

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

IMPORTANT NOTICE TO THE BAR AND PUBLIC

**THIRTY-DAY PUBLIC COMMENT PERIOD
CONCERNING AMENDMENT OF
2021 LOCAL BANKRUPTCY RULES AND FORMS**

Please be advised that the Board of Judges of the United States Bankruptcy Court for the District of New Jersey has approved for publication for a thirty-day public comment period, a draft of proposed 2021 amended Local Bankruptcy Rules and amended local forms as highlighted below:

D.N.J. LBR 2002-1. Certification of Service; Change of Address

- *Change of Address*

D.N.J. LBR 2004-1. Examination

D.N.J. LBR 2014-1. Employment of Professional Persons

D.N.J. LBR 3021-1. Chapter 11 Plan Distributions

D.N.J. LBR 3022-1. Closing a Chapter 11 Case

D.N.J. LBR 9019-2. Mediation: Procedures

Local Forms amended without amendment to related local rule or not related to a local rule:

- *Disclosure of Chapter 13 Debtor's Attorney Compensation*
- *Appearance Sheet*

The proposed Local Bankruptcy Rules and amended local forms are attached for ease of reference.

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

- May 3, 2021 - Publication of draft rules for public comment.
- June 2, 2021 - Close of public comment period.

- June 3, 2021 - Consideration of comments received by the Board of Judges of the Bankruptcy Court for the District of New Jersey.
- June 10 - June 30, 2021 - Submission of draft rules for formal approval by the Board of Judges of the District Court for the District of New Jersey.
- August 1, 2021 - Effective date of 2021 Local Bankruptcy Rules.

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

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

Dated: May 3, 2021

Jeanne A. Naughton, Clerk

D.N.J. LBR 2002-1. Certification of Service; Change of Address

(a) Certification of service. A party seeking relief from the court must file Local Form *Certification of Service*.

(b) Change of address. A party changing its address during a case or proceeding must file Local Form *Change of Address* in each affected case or proceeding.

2021 Comment

This rule is amended to clarify that a separate *Change of Address* form must be filed in each main case and adversary proceeding where the address of the party needs to be updated.

2015 Comment

This Rule is new. Use of the local form required under subdivision (a) simplifies the court's review of service.

Subdivision (b) provides a uniform method for informing the court, a trustee, and any affected party of a change of address.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:

Case No.: _____

Adversary No.: _____

Chapter: _____

Judge: _____

CHANGE OF ADDRESS

Under D. N.J. LBR 2002-1(b) this form must be used by a party to change its address during a case or proceeding. **NOTE:** A separate form must be filed in each main case and adversary proceeding where the address of the party needs to be updated. A debtor who wishes to change the address of a creditor previously included on their Schedules may also use this form.

Party's name/type: _____
(Example: John Smith, creditor)

Old address: _____

New address: _____

New phone no.: _____
(if debtor is filing and their phone number has changed).

I hereby certify under penalty of perjury that the above information is true. If a debtor, I understand that it is my responsibility to notify the Trustee and any affected party of my change of address.

Date: _____

Signature

D.N.J. LBR 2004-1. Examination

(a) Examination on parties' agreement. A motion under Bankruptcy Rule 2004(a) is not required if the party from whom an examination or document production is sought agrees to voluntarily appear or produce documents or electronically stored information.

(b) Examination on subpoena. An attorney for a party in interest seeking to compel an examination or production of documents or electronically stored information under Bankruptcy Rule 2004 may serve national Director's Form 2540 *Subpoena for Rule 2004 Examination*; a motion is not required. A self-represented party seeking to compel an examination or production of documents or electronically stored information must file an application for an order compelling discovery.

(c) Date and place of examination. A subpoena issued under subdivision (b) must set the examination or document or electronically stored information production not earlier than 14 days after service of the subpoena. The examination or document or electronically stored information production must take place at the location set by the party issuing the subpoena, provided that the location complies with Federal Rule 45(c). The parties may agree to modify these requirements.

(d) Quashing or modifying subpoena. On motion of the examinee or a party in interest, the court may quash or modify a subpoena issued under subdivision (b). The filing of the motion prior to the date set for examination or document production stays the subpoena until the court rules on the motion.

(e) Compelling attendance and production of documents. If the examinee fails to comply with a subpoena issued under subdivision (b) and fails to file a motion under subdivision (d), the party issuing the subpoena may file a motion for an order directing an examination or document production under Bankruptcy Rule 2004.

2021 Comment

Subdivisions (a), (b), and (c) of this Rule are amended to include electronically stored information, in accordance with changes to Bankruptcy Rule 2004 (effective December 1, 2020).

2016 Comment

Subdivision (b) of this Rule is amended to reference the change in numbering of the national Director's Form to B2540 *Subpoena for a 2004 Examination*.

2015 Comment

An attorney may serve a Bankruptcy Rule 2004 subpoena without a court order.

Subdivision (c) provides that the location set by the issuer of the subpoena will not be subject to challenge if the location is within the geographical limits specified in Federal Rule 45(c).

Local Bankruptcy Rule 9016-1 addresses other types of subpoenas.

D.N.J. LBR 2014-1. Employment of Professional Persons

(a) General requirements. An applicant seeking approval of employment of a professional person must file and serve Local Forms *Application for Retention of Professional, Certification of Professional in Support of Application for Retention of Professional* and *Order Authorizing Retention* on the debtor, the trustee, secured creditors, official committees, and parties requesting notice of all proceedings.

(b) Objection.

(1) If an application is filed within 21 days after the filing of the petition, an objection must be filed and served within the later of:

(A) 14 days after the filing of the application; or

(B) 21 days after the filing of the petition.

(2) If an application is filed after the initial 21-day period, an objection must be filed and served within 7 days after the filing of the application.

(3) If an objection is filed, the court may conduct a hearing on the objection in its discretion.

2021 Comment

Subdivision (b) has been modified to clarify the objection period, based on the filing date of an employment application.

2015 Comment

Subdivision (a) is amended to add a reference to the relevant Local Forms.

Local Bankruptcy Rule 2014-2 addresses the requirements for the retention of an auctioneer.

Local Bankruptcy Rule 6004-4 addresses the requirements for the retention of a liquidator.

Bankruptcy Rule 6003 provides that unless necessary to avoid harm, the court will not grant an application under Bankruptcy Rule 2014 within the first 21 days of a case. The 14 day objection period in subdivision (b) balances Rule 6003's goal of alleviating "some of the time pressures present at the start of a case" with a professional person's interest in obtaining a prompt determination on an employment application.

D.N.J. LBR 3021-1. Chapter 11 Plan Distributions

(a) Disbursing agent. A chapter 11 plan providing for distribution of property must designate a disbursing agent and state the terms of any compensation to the disbursing agent.

(b) Deposit of funds. The disbursing agent must deposit funds in a segregated account. Distributions from the account must indicate the source of the funds.

(c) Funds held for more than 30 days. If the chapter 11 plan requires the disbursing agent to maintain funds for more than 30 days, the funds must be held in an interest-bearing account or certificate for the benefit of creditors and interest holders.

(d) Report of Distributions. Within 14 days after each distribution, and until the case is closed, the disbursing agent must file and serve on the debtor, the chapter 11 plan proponent, the United States Trustee, and any official committee Local Form *Report of Distributions Under Confirmed Chapter 11 Plan*.

(e) Unclaimed distributions. Unclaimed security, money, or other property must be returned to the debtor or the entity acquiring the assets of the debtor under the chapter 11 plan not later than 180 days from the date of distribution unless the plan provides otherwise.

(f) Individual debtor. Except in the case of a plan confirmed under § 1191(a) or (b) of the Code, a chapter 11 debtor who is an individual must file Local Form *Chapter 11 Individual Debtor's Certification of Completion of Plan Payments and Notice to Creditors* after the final distribution.

2021 Comment

Subdivision (f) is amended due to the enactment of the Small Business Reorganization Act of 2019.

2015 Comment

Subdivision (a) has been amended to require that a chapter 11 plan providing for distribution of property must designate a disbursing agent.

Subdivision (b) has been amended to eliminate the requirement in the former rule that a distribution be only by check. The Rule now permits distribution by other means, such as electronic transfer. If a check is used, it must identify the case name and the disbursing agent's name.

Subdivision (e) supplements § 347(b) of the Code, and in the absence of a time period set forth in a plan, provides a deadline for return of unclaimed security, money, or other property.

Subdivision (f) supplements § 1141(d)(5) of the Code, which provides that in a case in which the debtor is an individual the court does not grant a discharge until the debtor has completed all payments under the plan.

D.N.J. LBR 3022-1. Closing a Chapter 11 Case

(a) Closing case. Except in the case of a plan confirmed under § 1191(b) of the Code, the court will close a chapter 11 case 180 days after entry of the order confirming the plan.

(b) Cases under § 1191(b) of the Code. In a case confirmed under § 1191(b) of the Code, the Court will close the case if the trustee has filed the Chapter 11 Subchapter V Trustee's Final Report and Account, and if within 30 days no objection has been filed by the United States Trustee or a party in interest.

(c) Extension. On motion of a party in interest filed before the case is closed, the court may extend the time for closing the case.

2021 Comment

Subdivision (a) is amended and Subdivision (b) is new due to the enactment of the Small Business Reorganization Act of 2019.

2015 Comment

The changes to this Rule are stylistic.

D.N.J. LBR 9019-2. Mediation: Procedures

(a) Referral to mediation.

(1) Every adversary proceeding will be referred to mediation after the filing of the initial answer to the adversary complaint, except as provided in subdivisions (a)(2) and (3). A contested matter under Bankruptcy Rule 9014 may also be referred to mediation either by joint request of the parties, or by the court at a status conference or hearing.

(2) An adversary proceeding will not be presumptively referred to mediation if:

(A) one or more parties is self-represented;

(B) a party seeks a temporary restraining order or preliminary injunction;

(C) the action is initiated by the United States trustee; or

(D) the action is initiated against the United States Department of Education under § 523(a)(8) of the Code.

An adversary proceeding identified in subdivisions (a)(2)(A), (B), (C), or (D) may be referred to mediation only by the request of a party, on written notice to the other parties and the court, or by the court's own motion at a status conference or hearing.

(3) A party subject to presumptive mediation may file a motion requesting to be excused from mediation participation, or requesting a determination that the mediation should not proceed. If a party intends to raise an objection to mediation at the pretrial conference, then not later than 7 days before the pretrial conference the objector must notify the court and all parties to the adversary proceeding that an objection to mediation will be raised at the hearing.

(b) Selection of mediator.

(1) The parties must confer regarding the selection of a mediator. The parties may select, or the court may designate, an individual who is not on the court's register of mediators.

(2) When the parties agree to mediation they must submit to the chamber's e-mail Local Form *Mediation Order*. If the parties also agree on the selection of a mediator, the name of the chosen mediator must be included in the *Mediation Order*.

(3) If the court overrules a party's objection to mediation, the parties must submit a *Mediation Order* not later than 14 days after the pretrial conference.

(4) The plaintiff must immediately serve the mediator with the *Mediation Order*.

(c) Acceptance of appointment.

(1) Promptly after receiving the notification of appointment, the mediator must determine whether there is a basis for disqualification, or whether the mediator is unable to serve for any other reason. The determination should include a search for conflicts of interest in the manner prescribed by the applicable Rules of Professional Conduct for attorneys, and by the applicable rules pertaining to the profession of the mediator.

(2) A party who believes that the mediator has a conflict of interest or other basis for disqualification must promptly advise the mediator, as applicable, and other parties. If the mediator does not withdraw, and the party is dissatisfied with the mediator's decision, the party can seek a determination of the issue from the court.

(d) Organizational conference. Upon entry of the Mediation Order, the parties must promptly contact the mediator to schedule an organizational telephone conference.

(e) Commencement of mediation. Mediation must commence not later than 60 days after the entry of the Mediation Order. Parties may seek an extension of time to conduct the mediation by consent order or by motion.

(f) Pretrial conference. The parties do not need to appear at the pretrial conference if, not later than 3 days before the first scheduled pretrial conference, they submit to the chamber's e-mail:

(1) Local Form *Mediation Order*; and

(2) Local Form *Joint Order Scheduling Pretrial Proceedings and Trial*.

(g) Effect of mediation on discovery. Unless otherwise ordered by the court, the assignment to mediation stays discovery, but does not stay the initial disclosures required under Federal Rule 26(a)(1). A party may file a motion requesting that discovery proceed during mediation or that Rule 26 disclosures be stayed.

(h) Mediation statement. The mediator will fix a date for the parties to submit to the mediator and serve on other parties a brief statement of facts, applicable law, and proposals for settlement. Mediation statements should not be filed with the court. The mediation statement should not exceed 15 pages. The mediation statement must contain:

(1) any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement;

(2) the history of any prior settlement discussions, including disclosure of any previous or outstanding offers and demands; and

(3) an estimate of the cost and time to be expended for further discovery, pretrial motions, and trial. At the discretion of the parties, each party's mediation statement may be prepared and submitted to the mediator for review without service of the statement on other parties.

(i) Attendance. Unless excused by the mediator or the court on a showing of good cause or hardship, or if the mediator or the court determines that it is consistent with the goals of the mediation to excuse a particular person from attending, the following persons must attend the mediation session personally:

(1) each party that is a natural person;

(2) if a party, including a governmental entity, is not a natural person then a representative who is not the party's attorney of record and who either has full authority to negotiate and settle the matter on behalf of the party, or has authority to recommend a settlement and has prompt access to any board or governmental body whose approval is required to settle the matter;

(3) the attorney who has primary responsibility for a party's case; and

(4) other interested parties, such as insurers or indemnitors, whose presence is necessary or beneficial to reaching a full resolution of the matter.

(j) Failure to Attend. Willful failure to attend a mediation session may be reported to the court by the mediator or any other party, and may result in the court imposing sanctions.

(k) Confidentiality.

(1) Except as provided in subdivision (k)(2), unless the mediator and the participants agree otherwise in writing, or unless disclosure is permitted by this Rule or applicable law, a mediator, party, or other participant in the mediation may not disclose to an entity or person who was not a participant in the mediation any oral or written communication concerning the mediation, including any document, report or other writing presented or used solely in connection with the mediation.

(2) A mediator must disclose to a proper authority information obtained at a mediation session if required by law, or if the mediator or a party has a reasonable belief that the disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm.

(3) A mediator shall not testify in any judicial proceeding as to any statements, matters, occurrences or observations arising out of the mediation except by express written agreement of all parties to the mediation. This clause is not applicable to any litigation to enforce the terms of any written agreement reached by the parties in the course of the mediation wherein the meaning or content of such agreement is put in issue.

(4) No written record or transcript of any discussion had in the course of mediation is to be kept, absent express written agreement by the parties.

(l) Attorney conduct. A lawyer representing a client at a mediation session is subject to the Rules of Professional Conduct.

(m) Evidentiary privilege. A mediation communication, whether written or verbal, is not subject to discovery or admissible in evidence in any subsequent proceeding. A party may by independent evidence establish the substance of the mediation communication in the subsequent proceeding.

(n) Preservation of privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the communication.

(o) Termination of mediation. The mediator has the right to terminate the mediation at any time, for any reason, by providing written notice to counsel for all parties.

(p) Procedure following mediation. The mediator must, not later than 7 days after the mediator determines that the mediation has concluded, submit to the court Local Form Mediation Report. If mediation occurred in an Adversary Proceeding, the mediator must indicate in the report if all outstanding issues have been resolved, and whether the case can be closed. A continuing failure to file a Mediation Report may result in removal from the Register of Mediators. If an agreement between the parties has been reached, the agreement must be set forth in a written document signed by all of the parties or their legal representatives. If the matter is not fully resolved, the parties should be guided by the dates in the Joint Order Scheduling Pretrial Proceedings and Trial. If a scheduling order was not entered, the parties should contact chambers.

2021 Comment

Subdivision (a)(2)(D) has been added as an additional exclusion from presumptive mediation.

2016 Comment

This Rule has been amended to eliminate the requirement that the mediator file a statement accepting or declining appointment and to stress the importance of filing a Mediation Report.

2015 Comment

This Rule has been amended to reflect the court's adoption of a presumptive mediation program. The Rule supersedes the court's General Order Adopting Mediation Procedures dated November 20, 2013.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

In Re:

Case No.: _____

Chapter: 13

Judge: _____

DISCLOSURE OF CHAPTER 13 DEBTOR'S ATTORNEY COMPENSATION

1. Pursuant to 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b), I certify that I am the attorney for the debtor(s) and that compensation was paid to me within one year before the filed date of the petition, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in connection with this bankruptcy case is as follows:

Under D.N.J. LBR 2016-5(b), I have agreed to accept for all legal services required to confirm a plan, subject to the exclusions listed below, including administrative services that may occur postconfirmation, a flat fee in the amount of \$ _____. I understand that I must demonstrate that additional services were unforeseeable at the time of the filing of this disclosure if I seek additional compensation and reimbursement of necessary expenses.

Legal services on behalf of the debtor in connection with the following are not included in the flat fee:

Representation of the debtor in:

- adversary proceedings,
- loss mitigation/loan modification efforts,
- post-confirmation filings and matters brought before the Court.

I have received: \$ _____

The balance due is: \$ _____

The balance will will not be paid through the plan.

Under D.N.J. LBR 2016-5(c), I have agreed to accept for legal services provided on behalf of the debtor in this case, an hourly fee of \$ _____. The hourly fee charged by other members of my firm that may provide services to this client range from \$ _____ to \$ _____. I understand that I must receive the Court's approval of any fees or expenses to be paid to me in this case post petition pursuant to D.N.J. LBR 2016-1.

I have received: \$ _____

2. The source of the funds paid to me was:

Debtor(s) Other (specify below)

3. If a balance is due, the source of future compensation to be paid to me is:

Debtor(s) Other (specify below)

4. I have or have not agreed to share compensation with another person(s) unless they are members of my law firm. If I have agreed to share compensation with a person(s) who is not a member of my law firm, a copy of that agreement and a list of the people sharing in the compensation is attached.

5. (a) The Debtor(s) agree that coverage counsel may appear at hearings on their behalf in lieu of counsel retained by Debtor(s) as needed. If possible, Debtor's counsel will advise Debtor(s) of the use of coverage counsel for any hearings prior to that hearing. Debtor(s) acknowledge that coverage counsel may not be a member of my firm and may or may not be compensated for their appearance.

Debtor(s) Initials

Debtor(s) Initials

(b) The Debtor(s) DO NOT agree that coverage counsel may appear at hearings on their behalf in lieu of counsel retained by Debtor(s) as needed. All appearances related to the Debtor(s) matter will be made by me, the undersigned attorney, or members of my law firm.

Debtor(s) Initials

Debtor(s) Initials

6. The Debtor(s) have reviewed this Disclosure and it is consistent with the terms of the Retainer Agreement.

Date: _____
Debtor

Date: _____
Joint Debtor

Date: _____
Debtor's attorney

UNITED STATES BANKRUPTCY COURT, DISTRICT OF NEW JERSEY



APPEARANCE SHEET

Each party appearing before the Court must complete this form in full and give it to the court recorder/reporter prior to the commencement of the calendar.

Contested Judge _____
 Uncontested
 Adjournment requested

Number on calendar: _____ Date: _____

Name of Debtor: _____

Check if you are not represented by an attorney *

Case Number: _____ Adv. No.: _____

Appearing Attorney's Name: _____

Appearing Firm Name/Address: _____

Phone/Email: _____

Appearing For: _____

If you are coverage counsel, you must answer the following: ___ Client is aware of my appearance as coverage counsel; ___ Client is not aware; ___ I do not know.

Movant: _____ Respondent: _____

Plaintiff: _____ Defendant: _____

Witness (if applicable)

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

* If you are not represented by an attorney, please be sure to include your name and address on this form.