United States Trustee shall be granted access to said documents without an order of the court.

(b) **Statement that no payment advices available**

Where debtors did not receive payment advices within the time period set forth in 11 U.S.C. § 521(a)(1)(B)(iv), they shall file a statement to that effect. The statement shall also provide the reason why no payment advices were received. Debtors shall simultaneously serve a complete and unredacted copy of that statement on the trustee appointed in that debtor's case.

RELATED AUTHORITY

11 U.S.C. §107(c), 521(a)(1)(B)(iv)
Fed. R. Bankr. P. 1007(b)(1)(E), 9037(f)

Advisory Committee Notes:

Payment advices are filed with the court pursuant to the Code but maintained as sealed documents, limiting parties' access to this information. It is critical that the United States Trustee and trustees promptly receive this information from debtors in order to perform their jobs.

STATEMENT OF DOMESTIC SUPPORT OBLIGATIONS

In Chapter 7, 11, 12 and 13 cases and within the time provided by Fed. R. Bankr. P. 1007(c), the individual debtor and any joint debtor shall file with the court a separate "Statement of Domestic Support Obligation". All current and past due Domestic Support Obligations as defined by 11 U.S.C. § 101(14A) shall be reported on said statement. If a domestic support obligation is owed, the statement shall include: (1) the name, address and phone number of the employer of the debtor and joint debtor; (2) the name, address and phone number of the holder of such claim of support; (3) the amount of the support obligation; (4) the term of the support obligation; (5) the amount that the debtor is in arrears as of the filing of the bankruptcy petition, if any; (6) the identity of the court action where an order, judgment or decree establishing said Domestic Support Obligation was entered; and (7) the name, address and phone number of any State child support enforcement agency involved with such claim.

RELATED AUTHORITY

11 U.S.C. §§ 101(14A), 521(a)(3), 704(a)(10) & (c), 1106(a)(1), (a)(8) & (c), 1202(b)(6) & (c), and 1302(b)(6) & (d)

Fed. R. Bankr. P. 1007

Advisory Committee Notes:

The Advisory Committee has promulgated a standard form statement for the debtor and a separate form for the joint debtor that can be found on the court website at: www.id.uscourts.gov.

AMENDMENTS OF PETITIONS, LISTS, SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS

(a) Any amendment of the petition, list, schedule or statement of financial affairs shall bear, on its face, the debtor's name and case number, and the notation "amendment." The amendment shall identify the schedule or document being amended and include an explanation of the change(s) or addition(s) in the amendment and shall be limited to the changed or additional information being offered and shall not include unaffected portions of the schedule or document being amended.

(b) Where the amendment adds additional creditors, the debtor shall:

(1) Send to the creditor(s) so added a copy of the filed "Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Deadlines" and a copy of any "Notice of Need to File Proof of Claim due to Recovery of Assets" and plan if applicable;

(2) File a certificate of service with the clerk;

(3) Complete the appropriate ECF event, or if a pro se debtor, submit a written request to the clerk to add the creditor(s) to the Master Mailing List, and

(4) Submit the applicable filing fee.

The clerk need not verify or confirm that the additional creditor(s) receive notice.

RELATED AUTHORITY

Fed. R. Bankr. P. 1007, 1008, 1009, 2002(g)
Official Forms 309A-309I; Procedural Form 2040

Advisory Committee Notes:

This rule continues current practice in those situations where the debtor or debtor's counsel causes notice of the amendment to be served.

Note that Fed. R. Bankr. P. 1008 requires all amendments to petitions, schedules and statements to be verified or contain an unsworn declaration of the debtor(s). In addition, this Court's ECF Procedures require a scanned pdf version of the original signature pages of such amendments to be electronically submitted to the Clerk at the time of filing.

CONVERSION OR DISMISSAL OF CASE

(a) **Conversion of chapter 7 to chapter 13.**

(1) Motion. A motion under 11 U.S.C. § 706(a) to convert from chapter 7 to chapter 13 shall comply with this rule.

(2) Service. A debtor shall serve the motion to convert on the Chapter 7 Trustee, the United States Trustee and any creditor who has appeared in the case.

(3) Objection. An objection to the motion to convert must be filed within seven (7) days of service of the motion.

(A) Hearing. If an objection is filed, the debtor must schedule a hearing on the motion to convert and the objection, giving a minimum of seven (7) and a maximum of fourteen (14) days notice to the objecting party, the Chapter 7 Trustee and the United States Trustee.

(4) No Objection. If no objection to debtor's motion is filed within seven (7) days, the Court will enter a notice of conversion.

(b) **Dismissal of chapter 13.**

(1) Motion. A motion under 11 U.S.C. § 1307(b) to dismiss a chapter 13 case which has not been converted to chapter 13 pursuant to 11 U.S.C. §§ 706, 1112, or 1208 shall state whether there are any pending motions to convert or dismiss with prejudice the chapter 13 case.

(2) Service. A debtor shall serve the motion to dismiss on the Chapter 13 Trustee, the United States Trustee and any creditor who has appeared in the case.

(3) Objection. An objection to the motion to dismiss must be filed within seven (7) days of service of the motion.

(A) Hearing. If an objection is filed, the debtor must schedule a hearing on the motion to dismiss and the objection, giving a minimum of seven (7) and a maximum of fourteen (14) days notice to the objecting party, the Chapter 13 Trustee and the United States Trustee.

(4) No Objection. If no objection to debtor's motion is filed within seven (7) days, the Court will enter an order dismissing the case.

RELATED AUTHORITY

11 U.S.C. §§ 706, 1307
Fed. R. Bankr. P. 1017, 9013
LBR 9010.1
General Order 234, 235

Advisory Committee Notes:

Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365 (2007) and *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008), necessitated a rule to establish procedures on motions to convert a chapter 7 case to chapter 13 and to dismiss a chapter 13 case that, prior to such precedent, were "automatically" granted.

CONVERSIONS

(a) **Schedules of unpaid debts.**

Within fourteen (14) days following the entry of the order of conversion, a schedule of unpaid debts incurred after commencement of the superseded chapter 11, 12 or 13 case shall be filed. A Master Mailing List setting forth the name and address of each such creditor shall be filed with the court by the following parties, and served on the U.S. Trustee and successor trustee, if applicable.

(1) The debtor in possession, or trustee if one served, in a chapter 11 case;

(2) A chapter 13 debtor, or

(3) A chapter 12 debtor in possession or the chapter 12 trustee if the debtor is not in possession.

(b) **List of 20 largest unsecured creditors.**

If converting to a chapter 11 proceeding, a separate list of the 20 largest unsecured creditors shall be filed with the court and served on the U.S. Trustee.

(c) **Filing of plan.**

If converting to a chapter 13, a plan is to be filed with the notice or motion to convert or within fourteen (14) days thereafter.

(d) **Final report and account.**

Upon conversion, the final report and account required to be filed by the debtor or trustee shall include the following:

(1) A schedule of property acquired by the debtor after the commencement of a chapter 11 case.

(2) A balance sheet as of the date of conversion and a profit and loss statement for the period of the pendency of a case under chapter 11, unless such balance sheet and profit and loss statements for the period of the pendency of a case under chapter 11 have been previously filed in accordance with court order.

(3) A statement of the money or property paid or transferred, directly or indirectly, during the pendency of a chapter 11 case, to the debtor, if the debtor is an individual; or to each partner, if the debtor is a partnership; or to each officer, stockholder, and director, if the debtor is a corporation.

(4) A listing of all matters pending in the case and any adversary proceedings or other litigation pending in which the debtor, debtor-in-possession or trustee is a party.

(5) Except to the extent otherwise clearly disclosed by the foregoing, amended schedules reflecting the status of assets and liabilities as of the date of conversion.

(e) **Bank account.**

The debtor, or trustee if one served in the original chapter 11 case, shall furnish to the successor trustee originals or photocopies of all canceled checks and bank statements pertaining to the bank account(s) maintained in the chapter 11 case.

(f) **Deadline for requests for allowance of administrative expenses.**

All applications for allowance of administrative expenses in the original chapter 11, chapter 12 and chapter 13 case, other than those of a governmental unit, shall be filed within ninety (90) days of entry of the order of conversion, or at another time as may be established by order.

RELATED AUTHORITY

11 U.S.C. § 1112
Fed. R. Bankr. P. 1019

Advisory Committee Notes:

Fed. R. Bankr. P. 1019 provides for the filing of lists, inventories, schedules, statements, and other reports upon conversion of any chapter 11, 12 or 13 case to a chapter 7 and establishes numerous requirements in addition to those under this rule. Additionally, if the schedule of unpaid debt is not filed within the required fourteen (14) days, the clerk will assess an amendment fee.

A suggested form of final report and account in converted chapter 11 cases is available at the clerk's office. The form can

also be viewed at www.id.uscourts.gov.

SALE OF PROPERTY OF THE ESTATE

A sale of property of the estate, other than in the ordinary course of business, pursuant to 11 U.S.C. § 363(b), including a sale free and clear of any interest of any entity other than the estate, must comply with Fed. R. Bankr. P. 6004 and is subject to LBR 2002.2.

(a) **Notice of sale or motion for sale**.

(1) The notice of sale or motion for sale shall include, without limitation, the following information:

(A) A description of the property to be sold;

(B) The date, time and place of sale;

(C) The material terms of sale including, but not limited to, the name of any individual or entity with a pending offer to purchase the property being sold; the potential buyer's connections, if any, to the debtor(s); the opening bid price, if known; and the bidding procedures and overbid qualifications to be used at the sale, if any;

(D) Whether the property is to be sold free and clear of any interest, liens or encumbrances, and, if so, an explanation of how the sale is authorized under 11 U.S.C. § 363(f);

(E) The estimated fair market value of the property and a brief statement of the basis for the estimate;

(F) If known, the amounts of each lien or encumbrance claimed against the property and the identity of each lienholder;

(G) The proposed disposition of the proceeds of sale shall include any proposed compensation to brokers, auctioneers, or other professionals to be paid from the proceeds of sale;

(H) If applicable, an explanation of how the sale meets the requirements of a "good faith sale" under 11 U.S.C. § 363(m); and

(I) The date by which objections to the sale must be filed, pursuant to Fed. R. Bankr. P. 6004(b), and the name and address of any entity to be served with the objection.

(2) All interests in the property sold free and clear shall attach to the proceeds of the sale, except as otherwise provided in the notice.

(b) **Order**.

A party moving for an order approving or confirming an unopposed sale shall support the motion with an affidavit showing the necessity for the order.

Related Authority:

11 U.S.C. § 363(f)
Fed. R. Bankr. P. 2002(a),
2002(c)(1), 6004, 7001

Advisory Committee Notes:

Certain controls on the sale of property of the estate, including a requirement of specificity in the notice or motion, were deemed advisable by the committee especially in regard to sales free and clear of claims, liens and interests.

The notice or motion, under subdivision (a)(1)(G), should note that any such compensation is subject to review of the court.

An action to determine the validity, priority, or extent of any interest of an entity other than the bankruptcy estate in property must be brought separately as an adversary proceeding. *See* Fed. R. Bankr. P. 7001(2).

NOTICE AND HEARING

(a) **Applicability.**

All contested matters under Fed. R. Bankr. P. 9014, all motions under Fed. R. Bankr. P. 9013, and all other matters requiring or with provision for a hearing under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, shall be subject to the following requirements and conditions, in addition to other and further requirements as may be imposed by rule or applicable law.

(b) **Notice.**

(1) By whom given. Except for notices specified in Fed. R. Bankr. P. 2002(a)(1), (a)(7), (a)(9),(b)(3), (e) and (f), all notices shall be given by the party requesting an order or other relief.

(2) To whom given.

(A) "Notice," as used in this rule shall mean notice by mail or electronic means to all creditors, equity security holders, trustees and indenture trustees, the debtor, the chairman of any committee appointed in the case, U.S. Trustee and any other parties in interest. A different method or less inclusive notice may be given only if allowed by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, or if authorized by a judge.

(B) The addresses of notices shall be in accordance with Fed. R. Bankr. P. 2002(g) and 11 U.S.C. § 342.

(i) A Master Mailing List of names and addresses, as filed with the court, and updated in accordance with Rule 2002(g), and 11 U.S.C. § 342 may be downloaded from PACER which can be accessed from the court's website at www.id.uscourts.gov.

(ii) Required notice to all creditors is presumed to be appropriate if sent to all entries on the Master Mailing List, which has been provided by the clerk.

(iii) Notices sent by the clerk, BNC, or some other person or entity as the court may direct, pursuant to 11 U.S.C. §§ 341(a), 342(a) and (b), and Fed. R. Bankr. P. 2002, that are determined undeliverable will be forwarded to the debtor's attorney (or debtor if *pro se*). Any notice, other than a § 341(a) meeting of creditors, or a copy of the final order of discharge, which is returned to the court, shall be destroyed after processing.

(3) Proof of Service. After giving notice, the moving party shall file within five (5) days of the notice, a certificate of mailing with a list of the persons and their addresses to whom the notice was sent. If notice to all creditors is required, the certificate of service must certify mailing (or other services) on all parties included on the Master Mailing List described in subdivision (b)(2)(B) of this rule.

(c) **Objection.**

If the notice provides for the filing of an objection, a party objecting to an act or the entry of an order shall file with the clerk and serve on the moving party, a written objection within the time set forth in the notice. The objection shall state, with specificity, the grounds therefor.

(d) **When hearing is not required.**

A request for an order under Fed. R. Bankr. P. 9013, where only notice and an opportunity for a hearing are required, may proceed with the service of a motion/application complying with this Local Bankruptcy Rule.

(1) Form of Disclosure. The following language must be placed immediately below the caption of the motion/application:

> Notice of Motion for [name of motion or application] and Opportunity to Object and for a Hearing
>
> No Objection. The Court may consider this request for an order without further notice or hearing unless a party in interest files an objection within [___] days of the date of service of this notice.
>
> If an objection is not filed within the time permitted, the Court may consider that there is no opposition to the granting of the requested relief and may grant the relief without further notice or hearing.

Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.

Hearing on Objection. The objecting party shall also contact the Court's calendar clerk to schedule a hearing on the objection and file a separate notice of hearing.

(2) Time of Negative Noticing. The minimum number of days under this Local Rule will be 14 days unless another notice period is applicable under the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules.

(3) Statement of No Objection. To obtain the requested order if no objection is filed within the applicable notice period, the movant shall file*a Statement of No Objection* and a proposed Order. The statement shall contain the Bankruptcy Court docket number for the initial motion/application sent under subsection (d) of this Rule, any related certificate of service, and a certification that no objection has been received to the requested relief.

(4) Hearing on Objection. If the objecting party does not schedule a hearing as provided in the notice, the moving party may set the matter for a hearing.

(e) **Hearing.**

(1) By moving party. Counsel for the party who desires or is required to set a matter for hearing shall be responsible for contacting the calendar clerk and obtaining a date for such hearing. Unless the moving party obtains a hearing date and properly files and serves the notice the matter will not be heard. Counsel obtaining a hearing date shall be responsible for providing notice to all parties as provided by this rule.

Provided that no other rule to the contrary is applicable, the following language must be placed immediately below the caption of all notices of hearing wherein the hearing has been set at least twenty-eight (28) days from the date the applicable motion was filed:

Notice of Motion for [name of motion or application] and Opportunity to Object

No Objection. The Court may consider granting an order without further notice, at the hearing, unless a party in interest files and serves an objection at least fourteen (14) days prior to the date of the hearing, set forth in this notice. If an objection is not timely filed and served, the Court may consider the objection waived and the motion may be granted at the hearing.

Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.

(2) By objecting party. If a party objects to an act or the entry of an order and the matter is not previously set for hearing, counsel for the objecting party shall be responsible for contacting the calendar clerk and obtaining a hearing date, as provided in subdivision (e)(1) of this rule and notifying the moving party and all other parties as required by this rule.

(3) Any party requesting a hearing date from the calendar clerk (or in open court) shall file the notice of hearing and related pleadings at least seven (7) days prior to the scheduled hearing date. Failure to do so may result in the hearing being removed from the calendar.

(f) **Vacation or continuance of hearing.**

(1) On a judge's own motion;

(2) Upon submission, prior to hearing, of an agreed order resolving the matter endorsed by the parties or their counsel of record;

(3) Upon agreement of the parties, set forth in writing and filed no later than the day before the scheduled hearing, and for good cause shown, or, if settled later than the day before the hearing, upon an agreement read into the record at the time of the hearing by counsel for one of the parties; or

(4) On the request of a party after notice to all opposing parties filed and served at least three (3) days prior to the scheduled hearing, accompanied by an affidavit stating the grounds for such request, unless a judge for cause shown waives the requirements of this rule.

RELATED AUTHORITY

11 U.S.C. § 102(1), 704, 1112, 1324, 1514
Fed. R. Bankr. P. 2002, 5008, 9006, 9007, 9008, 9013, 9014, 9036
LBR 9004.1

Advisory Committee Notes:

Note that subdivision (b)(1) requires a party to serve notice in certain circumstances where previously the clerk provided notice.

Subdivision (e) reflects current practice and emphasizes the necessity of setting matters through the calendar clerk. Subdivision (e)(3) requires the filing of supporting pleadings. Upon request of a party, a hearing may be heard by video conference. Parties must request and obtain approval for a video conference hearing by contacting the Judge's courtroom deputy.

Subdivision (f) is designed to cure problems presently encountered by the court where counsel vacates a hearing without advising the court and/or opposing counsel.

2008 Advisory Committee Notes: It is the intent of the Committee that the text box containing the required notice under 2002.2(d)(1) be placed **in** the motion/application immediately below the caption and immediately before the substantive allegations of that motion/application.

The time permitted for filing an objection under the negative notice procedure is the time period required for notice by the applicable rules or local rules relating to the motion or application. If no specific time is otherwise provided in the rules or local rules, a minimum of 14 days notice must be given.

The procedures for the following motions/applications are specifically governed by other local rules and 2002.2(d) does not apply:

- Relief from the Automatic Stay. [LBR 4001.2]
- Confirmation of Chapter 13 Plans. [LBR 2002.3]
- Objection to Claims. [LBR 3007.1]

The following matters are addressed by other local rules as to substantive requirements, who is to receive service, and/or the time in which to respond or object. However, if the movant/applicant wants an order without a hearing, these motions/applications are also subject to LBR 2002.2(d)'s requirement of disclosure and statement of no objection.

- Examinations [2004.1]
- Employment of Professionals. [LBR 2014.1]
- Objections to Exemptions. [LBR 4003.1]
- Motions to Avoid Liens. [LBR 4003.2]
- Sale of Property of the Estate. [LBR 2002.1]

FILING AND SERVICE OF PLANS

(a) **Chapter 13 cases.**

(1) The BNC, or some other person or entity as the court may direct, will send plans filed with the petition in chapter 13 cases with the § 341(a) notice to creditors. In such cases, and provided all other schedules and statements are also filed with the petition, the notice of the § 341(a) meeting of creditors issued by the BNC shall advise creditors of the confirmation hearing date.

(2) In all cases where the plan is not filed with the petition, the debtor shall be responsible for sending copies of the chapter 13 plan and notice of hearing on confirmation to all creditors and parties in interest. Such notice must comply with Fed. R. Bankr. P. 2002 and 3015, and must be served at least 28 days prior to the initial confirmation hearing. The debtor shall immediately after serving the creditors with the plan, file proof of service with the clerk of the court.

(b) **Other cases.**

In all chapter 11 and 12 cases, the debtor or plan proponent shall give notice of the hearing on confirmation of the plan. The debtor or plan proponent shall send copies of the plan, with such notice, to all creditors and parties in interest prior to the hearing date set for confirmation of the plan. In chapter 11 cases, except if governed by 11 U.S.C. § 1125(f) and Fed. R. Bankr. P. 3017.1, the debtor or plan proponent shall also send copies of the order approving disclosure statement and notice of the confirmation hearing, together with a copy of the disclosure statement, plan, ballot, and any amendments or addenda to the original plan or disclosure statement.

RELATED AUTHORITY

11 U.S.C. §§ 1125(f), 1128, 1224, 1324
Fed. R. Bankr. P. 2002(a), 2002(b), 3015, 3017
LBR 2002.5, 3018.1, 3020.1

Advisory Committee Notes:

Unless the court provides otherwise, to comply with 11 U.S.C. § 1324(b) (providing, in part, chapter 13 confirmation hearings may not be held sooner than 20 days and no later than 45 days from the § 341(a) meeting) and with Fed. R. Bankr. P. 2002(b) (requiring 28 days notice of confirmation hearing), a debtor scheduling a confirmation hearing date under subdivision (a)(2) must ensure that an appropriate date is obtained and notice of hearing is issued.

In addition to the requirements of this rule, plan proponents in chapter 11 cases are required by LBR 3018.1 to file ballots and a written summary of the ballots and by LBR 3020.1 to file a preconfirmation report.

FILING AND CONFIRMATION OF CHAPTER 12 PLAN

(a) **Objections**.

Objections to confirmation of a chapter 12 plan shall be in writing and filed with the clerk and served on the debtor, the trustee, and on any other party in interest, not less than seven (7) days prior to any scheduled confirmation hearing. An objection to confirmation must set forth with specificity the grounds for objection and is governed by Fed. R. Bankr. P. 9014.

(b) **Notice**.

The debtor or plan proponent shall provide notice according to LBR 2002.3(b). Unless a judge fixes a shorter period, notice of such hearing shall be given not less than twenty-eight (28) days before the hearing. A copy of the plan shall accompany the notice.

(c) **Retained power**.

Notwithstanding the entry of the order of confirmation, a judge may enter all orders necessary to administer the estate.

RELATED AUTHORITY

11 U.S.C. §§ 1221, 1224, 1225
Fed. R. Bankr. P. 2002, 3015

Advisory Committee Notes:

11 U.S.C. § 1221 and Fed. R. Bankr. P. 3015(a) provide that a chapter 12 debtor may file a plan with the petition. If a plan is not filed with the petition, it must be filed within ninety (90) days thereafter unless the court extends the time for filing the plan. After notice, as provided in this rule, a judge shall conduct and conclude a hearing within the time prescribed by 11 U.S.C. § 1224 and rule on confirmation of the plan. If no objection is timely filed, Fed. R. Bankr. P. 3015(f) allows the judge to determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues.

FILING AND CONFIRMATION OF CHAPTER 13 PLAN

(a) **Amendment of plans**

The proposed plan may be amended anytime prior to confirmation to resolve an objection. Such amendment must be included in an amended plan or in the order for confirmation. Where a timely objection has been made, the plan will not be confirmed until the objecting party has withdrawn such objection or a hearing is held or the parties reach an agreement as stipulated to in the order of confirmation. Where the amendment does not affect any other party in interest, a judge may confirm the plan as amended without notice or a hearing. Where the amendment would affect another party in interest, the plan as amended must be mailed to each affected party at least twenty-eight (28) days prior to the date set for hearing on confirmation of the plan with a notice providing twenty-one (21) days to object to the amendment. If no objection is filed and served at least seven (7) days before the date set for hearing, a judge may confirm the plan as amended without a hearing.

(b) **Standard chapter 13 plan and order**.

The debtor shall use the standard approved chapter 13 plan and order for this district with such alterations as may be appropriate in a particular case. If the debtor is represented by an attorney, the plan or any amended plan shall be signed by the attorney at the time it is filed and shall be signed by the debtor prior to the confirmation hearing. If the debtor is not represented by an attorney, the plan shall be signed by the debtor at the time it is filed. If either the plan or any amended plan is further amended and the amendments are contained in the order confirming the plan, the proposed order confirming the plan shall be signed by the debtor, the debtor's attorney, the trustee, and any other party in interest affected by the amendments.

RELATED AUTHORITY

11 U.S.C. §§ 1302, 1322, 1323, 1324, 1325
Fed. R. Bankr. P. 2002, 3015.1
Model Chapter 13 Plan

Advisory Committee Notes:

The debtor must file the plan within fourteen (14) days of the petition. *See* Fed. R. Bankr. P. 3015(b). The debtor shall also provide copies of the plan and notice of confirmation hearing to all creditors and parties in interest, in compliance with Fed. R. Bankr. P. 2002 and 3015, and these local rules.

Bankruptcy Local Rule 2002.6

Back to Top

PAYMENT OF CHAPTER 7 ADMINISTRATIVE EXPENSES

Pursuant to 11 U.S.C. § 503, and consistent with Fed. R. Bankr. P. 2002(a)(6), a chapter 7 trustee may move the court for an order authorizing the trustee to pay an administrative expense not exceeding $1,000 to any one entity or person by serving the motion on the debtor, debtor's counsel, the U.S. Trustee and any other party requesting notice in the bankruptcy case. The trustee shall account for the payment of such fees and expenditures in the trustee's Final Report. Where the motion was not served on all creditors and parties in interest, creditors and parties in interest may file an objection to allowance of the administrative expense on or before the deadline to object to the trustee's Final Report.

Related Authority:
11 U.S.C. §§ 102(1) and 503
Fed. R. Bankr. P. 2002
LBR 2002.2

Advisory Committee Notes:

In the interest of minimizing delay and additional administrative expenses to the bankruptcy estate, LBR 2002.6 was added to address the extent of the "notice and a hearing" requirement set forth in 11 U.S.C. § 503(b) when the trustee seeks payment of modest administrative expenses from estate funds.

SECTION 341(a) MEETING OF CREDITORS

(a) **Debtor's Request to Continue the 11 U.S.C. § 341(a) Meeting.**

(1) A request to continue a § 341(a) meeting shall be submitted in writing to the corresponding Chapter 7, 12, or 13 trustee or, in Chapter 11 cases, to the U.S. Trustee, as soon as possible and, absent unforeseeable circumstances, not later than 14 days before the scheduled meeting. A written request to continue a § 341(a) meeting shall identify the circumstances rendering the debtor or the debtor's counsel unable to appear. The request is not filed with the Court.

(2) When a written request could not have been made before the § 341(a) meeting, the debtor or debtor's counsel may request, at the time of the § 341(a) meeting, that the presiding officer grant a continuance.

(3) In the event a debtor fails to appear at the § 341(a) meeting and a request for a continuance could not have been made at or before the meeting, the debtor or debtor's attorney may submit to the U.S. Trustee a written request that the debtor be permitted to appear at a continued §341(a) meeting. The request must demonstrate that unavoidable circumstances caused the failure to appear. The request must be submitted to the U.S. Trustee not later than 7 days after the scheduled meeting.

(b) **Notice and service**.

If a debtor's request to continue the § 341(a) meeting is granted, the debtor or debtor's attorney must serve notice of the continuance on all creditors as soon as possible and not later than 7 days before the originally scheduled § 341(a) meeting or, if the continuance was granted at, or after the § 341(a) meeting, as soon as possible and not later than 7 days before the date of the continued § 341(a) meeting. The notice must include the date, time, and location of the continued § 341(a) meeting, and, if the case is a chapter 13, the notice must also include the date, time and location of the confirmation hearing. Proof of service of the notice of continuance must be filed with the clerk and must list each party served and their mailing address.

(c) **Waiver of meeting**.

A request pursuant to § 341(e) that the § 341(a) meeting of creditors and/or equity security holders not be convened, shall be made to the court at the time of filing the petition for relief. If not timely filed, the right to seek such relief shall be deemed waived.

(d) **Dismissal**.

If the debtor fails to appear at the §341(a) meeting the U.S. Trustee or other party in interest may move for an order of dismissal. The motion may be filed pursuant to the negative notice procedures provided in these Local Bankruptcy Rules.

(e) **Notice to other courts**.

The debtor's attorney (or the debtor if *pro se*) shall provide a notice of the commencement of the bankruptcy case to all courts in which the debtor is known to be a party. Such notice shall reasonably identify to such court(s) the case or action affected by the debtor's bankruptcy.

RELATED AUTHORITY

11 U.S.C. §§ 341, 343
Fed. R. Bankr. P. 2003, 2004, 4002

Advisory Committee Notes:

This reflects the responsibilities of the U.S. Trustee in conducting § 341(a) meetings. The U.S. Trustee's policies regarding § 341(a) meetings, such as continuing meetings or arranging meetings for active duty military service members, can be found at http://www.justice.gov/ust/r18/boise/ These policies apply to cases under Chapters 7, 11, 12 and 13.

Under subdivision (d) of the rule, the U.S. Trustee may request that the case be dismissed. However, the U.S. Trustee or case trustee may elect to have the case remain open, for example, to administer assets or oppose entry of the debtor's discharge based on the failure to appear. *See* 11 U.S.C. §§ 704, 727. Note also that dismissal on this ground may fall within the scope of the prohibition of § 109 (g)(1) on filing a subsequent petition for relief.

For purposes of planning and avoiding potential conflicts, note that the court's calendar for § 341(a) meeting dates is set one year in advance. Copies of this calendar are available, without charge, from the office of U.S. Trustee or at

www.id.uscourts.gov.

EXAMINATIONS

(a) **Motions**.

A motion by a party in interest under Fed. R. Bankr. P. 2004(a) for an order requiring the examination of an entity is subject to LBR 2002.2(d).

(1) Document production. If the party seeking an order for examination seeks also to require the production of documents at such examination under Fed. R. Bankr. P. 2004(c), the proposed production shall be specified in the motion.

(2) Time and place of examination. The motion shall specify the date, time and place of the proposed examination, unless the party seeking the order expressly indicates in the motion that the same will be established after consultation and in coordination with the entity to be examined.

(b) **Orders**.

(1) Upon expiration of time for objection. In the absence of response or objection within fourteen (14) days, an order may be submitted for entry.

(2) Upon shortened time. For specific cause shown in the motion or in a supporting affidavit, a party in interest may seek entry of an order setting an examination prior to the expiration of fourteen (14) days.

(3) Upon agreement. An order for an examination of an entity under Fed. R. Bankr. P. 2004 may be entered immediately and without compliance with the requirements of LBR 2002.2(d) if such order is endorsed by the entity to be examined or by the attorney for such entity.

(c) **Disputes.**

Disputes or disagreements over compliance with the order for examination, the production of documents at the examination, or the conduct of the examination, are subject to LBR 7037.1.

RELATED AUTHORITY

11 U.S.C. §§ 341, 343
Fed. R. Bankr. P. 2004, 2005, 9016
LBR 2002.2(d)

Advisory Committee Notes:

This rule requires notice to an entity (including a debtor, *see* Fed. R. Bankr. P. 2004(d)), of the details of a proposed examination, and allows an opportunity for objection before an order is entered by the court. Provision is made for requests on shortened notice basis, for cause shown. If parties discuss and consult in advance, and submit an agreed and endorsed order, the court may enter the order immediately. Additionally, once an order is entered, disputes over the compliance with that order or the conduct of the examination are subject to the conference and certification requirements of LBR 7037.1.

APPROVAL OF EMPLOYMENT OF PROFESSIONAL PERSONS

(a) **Applications for approval of employment of professional persons.**

In addition to including the information required by Fed. R. Bankr. P. 2014(a), an application for approval of employment of a professional person shall be signed by the trustee, debtor-in-possession or committee, and shall state the following information:

(1) The proposed arrangement for compensation. If there is a retainer, the application shall disclose all pre-petition fees and expenses drawn down against the retainer, and any written retainer agreement shall be attached to the application; and

(2) To the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the U.S. Trustee, or any person employed in the office of the U.S. Trustee.

(b) **Service and proof of service.**

(1) Copies of the application for approval of employment, the verified statement, any accompanying documents, and the proposed order approving employment shall be transmitted to the office of the U.S. Trustee in Boise.

(2) In a non-chapter 11 case, service shall also be made upon the debtor(s), debtor(s)' counsel, the trustee, and trustee's counsel.

(3) In a chapter 11 case, service shall also be made upon members of any creditors' committee and any attorneys appointed to represent the committee. In the event no committee has been appointed, service shall also be made on the 20 largest unsecured creditors. In a chapter 11 case, service shall also be made on the debtor and the attorney for the debtor if the application is made upon behalf of a party other than the debtor.

(4) Proof of such service shall be filed with the application.

(c) **Entry of an order of approval of employment.**

If neither the U.S. Trustee nor any other party in interest objects to the application for approval of employment of the professional within twenty-one (21) days of the date of service of the application, the court may enter the order approving the employment of the professional without a hearing. If an objection to the application is timely filed, then the applicant shall schedule a hearing on the application and serve notice of the hearing on the U.S. Trustee and all other parties in interest. Proof of such service shall be filed with the notice of hearing. Any order of approval of employment entered by the court will relate back to the date of service of the application, which date shall be set forth in the order.

RELATED AUTHORITY

11 U.S.C. §§ 327, 328
Fed. R. Bankr. P. 2014, 6003, 9034

Advisory Committee Notes:

Fed. R. Bankr. P. 2014 governs applications for employment of professional persons. This rule sets forth a minimum standard of notice. In many cases, a party may wish to set an actual hearing and/or provide notice to all parties in interest. The rule is not designed to prohibit such an approach.

CHAPTER 13 REPRESENTATION AND COMPENSATION

(a) **Applicability**.

Attorneys representing debtors in cases under chapter 13 of the Bankruptcy Code may elect to establish terms of compensation for their services under the requirements and conditions of this rule. If they elect not to do so, the terms and conditions of employment shall be as established by appropriate written agreement, and compensation shall be subject to the requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including but not limited to 11 U.S.C. § 330(a)(4)(B).

(b) **Presumptive fee.**

If an attorney elects to establish compensation for representation of debtors in chapter 13 cases under this rule, and upon compliance with the terms and conditions of this rule, the attorney shall be allowed a fixed fee not to exceed the amount provided in a General Order of this court for all services rendered or to be rendered throughout the duration of the chapter 13 case, and inclusive of all costs and expenses with the exception of filing fees. This fixed fee shall be presumptively reasonable and allowable under 11 U.S.C. § 330(a)(4)(B) without itemization of time or other submission. The chapter 13 plan may make provision for the payment of any portion of such fee not paid by the debtor(s) prior to the filing of the petition.

(1) Inasmuch as such fee's reasonableness is presumptive only, the court may, in its discretion or upon request of the debtor, the chapter 13 trustee, the U.S. Trustee, a creditor or party in interest, conduct a hearing to consider the reasonableness of such fee under all the facts and circumstances of the case. The court may, as a result of such hearing, reduce or modify such fee.

(c) **Required use of model retention agreement.**

An attorney seeking to establish presumptive compensation under this rule shall execute and be bound by the Model Retention Agreement in the form required by the court. Such attorney shall also obtain the signatures of the debtor(s) to the Model Retention Agreement. A copy of the fully executed Model Retention Agreement shall be attached to the statement filed by the attorney under Fed. R. Bankr. P. 2016(b).

(d) **Applications for fees in addition to presumptive amount.**

In extraordinary circumstances, an attorney receiving presumptive compensation under this rule may seek additional fees through an application for allowance of additional compensation and, if necessary, a motion to modify a confirmed plan. Such an application shall be set for a hearing upon notice to the debtor(s), the chapter 13 trustee, the U.S. Trustee, and all creditors and parties in interest. Such an application shall be accompanied by an affidavit justifying the request and including an itemization of all services rendered by the attorney, from the initiation of representation of the debtor(s) through the date of application, supporting the total amount of compensation sought. This affidavit shall be filed with the court and served on the debtor(s), the chapter 13 trustee, and the U.S. Trustee.

(e) **Applications for attorney's fees in cases dismissed prior to confirmation.**

In the event the debtor(s) case is dismissed prior to confirmation, then attorney's fees awarded pursuant to 11 U.S.C. § 330(a)(4)(B) must be reasonable. In those cases wherein the attorney for the debtor(s) is seeking to be paid attorney's fees from funds received by the chapter 13 trustee from the debtor(s) prior to dismissal and still in trustee's possession, the attorney for the debtor(s) shall timely file a detailed fee application within 14 days of the date the case was dismissed with notice to the debtor(s) and the trustee. The application must state that debtor(s) have been advised of the attorney's intent to seek payment on their attorney's fees from funds being held by the trustee that would otherwise be refunded to the debtor(s) pursuant to 11 U.S.C. § 1326(a)(2) and that the debtor(s) have the right to object to the allowance of some or all of the fees requested. Failure of debtor(s)' attorney to timely file a fee application will result in funds being refunded to the debtor(s).

RELATED AUTHORITY

11 U.S.C. § 329, 330, 503(b)(2)
Fed. R. Bankr. P. 2016
District of Idaho General Order No. 291

Advisory Committee Notes:

This rule provides an alternative fee approach to counsel representing chapter 13 debtors. Ordinarily, counsel representing debtors in chapter 13 cases would be required to support fees paid pre-petition or through a confirmed plan by providing itemization on a time and hour basis. This court has previously as a matter of practice waived, in most cases, the requirement of itemization of services for counsel charging a fee for services in the case not exceeding $1,000.00. *See generally In re*

Gebert, 99.4 I.B.C.R. 137, 138 (Bankr. D. Idaho 1999).

The court wishes to ensure reasonable and adequate compensation is paid chapter 13 debtors' counsel, to encourage full performance of duties by such counsel throughout the duration of the case as debtors' needs and changed circumstances require; and to eliminate the expense of serial requests for incremental fees through modified plans. It has elected to do so through a significantly higher presumptively reasonable fee, but conditions its availability to those cases where debtors and their counsel agree to a standard form of retention agreement outlining the mutual duties and responsibilities of attorney and client.

Under this rule, counsel may charge and receive a fixed fee not to exceed the amount provided in a General Order of this court for all services rendered or to be rendered in the chapter 13 case. Use of this alternative requires that the attorney and the client execute the Model Retention Agreement, which may be found in Appendix II of the Local Bankruptcy Rules. A copy of the executed Model Retention Agreement must be attached to counsel's Rule 2016(b) statement.

The contemplation is that this compensation is a fixed fee for all services in the case, and not a base fee that in ordinary cases would be subject to post-confirmation requests for additional fees. However, in extraordinary circumstances, an attorney could seek relief from the fixed fee, and additional compensation, though only upon an application with supporting affidavits, notice, and actual hearing.

FILING PROOFS OF CLAIM IN CHAPTER 11 CASES

(a) **Time to file**.

Pursuant to Fed. R. Bankr. P. 3003(c)(3) and except as provided in subdivision (b) of this rule, the last day to file proofs of claim in a chapter 11 case shall be ninety (90) days from the first date set for a § 341(a) meeting of creditors. A claim of a governmental unit shall be filed before one hundred eighty (180) days after the date of the order for relief, except as otherwise provided in the Federal Rules of Bankruptcy Procedure. The clerk shall notify all creditors and parties in interest of such bar date.

(b) **Extension**.

The court may, for cause shown, extend the deadline upon appropriate motion, notice, and hearing. If the § 341(a) meeting notice to creditors has already been sent by the clerk's office, the notification to creditors of an extension of deadline to file claims will be the responsibility of the debtor in possession and its counsel.

RELATED AUTHORITY

11 U.S.C. §§ 501, 502, 1111(a)
Fed. R. Bankr. P. 3003

Advisory Committee Notes:

The rule does not change the operation of 11 U.S.C. § 1111(a) or Fed. R. Bankr. P. 3003(b)(1) or (c)(2) as to claims scheduled by the debtor as undisputed, non-contingent, and liquidated.

PROCEDURES AND HEARINGS FOR OBJECTIONS TO CLAIMS

(a) **Objections to proof of claims**.

The party objecting to a proof of claim (objecting party) may set the matter for hearing at the time the objection to the claim is filed or may wait to set the hearing to first determine if a hearing is necessary after receiving the claimant's response.

(b) **Responses to objections to proof of claims**.

A response to an objection to a claim must be filed and served not later than thirty (30) days after service of the objection. If a response is not timely filed, the court may sustain the objection without a hearing.

(c) **Time for setting hearing or withdrawing objection**.

Within twenty-one (21) days after being served with the claimant's response, the objecting party shall either: (1) withdraw its objection to the claim, or (2) file and serve a notice of hearing for the objection which provides the proper notice as required by Fed. R. Bankr. P. 3007. If the objecting party has not withdrawn the objection or set a hearing pursuant to the terms set forth herein, the claimant may set a hearing date.

(d) **Witness and exhibit lists**.

If the parties intend to offer evidence, the parties, not later than seven (7) days prior to any scheduled hearing, shall:

(1) File a list of witnesses;

(2) File a list of exhibits; and

(3) Exchange copies of any exhibits.

(e) **Order on claim objection**

If there is no timely response to the objection to the claim, or there has been a response but it has been resolved, the moving party shall submit an order to the court consistent with their objection, or any agreement, which sets forth how the claim shall be treated.

RELATED AUTHORITY

11 U.S.C. § 502
Fed. R. Bankr. P. 3007
LBR 2002.2, 9004.1

UNCLAIMED FUNDS

(a) **Filing of application.**

If a party seeks disbursement of unclaimed funds from a case, an application for withdrawal of funds must be executed and filed with the clerk. The clerk shall serve a copy of the application on the U.S. Attorney.

(b) **Proof of entitlement.**

(1) If the application is filed by a funds locator or other party, on behalf of a creditor in whose name the claim is filed, a signed limited or general power of attorney from the creditor must accompany the application (together with such other documentation required of the creditor under subdivisions (2) and (3) below).

(2) If the application is filed by a creditor, that is a corporation, partnership, or limited liability company, the application must be executed by an authorized officer, a general partner, or the limited liability company manager and accompanied by sufficient verification of capacity, such as articles of incorporation, board meeting minutes, partnership agreement, articles of organization, operating agreement, or other appropriate documentation.

(3) In all cases, sufficient proof of legal capacity and entitlement shall be filed with the application.

(c) **Objections.**

The U.S. Attorney may object by filing a written objection within twenty-eight (28) days of service of the application. An order approving the disbursement will be entered if no timely objection is filed.

RELATED AUTHORITY

11 U.S.C. § 347; 28 U.S.C. §§ 2041, 2042
Fed. R. Bankr. P. 3010, 3011

Advisory Committee Notes:

The clerk will provide guidelines upon request. The guidelines and form of application can be viewed at www.id.uscourts.gov. The ability to search the unclaimed funds database is also available at the court's website.

CHAPTER 11 BALLOTS - VOTING ON PLANS

All ballots provided for voting on a proposed chapter 11 plan shall indicate the return address of the plan proponent and all ballots cast regarding a proposed chapter 11 plan shall be returned to the plan proponent. Not less than five (5) days prior to the confirmation hearing, the plan proponent shall file the ballots and a written summary of the ballots cast, and shall serve a copy of the summary on the debtor, the United States Trustee, any committee appointed pursuant to the Bankruptcy Code or their authorized agents, and any party that has filed an objection to confirmation or has requested notice. The summary shall contain a separate listing of acceptances and rejections and shall include the following information by class:

(a) the name of each creditor filing an acceptance or rejection, the dollar amount of each claim, and whether the debtor has objected to the claim;

(b) the total dollar amount and number of all allowed claims voted;

(c) the percentage dollar amount of acceptances; and

(d) the percentage number of acceptances.

RELATED AUTHORITY

11 U.S.C. §§ 1126, 1128, 1129
Fed. R. Bankr. P. 3017
LBR 2002.3, 3020.1

Advisory Committee Notes:

Official Form B314 provides the ballot for accepting or rejecting a chapter 11 plan of reorganization. Official Form B313 provides the order for approving disclosure statement and fixing time for filing acceptances or rejections of the plan.

2010 Notes: In order to improve practice under this Rule, a form of Ballot Summary has been developed by the Committee. In addition to providing the information called for in this form, note that the Rule also requires the filing of a separate list of all accepting and rejecting ballots. The Ballot Summary form can be located at www.id.uscourts.gov.

2016 Notes: Plan proponents should note on the ballot summary whether the plan proponent believes there are any ballots that should not be allowed for purposes of confirmation, and indicate the reason(s) for disallowing those ballots.

CHAPTER 11 PRECONFIRMATION REPORTS

In a chapter 11 case, the plan proponent shall, not less than five (5) days prior to the confirmation hearing, file a memorandum containing the proponent's response to any objections, and a statement as to how each requirement of 11 U.S.C. § 1129 is satisfied. The memorandum shall be served on the debtor, the United States Trustee, any committee appointed pursuant to the Bankruptcy Code or their authorized agents, and any party that has filed an objection to confirmation or has requested notice. If the confirmation hearing is continued, a revised preconfirmation report shall likewise be filed and served not less than five (5) days prior to the continued hearing.

RELATED AUTHORITY

11 U.S.C. §§ 1128, 1129
Fed. R. Bankr. P. 3017, 3018, 3020(b)
LBR 2002.3, 3018.1

FINAL DECREE IN CHAPTER 11 REORGANIZATION CASE

(a) The debtor shall provide certain statistical information to the clerk, including:

(1) Percent of dividend to be paid;

(2) Amounts paid or to be paid for:

Trustee compensation
Attorney for trustee
Attorney for debtor
Other professionals (e.g. accountant, bookkeeper, auctioneer, etc)
All expenses, including trustee's;

(3) Total amounts for claims allowed (listed separately):

Secured
Priority
Unsecured
Equity security holders.

(b) A final decree closing the case after the estate is fully administered does not affect the right of the court to enforce or interpret its own orders.

(c) The clerk may close an open chapter 11 case subsequent to entry of an order confirming a plan of reorganization upon provision of not less than thirty (30) days written notice to the debtor(s), to counsel for debtor(s), and to the U.S. Trustee.

RELATED AUTHORITY

11 U.S.C. § 350
Fed. R. Bankr. P. 3022

Advisory Committee Notes:

Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Fed. R. Bankr. P. 3022.

Upon request, the clerk will furnish a chapter 11 form for the required closing statistical information. The form can be viewed at www.id.uscourts.gov.

USE OF CASH COLLATERAL AND OBTAINING
POST PETITION CREDIT

(a) **Motions to use cash collateral.**

Motions for use of cash collateral shall set forth the information required by Fed. R. Bankr. P. 4001 and shall contain, at a minimum, the following information:

(1) Identity of the creditor(s) whose cash collateral is to be utilized and the relationship, if any of the creditor(s) to the debtor;

(2) If interim use is requested, the amount of cash collateral to be used until the time of the final hearing on the motion to use cash collateral and the amount of cash collateral to be used thereafter;

(3) A line-item budget listing projected income and expenses for one year. If interim use is requested, the budget must also include projected income and expenses until the time of the final hearing on the motion;

(4) The estimated balance owed to the creditor(s) identified in paragraph (a)(1), as of the date the petition was filed, including any accrued, unpaid interest, cost or fees as provided in the agreement;

(5) If the cash collateral is rent, the amount of the gross and net rent realized each month, a description of the property from which the rent is generated, and an estimate of its fair market value;

(6) If the cash collateral is receivables, a description and itemization of such receivables and, if any accounts receivable aging statement exists, the same must be provided to the affected creditor(s) and any party requesting such statement;

(7) The estimated fair market value, and the basis of the estimate, of the collateral which allegedly secures the creditor's claims;

(8) The estimated value, and the basis of the estimate, of any property offered as adequate protection; and

(9) A statement of whether or not the debtor proposes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(b) **Motions to obtain credit.**

Motions by the debtor in possession or trustee for authorization to obtain postpetition credit or for approval of a postpetition financing agreement shall contain the information required by Fed. R. Bankr. P. 4001 and also shall contain, at a minimum, the following information:

(1) Identity of the lender, vendor or other creditor (hereafter "creditor") and relationship, if any, of the creditor to the debtor;

(2) If funding is to be incremental, timing of funding or method by which funding is to be determined;

(3) A line-item budget listing projected income and expenses for an appropriate period given the request made. If interim financing is requested, the budget shall also include projected income and expenses until the time of the final hearing on the motion;

(4) If the creditor is a pre-petition creditor, the following information:

(A) The balance owed to the creditor, as of the date the petition was filed, including any accrued, unpaid interest, cost or fees provided in the agreement;

(B) If the lender is secured by receivables, an accounts receivable aging statement;

(C) A description of the collateral which allegedly secures the creditor's claims, an estimate of its fair market value, and the basis of the estimate;

(5) A description of the collateral, if any, to secure the postpetition financing, and the current fair market value of that collateral;

(6) If any other entity has, or claims, an interest in the collateral proposed to secure the post-petition credit or financing;

(A) The balance owed that entity;

(B) Whether the interest of that entity is to be subordinated to the post-petition financing; and if so:

(i) Whether the subordinated entity has consented; or

(ii) In the absence of consent, how the interest of that entity is to be adequately protected; and

(7) A statement of whether or not the debtor proposes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(c) **Cash collateral and credit agreements**.

Motions for the approval of an agreement for use of cash collateral and/or for postpetition credit or financing shall set forth in the body of the motion whether or not the agreement includes any provision contained in the Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same which is other than a provision normally approved by the court, (under subsection (a) of the Guidelines) and, if so, the provision shall be clearly identified.

(d) **Motions heard on shortened time.**

(1) If emergency motions for interim relief made under subsections (a), (b), or (c) of this rule are requested to be heard on shortened time, such request shall be served by facsimile or personal delivery to the entities identified in the applicable provision of Fed. R. Bankr. P. 4001, the United States Trustee, the trustee, if any, and any creditor or party whose rights or interests may be directly affected if the requested relief is granted.

(2) All requests for hearings on shortened time shall set forth with specificity:

(A) The immediate and irreparable harm the estate will suffer if relief is not immediately granted;

(B) The extent of the relief required to prevent such immediate and irreparable harm to the estate; and

(C) As much of the information required by subsection (a), (b), or (c) of this rule, as applicable, as may be necessary to establish the necessity of relief to avoid immediate and irreparable harm to the estate pending a final hearing.

(e) **Notice of final hearing.**

Notice of the final hearing on a motion for the use of cash collateral under subsection (a), to obtain credit under subsection (b), or for approval of an agreement under subsection (c) shall be given, together with a copy of the motion or agreement if not previously served, to the persons specified in paragraph (d)(1) and such other persons as the court may direct.

RELATED AUTHORITY

11 U.S.C. §§ 361, 363, 364
Fed. R. Bankr. P. 2002, 4001, 6004, 9006, 9034
LBR 9034.1

Advisory Committee Notes:

The Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit, or Stipulations Regarding the Same are found in Appendix I of the Local Bankruptcy Rules.

MOTIONS REQUESTING RELIEF FROM
THE AUTOMATIC STAY

(a) **Motions.**

A request by a party in interest for relief from the automatic stay pursuant to §§ 362(d), 1201(c), or 1301(c) shall be made by filing a motion with the court, and paying the applicable fee. There is no fee for a motion for co-debtor relief under §§1201 or 1301.

(b) **Requisite information in motions.**

The motion shall:

(1) Identify the nature of the stay relief sought;

(2) Provide the details of the underlying obligation or liability upon which the motion is based;

(3) Contain an itemization of amounts claimed to be due upon the obligation;

(4) When appropriate, state the estimated value of any collateral for the obligation and the method used to obtain the valuation;

(5) Attach accurate and legible copies of all documents evidencing the obligation and the basis of perfection of any lien or security interest;

(6) Attach copies of recorded documents if any documents are recorded with the secretary of state, county recorder, or other lawfully designated recording agency and;

(7) Include the notice required by subsection (g) and the proof of service required by subsection (h).

(c) **Objections.**

Any party in interest opposing the motion must file and serve an objection thereto not later than seventeen (17) days after the date of service of the motion. The objection shall specifically identify those matters contained in the motion that are at issue and any other basis for opposition to the motion. The objection shall also contain the notice of hearing required by subsection (e)(1) and the proof of service required by subsection (h). Absent the filing of a timely objection, movant may submit a proposed order, and the court may grant the relief sought without a hearing.

(d) **Service.**

(1) Motions. If relief is sought under § 362(d), the motion shall be served upon the debtor, debtor's attorney, the trustee if one has been appointed, upon any committee or other creditors as required in Fed. R. Bankr. P. 4001(a)(1), and on any other party known to movant claiming an interest in any property subject of the motion.

(2) Motions for Co-debtor Stay Relief. If relief is sought under §§ 1201(c) or 1301(c), the motion shall be served upon the debtor, debtor's attorney, the trustee, any co-debtor affected thereby, and on any other party known to the movant claiming an interest in any property subject of the motion.

(3) Objections. If an objection is filed to a motion for stay relief, the objection shall be served upon the movant and upon all parties receiving service of the motion.

(e) **Hearings.**

(1) Scheduling. A party opposing a motion shall contact the court's calendar clerk to schedule a preliminary hearing. The objection to a motion shall include the notice of such hearing.

(A) Upon court approval, the movant may schedule a hearing for cause shown in the motion or other submissions.

(2) Preliminary Hearing Procedure. At the preliminary hearing, the parties shall be prepared to make specific representations to the court as to the proof and evidence to be submitted at any final hearing. In particular, the parties shall advise the court with specificity as to the issues to be presented at a final hearing, the identity of any witnesses expected to testify, and a summary of the expected testimony.

(3) Final Hearing. Unless otherwise ordered by the court, the parties, not later than seven (7) days prior to any scheduled final hearing, shall;

(A) File a list of witnesses

(B) File a list of exhibits; and

(C) Exchange copies of any exhibits.

(4) Vacation of Hearings. Once scheduled, a preliminary hearing or final hearing may be vacated or continued only upon compliance with LBR 2002.2(f).

(f) **Emergency relief motions**.

This rule does not affect a motion for relief brought under § 362(f) and Fed. R. Bank. P. 4001(a)(2).

(g) **Required notice.**

In any motion filed under this rule, the movant shall include a notice of the requirements of subdivision (c), (d)(3), and (e)(1), of this rule. In addition, if relief is sought from the automatic stay against acts against property of the estate under § 362(d) and (e), the notice shall also advise the party against whom relief is sought of the requirements of § 362(e).

(h) **Proof of service**.

Any motion, objection or other pleading filed under this rule shall include an appropriate proof of service.

(i) **Sanctions.**

The court may impose appropriate sanctions against any party and/or counsel who fails to prosecute or defend the motion in good faith, contrary to the representations made in its pleadings or preliminary hearing, or violates the requirements of this rule.

(j) **Standard form order.**

If no objection is filed within the subdivision (c) objection period, the movant shall submit the standard approved order for this district with such alterations as may be appropriate in a particular case. If the moving party provides additions, deletions, or other modifications, the moving party shall clearly identify the deviation.

RELATED AUTHORITY

11 U.S.C. § 362
Fed. R. Bankr. P. 4001, 9006, 9013, 9014
LBR 2002.2 9004.1

Advisory Committee Notes:

This rule specifically requires certain information to be included in a motion for relief from stay. A response must fairly meet the grounds of the motion. Both of these requirements are enhanced by the requirement of specificity in representation at the preliminary hearing. The Advisory Committee considered and rejected requiring affidavits in regard to factual issues presented. (*See, e.g.*, Fed. R. Bankr. P. 7056). However, even though the current practice of allowing representation of counsel is continued, in order to achieve the goal of productive preliminary hearings, factual detail in such representation is mandated. Failure of counsel to adhere to this standard may lead to sanction under the rule. *See* Fed. R. Bankr. P. 9011 (Fed. R. Civ. P. 11).

Notes to 2004 revisions. Under the revised rule, unless cause is shown and prior court permission is obtained, the moving party may not schedule a stay relief motion for hearing at the time of filing such a motion. Instead, a party opposing a motion must file a detailed objection, obtain a hearing date from the calendar clerk, and provide notice of both objection and hearing at the time of filing the objection. An objection without a properly noticed and timely conducted hearing will be ineffective to prevent automatic relief under § 362(e).

Notes to 2008 revisions. The Standard Form Order can be located at www.id.uscourts.gov.

Notes to 2010 revisions. Proposed Orders required by subdivision (j) must be submitted in accordance with the court's ECF Procedures. *See generally* LBR 5003.1.

PROPERTY IN NEED OF ATTENTION OR PROTECTION
AND TURNOVER OF INFORMATION AND PROPERTY

(a) **Inventory or Equipment**.

When a stock of goods or business equipment is scheduled, the debtor shall, immediately after the general description thereof, list a present inventory, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

(b) **Need for Immediate Action**.

If a stock of goods includes perishables, or if there is any hazard to life or the environment, or if property or the business premises otherwise requires the trustee's immediate attention or protection, the debtor or the debtor's attorney, shall immediately notify the trustee (if one has been appointed) of the need for immediate action. Notification shall be by personal communication, telephone, or by other electronic communication.

(c) **Turnover of Information and Property**

In all chapter 7 cases with primarily non-consumer debts, immediately following the appointment of a chapter 7 trustee, the debtor or the debtor's attorney shall notify the trustee by personal communication, telephone or other electronic communication, and arrange to immediately turn over the following property of the estate to the trustee:

(1) Information or things needed to gain entry to real property in which the debtor has an interest, excluding the debtor's personal residence, including, but not limited to, keys, key cards, passwords, security codes, and the contact information for the managers, landlords, owners or tenants of the property; and

(2) Information that will allow the trustee to contact any entity with which the debtor has accounts subject to the debtor's withdrawal or order.

RELATED AUTHORITY

11 U.S.C. §§ 521(4), 704
Fed. R. Bankr. P. 4002

Advisory Committee Notes:

While this rule reflects current practice in many cases that fall within its scope, it is anticipated that the rule will provide the trustee with additional necessary information in a timely manner in other cases. This rule is intended to ensure that trustees are alerted to conditions that may require immediate attention. However, the rule is not intended to impose additional duties, or narrow any duties, required of debtors by the Bankruptcy Code.

EXEMPTIONS

(a) **Claim of exemptions**.

The Idaho Code section under which any exemption is claimed, and each item of property claimed as exempt, shall be described with specificity, without reference to other schedules.

(b) **Claim of exemption by joint debtors**.

If joint debtors claim separate exemptions under 11 U.S.C. § 522(m), each debtor must make and file a separate itemization in the manner prescribed by subdivision (a) of this rule.

(c) **Objections to exemptions**.

An objection to a claimed exemption shall state the specific exemption objected to and state the grounds upon which the objection is based. The objection may be sustained and the exemption disallowed without a hearing, unless a hearing is requested and set by the debtor(s), the trustee, or a party in interest.

RELATED AUTHORITY

11 U.S.C. § 522
Idaho Code §§ 11-604, 11-605 and 55-1001, et seq.
Fed. R. Bankr. P. 1007, 4003

Advisory Committee Notes:

This rule addresses the common problem of failure of the debtors to provide sufficient information regarding the exemptions claimed. It also reflects, in subdivision (c), the fact that hearings in many cases are not needed or demanded by debtors after review of the objection. Under Fed. R. Bankr. P. 4003(b), copies of an objection to a claim of exemption must be delivered or mailed to the trustee, the person claiming the exemption, and the attorney for such person. The debtor's right to a hearing is preserved, however. The trustee may also request and set a hearing. This may be necessary, for example, in cases where the debtor amends the claim of exemption but such amendment is itself objectionable or does not fully resolve the original objection.

AVOIDANCE OF LIENS ON EXEMPT PROPERTY

(a) **Specificity.**

All 11 U.S.C. § 522(f) lien avoidance motions or requests to a chapter 12 or chapter 13 plan shall contain a specific description of the lienholder's interest to be avoided including, where applicable, the instrument number and the recording governmental unit. The motion shall also specify the statutory exemption that is impaired and the creditor's name.

Further, all attendant orders shall specifically describe the avoided lienholder's interest, the extent that the lien is avoided, and the statutory basis for the impairment. If the avoided interest is represented by a recorded document, the order shall further provide the type of recorded instrument avoided, its date of recording, the recording governmental unit, and recording instrument number.

(b) **Nature of relief.**

The language contained in such motions or requests to avoid lien and attendant orders should be substantially identical to the language of 11 U.S.C. § 522(f).

(c) **Notice.**

Notice of such a motion or request to avoid a lien pursuant to 11 U.S.C. § 522(f) need be given only to the trustee and to the creditor claiming the lien.

RELATED AUTHORITY

11 U.S.C. § 522(f)
Fed. R. Bankr. P. 4003(d), 9014

Advisory Committee Notes:

Many 11 U.S.C. § 522(f) lien avoidance motions, requests, and orders are factually incomplete, vague, or ambiguous. Additionally, the court has found that many of the proposed orders granting relief improperly recite that the lien is absolutely "void," rather than avoided "to the extent that such lien impairs an exemption to which the debtor would have been entitled."

Debtor's counsel may want to consider:

(1) attaching accurate and legible copies of all documents evidencing the lienholder's interest to be avoided, and the basis of perfection of any lien or security interest;

(2) attaching copies of recorded documents, if any documents are recorded with the county recorder, secretary of state, or other lawfully designated recording agency; and

(3) describing specifically the property upon which the lien is claimed and to be avoided.

Bankruptcy Local Rule 4004.1

Back to Top

A request for entry of a discharge for an individual chapter 11 debtor shall be made by motion. At least twenty-eight (28) days prior to the hearing on the motion, the notice of hearing and the deadline to object and the motion shall be served on creditors, parties in interest, and the United States Trustee. Objections shall be filed not later than seven (7) days prior to the hearing.

RELATED AUTHORITY
11 U.S.C. § 522(q)(1), § 1141(d)(5)
Fed. R. Bankr. P. 1007(b)(7)(B), (b)(8), 4004(c)(3), (c)(4)

Advisory Committee Notes:

11 U.S.C. § 1141(d)(5) provides that where the debtor is an individual, the court may grant a discharge pursuant to a confirmed chapter 11 plan after notice and a hearing. This rule is intended to ensure that parties who may be affected by entry of the discharge receive notice and an opportunity to be heard with adequate time to respond prior to entry of the discharge. The motion needs to include adequate information to allow creditors, parties in interest, the United States Trustee and the court to ascertain whether the debtor has satisfied the requirements for entry of a discharge.

ELECTRONIC CASE FILING

(a) **Official records of the court.**

The docketing and case management system for the Bankruptcy Court for the District of Idaho shall be the Case Management and Electronic Case Filing Program (ECF). The official record of the court shall be all documents filed electronically, all documents converted to an electronically filed format, and all documents filed and not capable of conversion to electronic format or otherwise ordered by the court to be maintained.

(b) **Establishment of electronic case filing procedures.**

The clerk of the court is authorized to establish and promulgate Electronic Case Filing Procedures ("ECF Procedures"), including the procedure for registration of attorneys and other authorized users, and for issuance and control of passwords to permit electronic filing and notice of pleadings and other papers. The clerk may modify the ECF Procedures from time to time, after conferring with the Chief Judge. The ECF Procedures shall be made available to the public on the court's website (www.id.uscourts.gov) and copies shall be available at all divisional court offices.

(c) **Scope of electronic filing.**

Unless expressly prohibited, the filing of all documents required or permitted to be filed with the court in connection with a bankruptcy case or adversary proceeding shall be accomplished electronically. Any and all references to "filing" or "service" in these Local Bankruptcy Rules shall be interpreted to include filing or service by electronic means consistent with the ECF Procedures and any applicable General Order. Local Bankruptcy Rule provisions which are or may be in conflict with ECF Procedures shall be superceded by such Procedures and/or applicable General Order until such time as appropriate rule amendments are promulgated.

(1) Documents filed conventionally with the court will be converted into an electronic format by the court and in such cases, such documents will be treated for all purposes as if they had been electronically filed, except that conversion of a conventionally filed document to electronic format by the court will not affect the original filing date and time of that document.

(2) On a case by case basis, the presiding judge may direct that paper copies of any documents filed electronically be sent directly to the judge's chambers.

(d) **Court retention of records - copies.**

Where a document filed conventionally is converted to an electronic format by the court, the document originally filed shall be maintained as a copy only. Such copies of documents will be retained by the court only so long as required to ensure that the information has been transferred to the court's data base, for other court purposes or as required by other applicable laws or rules. It shall be the responsibility of any party who has filed a document conventionally who desires to have the document returned by the clerk, to specifically request and arrange for its return. Absent such a request, the clerk is authorized to dispose of the document after electronic conversion.

(e) **Retention of conventionally signed documents.**

The original of all conventionally signed documents that are electronically filed shall be retained by the filing party for a period of not less than the maximum allowed time to complete any appellate process, or the time the case of which the document is a part, is closed, whichever is later. The document shall be produced upon an order of the court.

(f) **Eligibility.**

Only a Registered Participant or an authorized employee of the Registered Participant may file documents electronically. To become a Registered Participant, or to act as an authorized employee of the Registered Participant, a person must satisfy the registration requirements established by the court and participate in training as required by the court unless the clerk is satisfied that training is not necessary.

(g) **Consequences of electronic filings.**

The electronic transmission of a document to the court constitutes filing of the document for all purposes. Such transmission shall be consistent with ECF Procedures. The filing date and time of a document filed electronically shall be the date and time the document is electronically received by the court, which for the purposes of this Rule shall be Mountain Time.

(h) **Entry of court issued documents.**

The court shall enter all orders, decrees, judgments and proceedings of the court in accordance with the ECF Procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the clerk of court.

(i) **Large documents, exhibits and attachments.**

The parties are directed to refer to the ECF Procedures, which may be amended from time to time.

(j) **Signatures.**

The electronic filing of any document by a Registered Participant shall constitute the signature of that person for all purposes provided in the Federal Rules of Bankruptcy Procedure. For instructions regarding electronic signatures, refer to the ECF Procedures.

(k) **Notice and service of documents.**

Participation by a Registered Participant in the court's ECF system by registration and receipt of a login and password from the clerk of court shall constitute consent by that Registered Participant to the electronic service of pleadings and other papers under applicable Federal Rules of Bankruptcy Procedure.

(l) **Technical failures.**

Any Registered Participant or other person whose filing is made untimely or who is otherwise prejudiced as a result of a technical failure at or by the court, may seek appropriate relief from the court. The court shall determine whether a technical failure has occurred or whether relief should be afforded on a case by case basis.

RELATED AUTHORITY

Fed. R. Bankr. P. 5003, 5005
General Order 247

Advisory Committee Notes:

Effective January 1, 2006, members of the bar and other Registered Participants are required to file all documents in the District and Bankruptcy Court through ECF unless otherwise ordered by the court. Detailed procedures are found in the clerk's ECF Procedures and in the Court's General Order(s), which are available on the court's website or at any clerk's office. All references in the Local Bankruptcy Rules to "filing" or "service" (except service or process) are deemed to include electronic filing and/or service, even though more detailed amendments of the Local Bankruptcy Rules may later be made.

SEALED DOCUMENTS AND PUBLIC ACCESS

This Rule applies to documents filed electronically or those filed in paper format.

(a) **General Provisions**

(1) **Motion to file under seal**.

Parties seeking to file a document under seal shall file a motion to seal, along with supporting memorandum and a proposed order, and file the document with the clerk of court. Said motion must contain "MOTION TO SEAL" in bold letters in the caption of the pleading.

(2) **Motion to seal existing documents.**

Parties seeking to place a pending case or previously filed document under seal shall file a "MOTION TO SEAL", along with supporting memorandum and proposed order. Portions of a document cannot be placed under seal. Instead, the entire document must be placed under seal in order to protect confidential information.

(3) **Public information**.

Unless otherwise ordered, the motion to seal will be noted in the public record of the court. The filing party or the clerk of court shall be responsible for restricting public access to the sealed documents, as ordered by the court.

(b) **Procedure for the Electronic Filing of Sealed Documents**

(1) Sealed documents and sealed cases will be filed in electronic format, with access restricted to the Court and authorized staff, unless otherwise ordered by the court.

(2) A motion to seal a document or case shall be submitted electronically in CM/ECF. If a party wishes to file a document under seal in CM/ECF, they shall first contact the clerk's office for instructions regarding how to file the document and how to maintain the confidentiality of the information. The document submitted under seal shall be filed separately from the motion to seal.

(3) Documents submitted to the Court for *in camera* review shall be submitted in the same fashion as sealed documents.

(4) The presiding judge may request paper copies of documents for *in camera* inspection.

(5) Additional instructions for the electronic submission of sealed and *in camera* documents are contained in the ECF Procedures.

(c) **Documents submitted in Paper Format**

(1) If the material to be sealed is presented in paper, counsel shall submit the material in an UNSEALED 8½ x 11 inch manilla envelope. The envelope shall contain the title of the court, the case caption, and case number.

(2) Absent any other court order, sealed documents submitted in paper format will be returned to the submitting party after the case is closed and the appeal time has expired, or if appealed, after the conclusion of all appeals.

RELATED AUTHORITY

11 U.S.C. § 107
28 U.S.C. § 156 (e)
Fed. R. Bankr. P. 5003, 5005, 5007, 7005
ECF Procedures

DOCUMENTS FOR FILING OR ADMINISTERING

(a) **Petitions.**

At the time of filing, documents may be reviewed for format and legibility; correct size of paper (8 ½ x 11) for scanning purposes and signatures.

If filed in paper by pro se litigants, documents must be affixed by a fastener (i.e., paper clip,) and NOT staples.

(b) **No filing fee or an inappropriate amount submitted; and facsimile pleadings.**

The clerk has been given authority by General Order to refuse to accept or file:

(1) Any facsimile pleadings mailed or faxed to the clerk which do not comply with General Order 201, or

(2) Any petition or pleading not accompanied by the required filing fee under 28 U.S.C. § 1930.

(c) **General format of papers presented for filing**.

(1) Except for proposed orders submitted to the court, Official Forms under Rule 9009, and Idaho Form Chapter 13 Plan, starting 1 inch from the top of the first page, the following information must appear in the upper left-hand corner of the first page of each paper presented for filing, except that in multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented:

(A) Name of the attorney (or if in propria persona, of the party);

(B) E-mail address;

(C) Idaho State Bar Number (if applicable);

(D) Office mailing address;

(E) Telephone number;

(F) Facsimile number; and

(G) Specific identification of the party represented by name and interest in the litigation (i.e., debtor, creditor, plaintiff, defendant, etc.).

(2) Any pleading, motion or other paper presented for filing must be submitted in 12 to 14 font, with the exception of forms, exhibits, attachments or other documents which cannot be converted to this font.

(3)

(A) Following the counsel identification, a caption in the following form should appear:

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re [Debtor Name] Debtor	Case Number:_____ Chapter Number:

(B) In completing the form of caption, insert in place of bracketed material the debtor(s) name and designation of character of paper. When completing the case number, include three letter suffix indicating the assigned judge (*i.e*., 07-00001-TLM or 07-00001-JDP)[Designation of Character of Paper]

RELATED AUTHORITY

28 U.S.C. § 1930

Fed. R. Bankr. P. 2016, 5005, 9009
LBR 1002.1, 1006.1, 1006.2, 1007.1, 1009.1, 4001.2, 5007.1, 5010.1, 7003.1, 9004.1, 9004.2
District of Idaho General Order nos. 97, 154, 187, 201
Official Form 416A

Advisory Committee Notes:

The procedures on facsimile filing are governed by District of Idaho General Order 201, that is available on the court's website, or you may call the local clerk's office.

With respect to the format for adversary captions, refer to LBR 7003.1.

FILES, RECORDS AND EXHIBITS

(a) **Custody and withdrawal**.

All files and records of the court, except those sealed by order of the court, shall remain in the custody of the clerk, subject to examination by the public without charge. No record, paper, or article belonging to the files of the court shall be taken from the custody of the clerk without a special order of the court and a receipt given by the party obtaining it, describing the item and date of receipt, except as otherwise provided in this rule. Withdrawal orders will be made only in exceptional circumstances.

(b) **Exhibits part of files**.

Every exhibit offered in evidence, whether admitted or not, becomes a part of the files.

(c) **Substitution of copies**.

Unless there be some special reason why original exhibits or depositions should be retained, the bankruptcy court may, on stipulation or application, order them returned to the party to whom they belong upon filing of a copy, either certified by the clerk or approved by counsel, for all parties concerned.

(d) **Disposition of exhibits**.

(1) Delivery to Person Entitled. In all proceedings in which final judgment has been entered, and the time for filing a motion for new trial or rehearing and for appeal has passed, or in which a final order on appeal has been entered, any party or person may withdraw any exhibit or deposition originally produced by such party without court order, upon fourteen (14) days written notice to all parties, unless within that time another party or person files notice of claim thereto with the clerk. In the event of competing claims, the court shall determine the person entitled and order delivery accordingly. For good cause shown, the court may allow withdrawal or determine competing claims in advance of the time above specified.

(2) Unclaimed Exhibits. If exhibits or depositions are not withdrawn within thirty (30) days of the time when notice may be given under subdivision (1) of this subdivision (d), the clerk may destroy them or make other disposition as appears proper.

(e) **Retention of electronic recordings**.

(1) Section 341(a) Meetings. Retention and preservation of electronic sound recordings of the § 341(a) meeting of creditors is the responsibility of the U.S. Trustee. Copies of the recordings may be obtained from the U.S. Trustee.

(2) Court Hearings and Proceedings. Electronic sound recording and/or court reporter's stenographic records of any bankruptcy court proceeding shall be retained and preserved by the clerk. Copies of the recordings may be obtained from the clerk upon payment of the duplication fee. Transcripts may be obtained upon written request. Requests for duplication or transcripts shall identify the name, address, and phone number of the requesting attorney, the case name and case number, and the date of the subject hearing or proceeding.

RELATED AUTHORITY

11 U.S.C. § 107
28 U.S.C. § 156(e)
Fed. R. Bankr. P. 5007 and 2003(c)

Advisory Committee Notes:

Subdivision (e) reflects the current administrative requirements that control the clerks and U.S. Trustee's retention of electronic recordings of meetings and proceedings. Transcription from the duplicate tape of the § 341(a) meeting of creditors is the responsibility of counsel, while the clerk will obtain the transcript of court hearings and charge counsel therefor. The Advisory Committee determined not to address issues of "certification" or the evidentiary use of such transcriptions.

CLOSING OF CASES

The clerk may close any open case which is otherwise eligible for closing despite a motion pending therein if a hearing date on such motion has not been obtained from the clerk within twenty-one (21) days of the filing of the motion, or where an order has not been submitted by the moving party within twenty-one (21) days of the date when such an order could properly be executed.

RELATED AUTHORITY

11 U.S.C. § 350
Fed. R. Bankr. P. 5009

Advisory Committee Notes:

Many cases otherwise eligible to be closed have pending motions never brought on for hearing and/or stipulations upon which orders have never been presented. This rule is designed to encourage the prompt noticing of matters and submission of orders. *See* LBR 5010.1.

REOPENING FEES AND PROCEDURES

Any party wishing to file a pleading or other document in a closed case must submit a motion and order reopening the case, and pay the attendant fee unless otherwise ordered by the court.

RELATED AUTHORITY

11 U.S.C. § 350(b)
Fed. R. Bankr. P. 5009, 5010

Advisory Committee Notes:

There are only limited circumstances where the court may act without reopening a case. *See* Fed. R. Bankr. P. 9024. The "attendant fee" is the same as the filing fee for a case under such chapter in effect as of the time of the motion to reopen. *See* 28 U.S.C. § 1930(b). The Miscellaneous Fee Schedule can be found at www.id.uscourts.gov.

As provided in the described fee schedule, the court may waive the filing fee in appropriate circumstances, or in the event of an administrative or clerical error.

ASSUMPTION, REJECTION OR ASSIGNMENT OF AN EXECUTORY CONTRACT OR UNEXPIRED LEASE

(a) **Motions.**

A motion to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, shall be served and heard in compliance with the provisions of Fed. R. Bankr. P. 9014, 6006 and this rule, unless otherwise ordered by the court..

(b) **Notice.**

(1) Motion to reject. A motion to reject an executory contract or unexpired lease shall be served on the parties to the contract or lease and, except in a chapter 9 municipality case, the U.S. Trustee. In a chapter 11 case, the motion shall also be served on the members of any creditors' committee or, if no creditors' committee has been appointed, on the twenty (20) largest unsecured creditors.

(2) Motion to assume or assign. A motion to assume or assign an executory contract or unexpired lease shall be served on all creditors and interested parties and, except in a chapter 9 municipality case, on the U.S. Trustee.

RELATED AUTHORITY

11 U.S.C. § 365
Fed. R. Bankr. P. 6006(a), 6006(c), 9014
LBR 2002.2

MOTIONS FOR ABANDONMENT

A motion by a party in interest under 11 U.S.C. § 554(b) for an order requiring a trustee to abandon property of the estate shall be noticed to creditors and parties in interest in accord with the requirements of Fed. R. Bankr. P. 6007(a).

RELATED AUTHORITY

11 U.S.C. § 554
Fed. R. Bankr. P. 6007(a), (b)

Advisory Committee Notes:

This rule makes Fed. R. Bankr. P. 6007(a) applicable to motions brought under 11 U.S.C. § 554(b) and Fed. R. Bankr. P. 6007(b).

COMMENCEMENT OF ADVERSARY PROCEEDINGS

(a) **Cover sheet.**

A completed "Adversary Proceeding Cover Sheet" and attendant fee shall accompany every complaint commencing an adversary proceeding under Fed. R. Bankr. P. 7003, together with a summons prepared in compliance with the Federal Rules of Civil Procedure.

(b) **Form**.

All pleadings in an adversary proceeding shall meet the requirements of Fed. R. Bankr. P. 7010 and the Official Forms, including identification of the debtor and the debtor's bankruptcy case number.

(1) The bankruptcy case number shall include the three letter suffix indicating the assigned judge (*i.e.*, 15-00001-TLM or 15-00001-JDP).

(c) **Adversary number and summons.**

Upon the filing of a complaint under Fed. R. Bankr. P. 7003, the clerk will assign the proceeding an adversary number, which number must thereafter appear on all pleadings and issue the summons which will then be returned to the plaintiff who will be responsible for service according to Fed. R. Bankr. P. 7004.

(1) The adversary proceeding number shall include the three letter suffix indicating the assigned judge (*i.e.*, 15-6001-TLM or 15-6001-JDP).

RELATED AUTHORITY

Fed. R. Bankr. P. 7003, 7004, 7007.1, 7010, 9004(b)

Official Form 1040

Advisory Committee Notes:

A corporate ownership statement pursuant to Fed R. Bankr. P. 7007.1 must be filed concurrently with the complaint or responsive pleading, as applicable.

NON-FILING OF DISCOVERY AND LIMITATIONS ON DISCOVERY

(a) **Adversary proceedings.**

All discovery, including depositions upon oral examination or written questions, interrogatories, requests for production of documents, requests for admissions, and answers and responses thereto, shall be served but shall not be filed except upon order of a judge following a motion by a party in interest.

(b) **Contested matters.**

All discovery made in a contested matter pursuant to Fed. R. Bankr. P. 9014, including depositions upon oral examination or written questions, interrogatories, requests for production of documents, requests for admissions, and answers and responses thereto, shall be served but shall not be filed with the court except upon order of a judge following a motion by a party in interest.

(c) **Limitations on discovery.**

All discovery made in a contested matter pursuant to Fed. R. Bankr. P. 9014 is subject to the following limitations absent stipulation of the opposing party or order of a judge upon a showing of good cause waiving or modifying such limitations:

(1) Interrogatories: No party shall serve upon any other party more than twenty-five (25) interrogatories, in which sub parts of interrogatories shall count as separate interrogatories.

(2) Requests for Admission: No party shall serve upon any other party more than twenty-five (25) requests for admissions.

RELATED AUTHORITY

Fed. R. Bankr. P. 7005, 7026, 7033, 7036, 9014
LBR 9014.1

Advisory Committee Notes:

Subdivisions (a) and (b) are designed to eliminate the filing burden upon the court in the majority of cases where discovery is never utilized prior to or at trial or prior to disposition of the case, as well as eliminate any potential problems caused by the nature or admissibility of the material included in the discovery requests or responses.

The provision of the rule set forth in subdivision (c) is meant to control abuses of discovery processes in regard to motion practice under the provisions of Fed. R. Bankr. P. 9014 regarding "contested matters" while still preserving availability and usefulness of discovery in proper circumstances. Under extraordinary circumstances, the court may modify the limitations.

DISCOVERY RULES NOT APPLICABLE IN ADVERSARY PROCEEDINGS

Except as otherwise ordered by the court, provisions of Fed. R. Civ. P. 26(a)(1)-(4) concerning requirements for disclosure of information, the first sentence of Rule 26(d) and Fed. R. Civ. P. 26(f) (and those provisions of Rule 16 and Rules 30-37 referring thereto) concerning discovery meetings will not be applicable in any adversary proceeding pending or filed.

RELATED AUTHORITY

General Order 101
Fed. R. Bankr. P. 7026, 9014 (contested matters)

Advisory Committee Notes:

This rule continues the provisions of General Order 101 of the U.S. Court and U.S. Bankruptcy Court for the District of Idaho, which were made effective December 1, 1993.

DISCOVERY MOTIONS

(a) **Obligation to confer.**

The Court will not consider a motion made pursuant to Fed. R. Bankr. P. 7026 to 7037 or Fed. R. Bankr. P. 9016 unless, prior to the filing of the motion the parties have conferred and attempted to resolve their differences in good faith. The mere sending of a written, electronic, or voicemail communication does not satisfy this requirement. Rather, this requirement can be satisfied only through direct dialogue and discussion in person or in a telephone conversation.

(b) **Certificate of compliance.**

Counsel for the moving party shall include in the motion a certificate of compliance with this Rule. The certificate of compliance shall indicate that the parties have conferred in good faith and shall set forth sufficient facts in the motion to allow the court to evaluate the adequacy of the compliance with this Rule.

(c) **Certificate of non-compliance.**

In the event that the parties were unable to meet and confer as described in section (a) above, counsel for the moving party shall include in the motion a certificate setting forth sufficient facts to demonstrate that attempts to comply with this rule were made, and why the parties were unable to comply with this Rule. The moving party shall set forth facts sufficient to allow the Court to evaluate the adequacy of the attempts to confer.

(d) **Failure to comply.**

If counsel fails or refuses to comply with this Rule, the Court may deny any discovery motion and may order the payment of reasonable expenses, including attorneys' fees.

RELATED AUTHORITY

Fed. R. Bankr. P. 7026-37, 9016

DISMISSAL OF INACTIVE ADVERSARY PROCEEDINGS

(a) **Dismissal.**

In the absence of a showing of good cause for retention, any adversary proceeding in which no action has been taken for a period of sixty (60) days may be dismissed, without prejudice, at any time.

(b) **Notice.**

At least twenty-one (21) days prior to such dismissal, the clerk shall give notice of the pending dismissal to all attorneys of record and to any party appearing on its own behalf in such adversary proceeding. The notice shall be sent to the last address of such attorneys or parties as shown in the official court adversary proceeding file.

RELATED AUTHORITY

Fed. R. Bankr. P. 7041

Advisory Committee Notes:

The rule does not refer to "contested matters" under Fed. R. Bankr. P. 9014 since justification for a similar rule is not present for motions within a case.

DISMISSAL OF ADVERSARY PROCEEDINGS
CONTESTING DISCHARGE

An adversary proceeding objecting to entry of discharge of the debtor(s) or seeking to revoke entry of discharge of the debtor(s) shall be dismissed only upon compliance with the following conditions.

(a) **Motion.**

The plaintiff shall file a motion that sets forth with particularity the grounds upon which the request for dismissal is based.

(b) **Affidavit.**

Contemporaneously with such motion, there must be filed an affidavit of the plaintiff setting forth any consideration, monetary or otherwise, received in connection with such requested dismissal.

(c) **Service of pleadings.**

Proof of service of the motion and affidavit provided for in subdivisions (a) and (b) of this rule, reflecting service upon the trustee and upon any committee appointed under the Code, must be filed within seven (7) days of the motion.

(d) **Notice to creditors and hearing.**

Notice of an intended dismissal and hearing shall be issued by the moving party and served upon all creditors and parties in interest in the debtor(s)' case, and proof of such service filed with the clerk.

(1) This requirement of notice shall not apply to dismissal of adversary proceedings brought by a trustee to deny or revoke discharge on the grounds of failure to file tax returns, failure to amend schedules, or failure to turn over property or records.

RELATED AUTHORITY

11 U.S.C. §§ 727, 1141, 1228, 1328
18 U.S.C. § 152
Fed. R. Bankr. P. 7001(4), 7041

Advisory Committee Notes:

Fed. R. Bankr. P. 7041, and case precedent limit voluntary dismissal of complaints generally objecting to discharge of debtors (as contrasted with those actions under §523 of the Code contesting dischargeability of individual debts). This rule clarifies the requirements previously imposed by the court in most cases. Subdivision (b) is, in part, in reference to the criminal prohibition upon the giving, receiving, offering or seeking to obtain any money, property or other advantage in return for acting or forbearing to act in a case under Title 11, U.S. Code.

TAXATION OF COSTS

(a) Within fourteen (14) days after entry of judgment under which costs may be claimed, the prevailing party may serve and file a cost bill in the form prescribed by the court, requesting an itemized taxation of costs. The cost bill must itemize the costs claimed and be supported by a certificate of counsel that the costs are correctly stated, were necessarily incurred and are allowed by law. The court will enforce the provisions of 28 U.S.C. § 1927 in the event an attorney or other person admitted to practice in this court causes an unreasonable increase in costs. Not less than twenty-one (21) days after receipt of a party's cost bill, the clerk, after consideration of any objections, will tax costs and serve copies of the cost bill upon all parties of record. The cost bill should reflect the clerk's actions to each item contained therein. Within fourteen (14) days after service by any party of its cost bill, any party may file and serve specific objections to any items setting forth the grounds for the objection.

(b) Generally, the prevailing party is the one who successfully prosecutes the action or successfully defends against it, prevails on the merits of the main issue, and the one in whose favor the decision or verdict is rendered and judgment entered.

(c) Costs must be taxed in conformity with the provisions of 28 U.S.C. § 1920-1923 and other provisions of law as may be applicable and any directives as the court may issue from time to time. Taxable items include:

(1) Clerk's Fees and Service Fees. Clerks fees (see 28 U.S.C. § 1920) and service fees as allowed by statute.

(2) Trial Transcripts. The cost of the originals of a trial transcript, a daily transcript, or of a transcript of matters prior or subsequent to trial, furnished the court are taxable at the rate authorized by the Judicial Conference when either requested by the court or prepared pursuant to stipulation. Acceptance by the court does not constitute a request. Copies of transcripts for counsel's own use are not taxable unless approved in advance by the court.

(3) Deposition Costs. The prevailing party may recover the following costs relative to depositions used for any purpose in connection with the case:

(A) The cost of the original deposition plus one copy (where prevailing party was the noticing party;

(B) The cost of a copy of a deposition (where prevailing party was not the noticing party; and

(C) The cost of video-taped depositions.

The prevailing party who noticed the deposition may recover the reasonable expenses incurred for reporter fees, notary fees and the reporter's/notary's travel and subsistence expenses. In addition, witness fees, whether or not the witness was subpoenaed are taxable at the same rate as attendance at trial. The reasonable fee for a necessary interpreter to attend a deposition is also taxable on behalf of the prevailing party. Attorney's fees and expenses incurred in arranging for or taking a deposition are not taxable.

(4) Witness Fees, Mileage and Subsistence. The rate for witness fees, mileage, and subsistence are fixed by statute (28 U.S.C. § 1821). Such fees are taxable even though the witness does not take the stand, provided the witness necessarily attends court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. The mileage taxation is based on the most direct route. Mileage fees for travel and subsistence are taxable only for the reasonable period during which the witness is within the district. No party shall receive witness fees for testifying on their own behalf except where a party is subpoenaed to attend court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than is statutorily allowed for ordinary witnesses. Allowance of fees for a witness on deposition must not depend on whether the deposition is admitted in evidence.

(5) Copies of Papers and Exhibits. The cost of an exhibit necessarily attached to a document (or made part of a deposition transcript) required to be filed and served is taxable. The cost of reproducing the required number of copies of the clerk's record on appeal is allowable.

(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The reasonable cost of maps, diagrams, visual aids, and charts are taxable if they are admitted into evidence. The cost of photographs are taxable if admitted into evidence or attached to documents required to be filed and served on opposing counsel. Enlargements greater that 8"x10" are not taxable except by order of the court. The cost of models is not taxable except by order of the court. The cost of compiling summaries, computations, and statistical comparisons is not taxable.

(7) Interpreter and Translator Fees. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if a document translated is necessarily filed or admitted in evidence.

(8) Other Items. Other items may be taxed with prior court approval.

(9) Certificate of Counsel. The certificate of counsel required by 28 U.S.C. § 1924 and the rules are *prima facie* evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary, or unreasonable.

(d) A review of the decision of the clerk in the taxation of costs may be taken by the court on a motion to retax by any party, pursuant to Fed. R. Bankr. P. 7054(b), upon written notice thereof, served and filed with the clerk within seven (7) days after the costs have been taxed in the clerk's office, but not after. The motion to retax must specify the ruling of the clerk excepted to, and no others will be considered. The motion will be considered and determined upon the same papers and evidence used by the clerk and upon such memoranda of points and authorities as the court may require. A hearing may be scheduled at the discretion of the court.

RELATED AUTHORITY

28 U.S.C. § 1920
Fed. R. Bankr. P. 7054(b)

Advisory Committee Notes:

This rule is generally consistent with the Local Rules of Civil Practice for the United States District Court for the District of Idaho, though there are minor differences.

MOTIONS FOR SUMMARY JUDGMENT AND PROCEEDINGS THEREON

(a) **Motions**.

A request by a party for summary judgment pursuant to Fed. R. Bankr. P. 7056 shall be made by motion filed, served and heard in compliance with the provisions of this rule, absent an order of the court providing otherwise.

(b) **Submissions and hearings**.

(1) The motion, supporting affidavits or declarations, a statement of undisputed facts, a notice of hearing, and a supporting brief shall be filed at least twenty-eight (28) days before the time fixed for the hearing.

(A) The moving party shall provide simultaneously with its motion, in a document separate from all others, a statement of asserted undisputed facts. The statement shall not be a narrative but shall set forth each fact in a separate, numbered paragraph. For each fact, the moving party shall provide a specific citation (including page, paragraph, and/or line number as appropriate) to an affidavit, deposition, or other portion of the record establishing such fact. Failure to submit such a statement in compliance with this rule constitutes grounds for denial of the motion without hearing.

(2) If the opposing party desires to file affidavits or other materials, that party shall do so at least fourteen (14) days before the date of the hearing. The opposing party shall also file a responsive brief, and a statement of disputed and undisputed facts, at least fourteen (14) days prior to the hearing.

(A) The opposing party's statement of disputed and undisputed facts shall respond to each of the moving party's asserted undisputed facts. The opposing party shall specifically identify whether such fact is disputed or undisputed. If disputed, the opposing party shall provide a specific citation (including page, paragraph, and/or line number as appropriate) to an affidavit, deposition, or other portion of the record establishing the basis of dispute.

(3) The moving party may thereafter file a reply brief not less than seven (7) days prior to the hearing.

(4) If an opposing party files a cross-motion for summary judgment, it must comply with the provisions of (b)(1) of this rule.

(5) All pleadings and documents filed under this rule shall be served on all other parties simultaneously with their filing.

(6) Other than as provided herein, absent an order of the court to the contrary for good cause shown, no other pleadings or documents shall be filed on a summary judgment motion.

(c) **Oppositions based on unavailability of facts**.

If a party responding to a motion for summary judgment intends on opposing such motion through an affidavit or declaration pursuant to Fed. R. Civ. P. 56(d), incorporated by Fed. R. Bankr. P. 7056, such affidavit or declaration and a supporting brief must be filed within the time set forth in subdivision (b)(2) of this rule.

(d) **Noncompliance or affidavits made in bad faith**.

If a party fails to comply with the requirements of this rule or with applicable orders entered by the court related to motions or proceedings on summary judgment, or should it appear that affidavits are presented in bad faith or for purposes of delay, the court may continue the hearing and, after notice and a reasonable time to respond, may impose costs, attorney's fees and sanctions against a party, the party's attorney, or both.

RELATED AUTHORITY

28 U.S.C. § 1746
Fed. R. Bankr. P. 7056
Fed. R. Civ. P. 56

Advisory Committee Notes:

If depositions or discovery responses are to be used in summary judgment proceedings, and if an order has not previously been entered allowing the filing of such discovery, *see* LBR 7005.1, the pertinent portions of such depositions or discovery responses (*i.e.*, the portions specifically cited to by the moving party in its statement of asserted undisputed facts, or by the opposing party in its statement of disputed and undisputed facts) should be attached to appropriate affidavits or declarations submitted in accordance with 28 U.S.C. § 1746.

DEPOSITS (REGISTRY FUND)

(a) Whenever a party seeks an order for money to be deposited by the clerk in an interest bearing account, the party shall prepare a form of order in accord with the following.

(b) The following form of standard order shall be used for the deposit of registry funds into interest bearing accounts or the investment of such funds in an interest-bearing instrument:

> IT IS ORDERED that the clerk invest the amount of $_____ in Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 USC § 2045, and said funds to remain invested pending further Order of the Court.
>
> IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and directed by this Order to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

RELATED AUTHORITY

28 U.S.C. § 2041-2042
Fed. R. Bankr. P. 7067
Fed. R. Civ. P. 67
District of Idaho General Order No. 257
LBR 7067.2

WITHDRAWAL OF A DEPOSIT

(a) **Order of the Court**

Funds may only be withdrawn upon an order of the court. Such order shall specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

(b) **Application Process**

Any person seeking withdrawal of monies, which were provided to the court under LBR 7067.1 and subsequently deposited into an interest-bearing account or instrument as required shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number, and the mailing address of the ultimate recipient of the funds.

Related Authority:
LBR 7067.1
District of Idaho General Order No. 257

RULES APPLICABLE TO BANKRUPTCY APPEALS

(a) **Rules applicable to bankruptcy appeals.**

(1) All Appeals. In addition to rules in Part VIII of the Federal Rules of Bankruptcy Procedure and Third Amended District Court General Order No. 38, LBR 8001.1 applies to all appeals from a judgment, order, or decree of a judge.

(2) Bankruptcy Appellate Panel (BAP). For the purposes of these Local Bankruptcy Rules, BAP shall mean the United States Bankruptcy Appellate Panel of the Ninth Circuit.

(b) **Filing of notice of appeal.**

An appellant shall file the notice of appeal together with the appropriate filing fee with the clerk of the bankruptcy court.

(c) **Form and time of consent to the BAP.**

(1) Consent. The consent of a party to allow an appeal to be heard and determined by the BAP shall be deemed to have been given unless written objection is filed with the clerk of the bankruptcy court either:

(A) by appellant with the notice of appeal or motion for leave to appeal; or

(B) by any other party within thirty (30) days from the date of service of notice of the appeal.

(C) When an appellant files both a notice of appeal and a motion for leave to appeal, consent will be deemed revoked if an objection to BAP determination is filed with respect to either pleading.

(2) Effect of Timely Objection. Upon timely receipt of a written objection to an appeal being heard and determined by the BAP, jurisdiction over the appeal shall be immediately transferred to the district court and the bankruptcy court clerk shall not forward any appeal documents, or any further documents, to the BAP. If the objection is timely, but filed after some of the appeal documents have been transferred to the BAP, the BAP clerk shall promptly return to the bankruptcy court clerk all appellate documents for administration.

(3) Objection Filed with Notice of Motion. If a written objection is filed with the notice of appeal or motion for leave to appeal, the bankruptcy court clerk shall not be required to forward any appeal documents to the BAP.

(d) **Transmittal of record.**

When the record is complete for purposes of appeal to either the district court or the BAP, a copy thereof will be transmitted, and the original bankruptcy court record shall remain in the office of the bankruptcy court clerk.

Related Authority:
28 U.S.C. § 158
Fed. R. Bankr. P. 8001-8019

Advisory Committee Notes:

The clerk will provide parties to an appeal, and to others upon request, copies of Amended General Order No. 38, as amended by General Order No. 113. In the event an appeal is heard by the BAP (*see* LBR 8001.1(c)), the BAP rules shall apply. Pursuant to LBR 1001.1(b) if an appeal is heard by the district court, it may order that the Local Rules of Civil Practice for the United States District Court for the District of Idaho shall apply.

FORM OF ORDERS

(a) **Separate documents.**

All orders must be submitted on a document separate from any attendant motion or stipulation.

(b) **Requisite information.**

All orders submitted must identify with specificity the application, motion, or other pleading to which it corresponds, and the court hearing, if any, from which it resulted. The order must also specifically identify the property or interest with which it deals.

(c) **Format**

All orders shall contain the proper case caption. There shall be no attorney information (name, firm, address, etc.) above the caption. After the text of the order, the end of the text shall be indicated with the phrase // end of text //. Below the end of text designation, the submitting attorney shall indicate the name of the attorney(s) submitting the order and who they represent (e.g. order submitted by John Smith, Attorney for Debtor Jane Doe), and any endorsements of the order by other parties. If the order is in regard to a Chapter 12 or a Chapter 13 case, other than in regard to an uncontested or stipulated stay relief motion, the order shall contain endorsements of the acting trustee.

(d) **Submission of proposed orders.**

Proposed orders are to be submitted by e-mail in a format compatible with WordPerfect, unless expressly directed by the court to be submitted in a different format. A certificate of service is not required when submitting a proposed order.

(1) When e-mailing the proposed order in the correct format to the court, all proposed orders must list in the e-mail subject line, the following items: (1) the case number; (2) judge's initials; (3) the docket number of the motion filed electronically, which is the subject of the proposed order; and (4) a description. (Example: 05-1234_TLM_10_Order_Dismissing.wpd)

(2) Proposed orders shall be sent to the appropriate e-mail address shown in the ECF Procedures.

Related Authority:
Fed. R. Bankr. P. 9004(b), 9013

Advisory Committee Notes:

Orders must identify the related application, motion or other pleading. This should be done by reference to the title, date and/or docket number of such pleading.

Attorneys should refer to the current ECF Procedures available on the court's website for further information about the submission of proposed orders.

ATTORNEYS

(a) **Eligibility for admission**.

(1) Any attorney who has been admitted to practice in the Supreme Court of the State of Idaho (including one admitted by reciprocity) is eligible for admission to the bar of this court. Any attorney admitted to practice before the district court for the District of Idaho is admitted to the bar of the bankruptcy court without further process.

(2) Each applicant for admission shall present to the clerk a written application stating the applicant's residence and office address and by what courts the applicant has been admitted to practice and the respective dates of admission to those courts.

(3) Each applicant for admission shall pay to the clerk the requisite admission fee.

(b) **Practice in this court.**

Only a member of the bar of this court may enter appearances for a party, sign stipulations or receive payment, or enter satisfactions of judgments, decrees, or orders.

(c) **Attorneys for the United States**.

An attorney, not admitted under this rule who is employed or retained by and representing the United States Government or any of its officers or agencies, may practice in this court in all actions and proceedings where the attorney is:

(1) A member in good standing of and eligible to practice before the bar of any United States Court, or of the highest court of any state or insular possession of the United States and;

(2) Who is of good moral character.

Attorneys permitted to practice in this court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the bar of this court.

(d) **Admission *pro hac vice*.**

(1) Any member in good standing of the bar of any United States Court, or of the highest court of any state or any territory or insular possession of the United States, who is of good moral character and has been retained to appear in this court, and who is not admitted to the bar of this court, may be permitted, after written application and without previous notice, to appear and participate in a particular case and related proceedings.

(2) The attorney filing pro hac vice must (1) designate a member of the bar of this court as co-counsel with the authority to act as attorney of record for all purposes, and (2) file with such designation the address, telephone number, and written consent of such designee. Designated local counsel shall be responsible both for filing the pro hac vice application through ECF and for payment of the prescribed fee. The pro hac vice application must be presented to the clerk and must state under penalty of perjury: the attorney's residence and office addresses; by what court(s) the attorney has been admitted to practice and the date(s) of admission; that the attorney is in good standing and eligible to practice in said court(s); and, that the attorney is not currently suspended, disbarred or subject to any pending disciplinary proceedings in any other court(s).

(A) Upon the electronic filing of the pro hac vice application and payment of fees by designated local counsel in ECF, out-of-state counsel shall immediately register for ECF.

(3) Unless otherwise ordered, the designee shall personally appear with the attorney on all matters heard and tried before the court.

(4) All pleadings filed with the clerk of court must contain the names, addresses and signatures, as prescribed in the ECF Procedures, of the attorney appearing *pro hac vice* and associated local counsel.

(e) **Appearances**.

(1) Only attorneys of this court may make appearances in this court, unless the party appears in propria persona. Whenever a party has appeared by an attorney, the party may not thereafter appear or act on their own behalf in the action, or take any steps therein unless a request for substitution or withdrawal, in accordance with this rule shall first have been made by that party and filed with the clerk. The court may, in its discretion, hear a party in open court notwithstanding the party has appeared or is represented by an attorney.

(A) At the discretion of the presiding judge, a legal intern who possesses a limited license issued by the Idaho State Bar may appear before the bankruptcy court in the presence of a supervising attorney, who shall be an attorney licensed to practice before this court.

(2) Persons representing themselves without an attorney must appear personally for such purpose and may not delegate that duty to any other person. Any person so represented without an attorney is bound by these Local Rules, the Federal Rules of Bankruptcy Procedure, and by the Federal Rules of Civil Procedure. Failure to comply therewith may be grounds for dismissal or judgment by default. In exceptional circumstances, a judge may modify these provisions to serve the ends of justice.

(3) Whenever a corporation, partnership or other entity desires or is required to make an appearance in this court, only an attorney of the bar of this court or an attorney permitted to practice under these rules shall make the appearance.

(4) In all Oregon cases heard before this court, and in all proceedings related thereto, Oregon counsel not previously admitted to the bar of this court under subdivision (a) of this rule may appear for the debtor(s) or a creditor or party in interest without compliance with the requirements of *pro hac vice* admission as set forth in subdivision (d) of this rule.

(5) For purposes of this rule, an appearance before this court does not include the preparation, signing, and filing by a creditor of:

(A) a proof of claim, or an amendment, withdrawal, or notice of assignment of such proof of claim,

(B) a stipulation for relief from the automatic stay,

(C) a reaffirmation agreement, or

(D) a request for service of documents.

(f) **Substitutions and Withdrawals**.

(1) When an attorney of record for any party ceases to act, that party shall appear in person or appoint another attorney by:

(A) A written substitution of attorney signed by the party, the attorney ceasing to act, and the newly appointed attorney or;

(B) By a written designation filed in the action and served upon the attorney ceasing to act.

(i) If the attorney ceasing to act is deceased, the designation shall so state and service of the designation shall not be required.

(2) No attorney of record for a party may withdraw from representation without leave of the court, upon notice to the client, all parties in interest, and notice and hearing. The withdrawing attorney may utilize this court's negative notice rules, LBR 2002.2(d), or set the matter for hearing. When appropriate, the withdrawing attorney shall submit a proposed order which directs the client to appear in person or appoint another attorney to appear, and to file a written notice with the court stating how the client will be represented within twenty-one (21) days from the date of the order authorizing withdrawal. The order shall also inform the client that no further proceedings will be held in the action that would affect the client's rights within those twenty-one (21) days but failure to appear in the action in person or through newly appointed counsel within that twenty-one (21) day period shall be sufficient grounds for entry of default or dismissal of the action without further notice.

(A) The withdrawing attorney shall continue to represent the client until the court enters and serves the order granting the attorney's motion to withdraw.

(B) Upon entry of the order, the court shall serve copies upon the withdrawing attorney, the former client and all parties entitled to notice under Federal Rule(s) of Bankruptcy Procedure or these rules.

(C) Upon the entry of the order, no further proceedings can be had in the action that will affect the rights of the party represented by the withdrawing attorney for a period of twenty-one (21) days. If the party fails to appear in the action, either in person or through a newly appointed attorney within such twenty-one (21) day period, such failure shall be sufficient grounds for the entry of default against such party or dismissal of the action without further notice.

(3) Anything in this subsection (f) notwithstanding, any incoming debtor's attorney, whether by substitution, by an appearance following an order permitting withdrawal of another attorney or otherwise, shall forthwith give notice of the appearance as attorney of record to all parties in interest and file a proof of service with the court.

(4) Upon notice of the death of an attorney or other good cause for termination of an attorney-client relationship, the Court may enter and serve an order consistent with subsection (f)(2).

(g) **Standards of professional responsibility**.

The members of the bar of this court shall adhere to the Rules of Professional Conduct promulgated and adopted by the Supreme Court of the State of Idaho. These provisions, however, shall not be interpreted to be exhaustive of the standards of professional conduct and responsibility. No attorney permitted to practice before this court shall engage in any conduct that degrades or impugns the integrity of the court or in any manner interferes with the administration of justice therein.

(h) **Attorney discipline**.

Discipline will be governed by the provisions of D. Id. L. Civ. R. 83.5.

(i) **Multiple counsel**.

If more than one attorney represents a party, only one attorney shall examine or cross-examine a single witness and only one attorney shall argue the merits before the court, unless the court otherwise permits.

Related Authority:
Fed. R. Bankr. P. 9010, 9011, 9020
District Court of Idaho General Order Nos. 59 and 185
D. Id. L. Civ. R. 83.4 and 83.5.

Advisory Committee Notes:

The provision of (e)(4) is meant to continue current practice under which members of the bar of the District of Oregon may appear in those eastern Oregon bankruptcy cases and proceedings administered by this court through agreement with the U.S. Bankruptcy Court for the District of Oregon. Such counsel need not be admitted to practice *pro hac vice*, but the authority to appear is limited solely to the Oregon case and its related proceedings.

A form of *pro hac vice* application and order can be viewed at www.id.uscourts.gov.

FAIRNESS AND CIVILITY

(a) Litigation, inside and outside the courtroom, in the United States District and Bankruptcy Courts for the District of Idaho, must be free from prejudice and bias in any form. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another on the basis of categories such as gender, race, ethnicity, religion, disability, age, or sexual orientation.

(b) Civility in professional conduct is the responsibility of every lawyer, judge, and litigant in the federal system. While lawyers have an obligation to represent clients zealously, incivility to counsel, adverse parties, or other participants in the legal process, undermines the administration of justice and diminishes respect for both the legal process and our system of justice.

(c) The bar, litigants and judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice. The fundamental principles of civility that will be followed in the Bankruptcy Court for the District of Idaho, both in the written and spoken word, include the following:

(1) Treating each other in a civil, professional, respectful, and courteous manner at all times;

(2) Not engaging in offensive conduct directed towards others or the legal process;

(3) Not bringing the profession into disrepute by making unfounded accusations of impropriety;

(4) Making good faith efforts to resolve by agreement any disputes;

(5) Complying with the discovery rules in a timely and courteous manner; and

(6) Reporting acts of bias or incivility to the clerk of the court. The clerk of the court will then determine the appropriate judicial officer with whom to discuss the matter.

Related Authority:
District Court of Idaho General Order Nos. 111 and 112
D. Id. L. Civ. R. 83.8

Bankruptcy Local Rule 9014.1

Back to Top

WITNESS TESTIMONY AT HEARINGS ON CONTESTED MATTERS

If a party intends to present evidence through witnesses at a hearing on a contested matter, such party shall so indicate on the initial or responsive pleadings or, alternatively, shall so indicate in a separate notice filed with the court and served on opposing parties not later than seven (7) days prior to such hearing.

Related Authority:
Fed. R. Bankr. P. 9014(e)

Advisory Committee Notes:

This Local Rule provides a procedure consistent with Fed. R. Bankr. P. 9014(e). Parties are encouraged to alert the calendar clerk about their intention to present witness testimony when the hearing is scheduled or when the response to the notice under this Rule is filed.

JURY TRIALS

(a) **Applicability of certain federal rules of civil procedure.**

Fed. R. Civ. P. 38, 39, and 47 through 51, and Fed. R. Civ. P. 81 (c) insofar as it applies to jury trials, apply in bankruptcy cases and adversary proceedings, except that a demand made under Fed. R. Civ. P. Rule 38(b) shall be filed in accordance with Fed. R. Bankr. P. 5005.

(b) **Consent to have trial conducted by bankruptcy judge.**

If the right to a jury trial applies, a timely demand has been filed under Fed. R. Civ. P. 38(b), and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than fourteen (14) days after service of the demand.

Related Authority:
None

Advisory Committee Notes:

This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

CHANGES TO JUDGMENTS OR ORDERS

When a party seeks to correct a judgment or order of the court due to clerical mistakes and/or errors arising from oversight or omission, the request shall be made by filing a motion with the court. The motion must set forth the proposed changes, either in the motion or by attaching a red-lined copy of the judgment or order as an exhibit to the motion. A separate order containing the proposed changes shall be submitted in accord with LBR 9004.1.

Related Authority:
Fed. R. Bankr. P. 9013, 9024;
Fed. R. Civ. P. 60(a)

Advisory Committee Notes:

Parties sometimes submit a proposed order that would amend a prior order without filing a motion or otherwise alerting the court as to the errors or inaccuracies in the prior order or identifying the need or reason for entering an amended order. The motion required by this rule should clearly identify the prior order (preferably by date and docket number) and specify the proposed changes. This allows the court to examine the proposed modification(s) and evaluate the propriety of entering an amended order. Generally, no hearing would be required if the motion identifies only clerical errors and parties in interest have received notice, or if affected parties have submitted a stipulation agreeing to the proposed changes or have endorsed the proposed order. However, when an objection is anticipated or filed, the hearing procedures of LBR 2002.2 should be followed.

Note that this rule is directed to motions made under Fed. R. Civ. P. 60(a), made applicable by Fed. R. Bankr. P. 9024. Requests for relief under the provisions of Fed. R. Civ. P. 60(b) are addressed under general motion practice.

TRANSMITTAL OF DOCUMENTS TO UNITED STATES TRUSTEE

(a) **Transmittal of documents**.

The following documents shall be transmitted to the office of the U.S. Trustee:

(1) Cases. Any document filed in cases under chapter 7, 9, 11, and 12 of the Bankruptcy Code, *except* proofs of claim, and *except* petitions and accompanying materials that are included in the initial filing with the bankruptcy court.

(A) Copies of applications for approval of employment, or for allowance of interim or final compensation of professionals, together with all supporting affidavits, exhibits or other documents, shall be transmitted to the office of the United States Trustee at the time of filing.

(B) Copies of attorney's fees disclosure statements required under Fed. R. Bankr. P. 2016(b).

(2) Adversary Proceedings.

(A) Any document filed in any adversary proceeding related to a case under chapter 9 or 11, if such document is required to be filed with the bankruptcy court;

(B) Any document filed in any adversary proceeding objecting to discharge under 11 U.S.C. § 727; or

(C) Any document filed in any adversary proceeding where a bankruptcy trustee is named as a party defendant.

(b) **Manner of transmittal.**

All such documents which are filed with the bankruptcy court and which must be transmitted in accordance with this rule shall be accompanied by proof of such transmittal to the U.S. Trustee by ECF Procedures at ustp.region18.bs.ecf@usdoj.gov or by first class mail at the following address:

Office of the U.S. Trustee
Washington Group Central Plaza
720 Park Blvd, Ste 220
Boise, Idaho 83712

(c) **Noncompliance**.

The U.S. Trustee has exclusive standing to object to noncompliance with any provision of this rule, with the exception of transmittal of those items specifically enumerated in Fed. R. Bankr. P. 9034.

Related Authority:
Fed. R. Bankr. P. 2020, 9034.

PRIVACY PROTECTION FOR FILINGS
MADE WITH THE COURT

(a) It is the sole responsibility of counsel and the parties to be sure that the redaction of personal identifiers pursuant to Fed. R. Bankr. P. 9037 is completed. The clerk will not review filings for redaction.

(b) A party wishing to file a document containing the personal data identifiers listed in Fed. R. Bankr. P. 9037 may file an unredacted document under seal only if the party believes maintenance of the unredacted material in the court record is critical to the case. The document must contain the following heading in the document, "SEALED DOCUMENT PURSUANT TO FED. R. BANKR. P. 9037". This document shall be retained by the court as part of the record until further order of the court. The party must also electronically file a redacted copy of this document for the official record.

Related Authority:
Dist. Idaho General Order 179, 183
Fed. R. Bankr. P. 9037

Advisory Committee Notes:

The Judicial Conference policy on redaction of personal identifiers listed in Fed. R. Bankr. P. 9037, also requires Counsel to redact information contained in transcripts filed with the Court. Counsel should follow the transcript redaction procedures outlined on the Court's web site. http://www.id.uscourts.gov/CourtReporter/Transcripts.pdf.

In addition to the privacy items listed in Fed. R. Bankr. P. 9037, the Judicial Conference policy requires that the court not provide public access to the following documents: juvenile records; ex parte requests for expert or investigative services at court expense; and sealed documents.

Counsel should exercise caution when filing documents that contain the following:

(1) Personal identification number, such as driver's license number;

(2) Medical records, treatment and diagnosis;

(3) Employment history;

(4) Individual financial information;

(5) Proprietary or trade secret information;

(6) Information regarding an individual's cooperation with the government;

(7) Information regarding the victim of any criminal activity;

(8) National security information; and

(9) Sensitive security information as described in 49 U.S.C. § 114(s).

Counsel is strongly urged to share this information with all clients so that an informed decision about the inclusion of certain materials may be made.

Guidelines regarding Motions to Use Cash Collateral
or to obtain Credit, or Stipulation regarding the Same

The following guidelines apply to motions or agreements to use cash collateral or obtain postpetition credit or financing. LBR 4001.1(a)(9), (b)(7) and (c), require that both interim and final motions contain a statement of whether or not the motion proposes to grant, or whether the agreement of the parties includes, any provision contained in subsection (b) of these guidelines, and, if so, that the provision be clearly identified.

(a) **Provisions Normally Approved**.

The court will normally approve, or may require, inclusion of the following provisions:

(1) Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to chapter 7;

(2) Securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral of the same type as the secured party had prepetition;

(3) Reservation of rights under § 507(b), unless that provision also calls for modification pursuant to § 726(b);

(4) Reasonable financial and other appropriate reporting requirements;

(5) Reasonable requirements for proof of insurance;

(6) Reasonable requirements for access to property for inspection and appraisal;

(7) Reasonable budgets and use restrictions; and

(8) Expiration date for the order.

(b) **Other Provisions.**

The following provisions are approved, rarely, if ever, on an interim basis. Approval following final hearing is dependent on adequate notice and cause having been shown. Inclusion of any of these provisions will be scrutinized by the court even in the absence of an objection by a party in interest.

(1) Cross-collateralization clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement.

(2) Provisions or findings of fact that bind the estate or all parties in interest, other than the debtor with respect to the validity, perfection or amount of the secured party's lien or debt.

(3) Provisions or findings of fact that bind the estate or all parties in interest, other than the debtor, with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the agreement.

(4) Provisions securing new advances or value diminution with a lien on postpetition collateral not the same type that the secured party had prepetition.

(5) Provisions that prime the liens and/or security interests of secured creditors who are not parties to the agreement, unless consented to by the affected creditor.

(6) Provisions that waive Bankruptcy Code § 506(c) except to the extent effective only during the period in which the debtor in possession or trustee is authorized to use cash collateral or obtain credit.

(7) Provisions that preclude a future trustee with a duty to care for, preserve, and/or liquidate collateral from recovering the expenses of administration.

(8) Provisions that characterize any postpetition payments as payments of interest, fees, or costs on prepetition obligations.

(9) Provisions that operate specifically or as a practical matter to divest the debtor, or any other party in interest, of any discretion in the formulation of a plan or administration of the estate, or limit access to the court to seek any relief under applicable provisions of law.

(10) Releases of liability for the creditor's prepetition torts, breaches of contract, or lender liability, as well as releases of prepetition or postpetition defenses and/or counterclaims.

(11) Provisions that waive causes of action.

(12) Provisions granting a security interest or lien in causes of action or recoveries arising under the Bankruptcy Code.

(13) Relief from the automatic stay of Bankruptcy Code § 362(a) upon default, conversion to chapter 7, or the appointment of a trustee, without notice.

(14) Provisions that waive the right to move for a court order under Bankruptcy Code 363(c)(2)(B) or § 364 (c) and (d) authorizing the use of cash collateral in the absence of the secured party's consent.

(15) Provisions that carve out administrative expenses that do not treat all such expenses equally or on a pro rata basis.

(16) Provisions that create an unreasonably short period of limitations for any party in interest (including a successor trustee) to bring claims or causes of action against the lender or secured creditor.

(17) Provisions that waive the procedural requirements for foreclosure or repossession mandated under applicable non-bankruptcy law.

(18) Provisions applicable in the event of a dispute under the order or agreement that place jurisdiction or venue in another court.

(19) Provisions applicable in the event of a dispute or default under the agreement wherein the debtor waives service of process, the doctrine of forum non conveniens, notice and hearing, or the right to a jury trial.

(20) Findings of fact on matters extraneous to the approval process or without testimony or evidence.

Model Retention Agreement

Rights and responsibilities agreement between
Chapter 13 Debtors and their Attorneys

United States Bankruptcy Court
District of Idaho

Chapter 13 gives debtors important rights, such as the right to keep property that could otherwise be lost through repossession or foreclosure – but Chapter 13 also puts burdens on debtors, such as the burden of making complete and truthful disclosures of their financial situation. It is important for debtors who file a Chapter 13 bankruptcy case to understand their rights and responsibilities in bankruptcy. In this connection, the advice of an attorney is crucial. Debtors are entitled to expect certain services will be performed by their attorneys, but debtors also have responsibilities to their attorneys. In order to assure that debtors and their attorneys understand their rights and responsibilities in the Chapter 13 process, the Bankruptcy Court for the District of Idaho has approved the following agreement, setting out the rights and responsibilities of both debtors in Chapter 13 and their attorneys. By signing this agreement, debtors and their attorney accept these responsibilities.

I. **BEFORE THE CASE IS FILED**

A. THE DEBTOR AGREES TO:

1. Discuss with the attorney the debtor's objectives in filing the case.

2. Provide the attorney with full, accurate and timely information, financial and otherwise, including properly documented proof of income.

B. THE ATTORNEY AGREES TO:

1. Personally counsel the debtor regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss both procedures (as well as non-bankruptcy options) with the debtor, and answer the debtor's questions.

2. Personally explain to the debtor that the attorney is being engaged to represent the debtor on all matters arising in this case, as required by Local Bankruptcy Rule and explain how and when the attorney's fees and the trustee's fees are determined and paid.

3. Review with the debtor and sign the completed petition, plan, statements, and schedules, as well as all amendments thereto, whether filed with the petition or later.

4. Timely prepare and file the debtor's petition, plan, statements, and schedules.

5. Explain to the debtor how, when, and where to make all necessary payments, including both payments that must be made directly to creditors and payments that must be made to the Chapter 13 trustee, with particular attention to housing and vehicle payments.

6. Advise the debtor of the need to maintain appropriate insurance.

II. AFTER THE CASE IS FILED

A. THE DEBTOR AGREES TO:

1. Make the required payments to the trustee and to whatever creditors are being paid directly, or, if required payments cannot be made, to notify the attorney immediately.

2. Appear at the meeting of creditors (also called the "§ 341(a) meeting") with recent proof of income, picture identification, and proof of the debtor's social security number, and any other required information.

3. Notify the attorney and the trustee of any change in the debtor's address or telephone number.

4. Inform the attorney of any wage garnishment, levies, liens or repossessions of or on assets that occur or continue after the filing of the case.

5. Contact the attorney immediately if the debtor loses employment, has a significant change in income, or experiences any other significant change in financial situation (such as serious illness, lottery winnings, or an inheritance.)

6. Notify the attorney if the debtor is sued or wishes to file a lawsuit (including divorce.)

7. Provide the attorney and the trustee with copies of income tax returns, and provide the trustee with any

refunds received, as required by the Court's Income Tax Order. Inform the attorney if any tax refunds to which the debtor is entitled are seized or not received when due from the IRS, the State of Idaho, or other entities.

8. Contact the attorney before buying, refinancing or selling any property, real or personal, and before entering into any loan agreement.

9. Cooperate with the attorney and the trustee in regard to questions about the allowance or disallowance of claims.

B. THE ATTORNEY AGREES TO:

1. Advise the debtor of the requirement to attend the meeting of creditors, and notify the debtor of the date, time, and place of that meeting.

2. Inform the debtor that the debtor must be punctual and, in the case of a joint filing, that both spouses must appear at the same meeting.

3. Provide knowledgeable legal representation for the debtor at the § 341(a) meeting of creditors and at any motion hearing, plan confirmation hearing, and/or plan modification hearing.

4. If the attorney finds it necessary for another attorney to appear and attend the § 341(a) meeting or any court hearing, personally explain to the debtor, in advance, the role and identity of the other attorney and provide the other attorney with the file in sufficient time to review it and properly represent the debtor.

5. Ensure timely submission to the trustee of properly documented proof of income for the debtor, including business reports for self-employed debtors.

6. Timely respond to objections to plan confirmation and, where necessary, prepare, file, and serve an amended plan.

7. Timely prepare, file, and serve any necessary amended statements and schedules and any change of address, in accordance with information provided by the debtor.

8. Be available to respond to the debtor's questions throughout the term of the plan.

9. Prepare, file, and serve timely modifications to the plan after confirmation, when necessary, including modifications to suspend, lower, or increase plan payments.

10. Prepare, file, and serve necessary motions to buy or sell property and to incur debt.

11. Evaluate claims which are filed and, where appropriate, object to filed claims.

12. Timely respond to the trustee's motion to dismiss the case, such as for payment default, or unfeasibility, and to motions to increase the payments into the plan.

13. Timely respond to motions for relief from stay.

14. Prepare, file, and serve all appropriate motions to avoid liens, if not included in the plan.

15. Provide any other legal services necessary for the administration of this case before the bankruptcy court.

ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES

Any attorney retained to represent a debtor in a Chapter 13 case is responsible for representing the debtor on all matters arising in the case, unless otherwise ordered by the court. For such services, as set forth above, the attorney will be paid a fixed fee of $_____ (exclusive of court filing fees).

In extraordinary circumstances, the attorney may apply to the court for additional compensation. Any such application must be accompanied by an affidavit of the attorney, and include an itemization of the services rendered, showing the date, the time expended, the identity of the attorney or other person performing the services, the rate(s) charged, and the total amount sought. Such an application must be set for a hearing before the court. The debtor must be served with a copy of the application, affidavit, and notice of hearing, and advised of the right to appear in court to comment on or object to such application. The debtor is hereby informed that, in the event of such a request, fees shall be calculated or claimed at the following rate(s): _____.

The attorney may receive some portion of the described fixed fee before the filing of the case. The attorney may not receive payment on the fee directly from the debtor after the filing of the case, but must receive any remaining portion of such fee through the plan. In addition to other disclosures required by the Rules, the attorney shall disclose, in any application for additional fees, any and all fees previously paid by the debtor.

If the debtor disputes the sufficiency or quality of the legal services provided or the amount of the fees charged by the attorney, including this fixed fee, the debtor may file an objection with the court and request a hearing.

If the attorney believes that the debtor is not complying with the debtor's responsibilities under this agreement or is otherwise not engaging in proper conduct, the attorney may apply for an order allowing the attorney to withdraw from the case.

The debtor may discharge the attorney at any time.

/s/_____ Date: _____
Debtor

/s/_____ Date: _____
Joint Debtor (if applicable)

/s/_____ Date: _____
Attorney for Debtor(s)