

U. S. BANKRUPTCY COURT  
DISTRICT OF IDAHO

FEB 09 1996

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**IN THE UNITED STATES DISTRICT  
AND BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO**

IN RE	)	GENERAL ORDER NO. <u>122</u>
LOCAL RULES OF THE UNITED	)	ORDER AMENDING AND
STATES BANKRUPTCY COURT FOR	)	ADOPTING LOCAL
DISTRICT OF IDAHO,	)	BANKRUPTCY RULES OF
	)	PRACTICE

The United States Bankruptcy Court for the District of Idaho having determined that certain additions and amendments are necessary to the Court's Local Bankruptcy Rules; and

The Court having transmitted the proposed additions and amendments to the Rules to the Court's Advisory Committee on Local Bankruptcy Rules for review and comment, and thereafter the Committee having recommended adoption of said rules; and

The Court having found that the proposed additions and amendments to the rules will improve the administration of justice; and for other good cause;

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3 NOW, THEREFORE, IT IS HEREBY ORDERED That the  
4 Local Bankruptcy Rules as listed below are adopted or  
5 amended effective as of March 15, 1996, and the same shall  
6 hereafter serve as Local Rules of Practice for the United  
7 States Bankruptcy Court for the District of Idaho from and  
8 after said date. The Rules subject to this order are as  
9 follows:

10 L.B.R. 1001.1 -- Scope, Applicability and Promulgation of  
11 Local Rules (Amended)

12 L.B.R. 1002.1 -- Petitions (Amended)

13 L.B.R. 1007.2 -- Extension of Time and Dismissal (Amended)

14 L.B.R. 1007.3 -- Amendments of Petitions, Lists, Schedules  
and Statements of Financial Affairs (Amended)

15 L.B.R. 1019.1 -- Conversions (Amended)

16 L.B.R. 2002.1 -- Sale of Property of the Estate (Amended)

17 L.B.R. 2002.4 -- Filing and Confirmation of Chapter 12 Plan  
18 (Amended)

19 L.B.R. 2014.1 -- Approval of Employment of Professional  
Persons (Amended)

20 L.B.R. 3002.1 -- Filing of Proofs of Claim in Chapter 12  
Cases (Amended)

21 L.B.R. 3002.2 -- Filing of Proofs of Claim in Chapter 13  
22 Cases (Amended)

23 L.B.R. 4001.2 -- Motions Requesting Relief from the  
Automatic Stay (Amended)

24 L.B.R. 4003.1 -- Exemptions (Amended)

25 L.B.R. 4003.3 -- Debtor's Failure to Perform According to  
26 Stated Intention (Amended).

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L.B.R. 5005.2 -- Documents for Filing or Administering (Amended)

L.B.R. 5007.1 -- Files, Records and Exhibits (Amended)

L.B.R. 5009.1 -- Closing of Cases (Amended)


L.B.R. 5011.1 -- Withdrawal of Reference (Deleted)

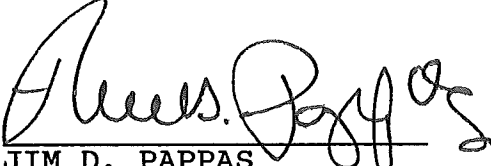
L.B.R. 7005.1 -- Non-Filing of Discovery and Limitations on Discovery (Amended)

L.B.R. 7041.1 -- Dismissal of Inactive Adversary Proceedings (Amended)

A copy of these Rules are attached hereto.

DATED This 9<sup>th</sup> day of February, 1996.

  
EDWARD J. LODGE  
CHIEF JUDGE  
U.S. DISTRICT COURT

  
JIM D. PAPPAS  
CHIEF JUDGE  
U.S. BANKRUPTCY COURT

**LOCAL BANKRUPTCY RULE 1001.1**  
**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. ~~A judge, sua sponte or on the motion of any party, may for cause shown dispense with any of these Local Rules in a particular case or proceeding.~~ 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.

**(c) Promulgation.**

Promulgation of local rules shall be made by the U.S. District Court in accord with Federal Rule(s) of Procedure 9029, and shall be made with the advice of the United States Bankruptcy Court Advisory Committee on Local Rules unless the U.S. District Court determines cause exists for emergency promulgation.

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**Related Authority:**

28 U.S.C. §§ 151, 154  
Federal Rule of Bankruptcy Procedure 9029

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**Advisory Committee Notes:**

These Local Rules were promulgated to address certain areas where the Bankruptcy Code and Federal Rules of Bankruptcy Procedure were 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.

For current membership on the Bankruptcy Court Advisory Committee, contact the clerks for the information on the rotation system contained in Amended General Order No. 50.

**LOCAL BANKRUPTCY RULE 1002.1  
PETITIONS**

**(a) Number of Copies.**

In addition to the original, each petition, schedules, and statements of affairs shall be accompanied by the following number of copies:

Chapter 7	3 copies
Chapter 7 (Stockbroker)	3 copies
Chapter 7 (Commodity Broker)	3 copies
Chapter 9	6 copies
Chapter 11	5 copies
Chapter 11 (Railroad Reorganization)	6 copies
Chapter 12	3 copies
Chapter 13	3 copies

**(b) Number of Plans.**

(1) In reorganization cases, in addition to the original (or any amended) plan, the following number of copies are required for filing by the clerk.

Chapter 9	3 copies
Chapter 11	1 copy
Chapter 12	2 copies
Chapter 13	1 copy

(2) In addition to the original plan and the required copies as set forth above for filing with the clerk, in cases where the plan is filed with the petition, the debtor shall provide sufficient copies of the plan for mailing purposes. This shall be in an amount equal to the number of names listed on the Master Mailing List, together with the number of copies listed below:

Chapter 13	8 copies
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(3) If the plan is not filed with the petition, the debtor shall be responsible for service, as required by LBR 2002.3. However, the original and number of copies set forth in subdivision (b)(1) of this rule shall still be filed.

**(c) Captions of Petitions and Identity of Debtors.**

In regard to all cases filed under Sections 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."

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

(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).

~~(d) — Other Names. —~~

~~Immediately after the debtor's name, as set forth in accordance with subdivision (e) of this rule, the petitioner shall list in accordance with Federal Rule of Bankruptcy Procedure 1005 all other names, assumed names, trade names, or other designations under which the debtor has been known or conducted business within the six (6) years preceding the filing of the petition.~~

~~(e)~~ **(d) Petition Filed by a Corporation or Partnership.**

Though a voluntary petition may be filed by a corporation or by a general or limited partnership, it must be executed by an authorized corporate officer or general partner, and the corporation or partnership shall be represented by an attorney, and such attorney shall also sign the petition.

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**Related Authority:**

11 U.S.C. §§ 101(12), 101(35), 109, 301, 302  
Federal Rules of Bankruptcy Procedure 1002, 1004, 1005, 1006(a), 1007 and 9011(c)

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**Advisory Committee Notes:**

This rule attempts, in subdivisions ~~(e) and (d)~~, 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 Section 302 of the Code -- i.e., an individual and a corporation. Should such a petition be accepted by the clerk, the rule contemplates that the precedent of Fitzgerald v. Hudson, 29 B.R. 3, 82 I.B.C.R. 205 (Bankr. D. Id. 1982) will be followed.

The rule in ~~(e)~~ **(d)** addresses the problem of so-called "pro se" corporate or partnership cases. See also LBR 9010.1(e)(3) regarding appearances for such entities.

Subdivision (b)(2) of this rule reflects the clerks service of plans together with Section 341(a) notices, in chapter 13 cases when the plan is filed with the petition. In other cases, LBR 2002.3 and 2002.4. governs service, though the filing and copy requirements of (b)(1) still apply.

**LOCAL BANKRUPTCY RULE 1007.2  
EXTENSION OF TIME AND DISMISSAL**

**(a) Extension of Time.**

An extension of time under Federal Rule of Bankruptcy Procedure 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 Section 341(a) unless a judge orders otherwise for cause shown. An extension beyond the date set for the Section 341(a) meeting will not be granted unless the debtor has also arranged for a continuance of the Section 341(a) meeting, and confirmation hearing if applicable, pursuant to Local Bankruptcy Rule 2003.1 and provided appropriate notice thereof.

~~(b) Dismissal.~~

~~The U.S. Trustee may apply for an order of dismissal in a voluntary case, where the debtor fails to timely pay all applicable court fees or file the required schedules, statements, lists and/or chapter 13 plan provided that the file contains proof that the debtor was notified, 1) of the deadline for filing said documents, and 2) that failure to file the documents in a timely manner may result in dismissal of the case.~~

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**Related Authority:**

11 U.S.C. § 521  
Federal Rule of Bankruptcy Procedure 1007

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**Advisory Committee Notes:**

~~This rule reflects~~ **it is** the responsibility of the United States Trustee to make a request for dismissal when the filing requirements are not met. See § 707(a)(3), § 1112(e), § 1208 and § 1307(c)(9) and (10).

**LOCAL BANKRUPTCY RULE 1007.3  
AMENDMENTS OF PETITIONS, LISTS, SCHEDULES  
AND STATEMENTS OF FINANCIAL AFFAIRS**

~~The debtor(s) shall give notice of an amendment of or to the petition, schedules, statement of affairs, or other lists or documents filed pursuant to Federal Rule of Bankruptcy Procedure 1007 or these rules, to the trustee and to any entity affected thereby.~~

An original, and the following number of copies of the amendment, must be filed with the clerk:

Chapter 7 . . . . original and 2 copies  
Chapter 11 . . . . original and 2 copies  
Chapter 12 . . . . original and 2 copies  
Chapter 13 . . . . original and 1 copy

The amendment shall bear, on its face, the debtor's name and case number, and the notation "amendment".

Where the amendment adds additional creditors, the debtor(s) shall send to the creditor(s) so added a copy of the notice of the Section 341(a) meeting of creditors, and plan if applicable, and file a certificate of such service with the clerk, request the clerk to add such creditor(s) to the Master Mailing List, and submit the applicable filing fee. The clerk need not verify or confirm that the additional creditor(s) receive notice.

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**Related Authority:**

Federal Rules of Bankruptcy Procedure 1007, 1009, 2002(g)

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**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.

Information may be obtained from the clerk's office regarding when the amendment fee will be assessed. See Miscellaneous Fee Schedule and LBR 1007.1(d)



**LOCAL BANKRUPTCY RULE 1019.1  
CONVERSIONS**

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

~~Upon conversion, and~~ Within 15 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 Fee.~~

~~If converting to a chapter 11 proceeding from a chapter 7 or chapter 13 case filed after November 26, 1986, and the conversion is at the request of the debtor, a fee of \$400.00 is required and is to be submitted with the notice or motion to convert.~~

**(d) Filing of Plan.**

If converting to a chapter 13, a plan is to be filed with the notice or motion to convert or within 15 days thereafter.

**(e) Final Report and Account.**

~~Upon conversion, the debtor, or trustee if one is served in the original case, shall file with the court and serve on the U.S. Trustee and successor trustee, if applicable, a final report and account within thirty (30) days of the conversion of a chapter 11 case. the final report and account required to be filed by the debtor or trustee shall include, in cases converted from chapter 11, the following:~~

- (1) A schedule of property acquired by the debtor after the commencement of the 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 the case under chapter 11, unless such balance sheet and profit and loss statements for the period of the pendency of the 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 the 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.

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**Related Authority:**

11 U.S.C. § 1112  
Federal Rule of Bankruptcy Procedure 1019

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**Advisory Committee Notes:**

Federal Rule of Bankruptcy Procedure 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 15 days, an amendment fee will be assessed by the clerk.

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

LOCAL BANKRUPTCY RULE 2002.1  
SALE OF PROPERTY OF THE ESTATE

(a) **Contested Matter.**

A sale pursuant to Section 363(b), including a sale free and clear of any interest of an entity other than the estate, is initiated by notice and is subject to LBR 2002.2. ~~An action to determine the validity, priority, or extent of any interest of an entity other than the estate shall be brought separately as an adversary proceeding.~~

(b) **Notice of Sale.**

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

- (A) A description of the property to be sold;
- (B) The time and place of sale;
- (C) The terms of sale;
- (D) Whether the property is to be sold free and clear of liens;
- (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) The subdivision of Section 363(f) which authorizes the sale; and
- (I) The date by which objections to the sale must be filed, pursuant to Federal Rule of Bankruptcy Procedure 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.

(c) **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.

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**Related Authority:**

11 U.S.C. § 363(f)  
Federal Rules of Bankruptcy Procedure 2002(a),  
2002(c)(1), 6004, 7001

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**Advisory Committee Notes:**

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

The notice, under Subsection (b)(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 F.R.B.P. 7001(2).

LOCAL BANKRUPTCY RULE 2002.4  
FILING AND CONFIRMATION OF CHAPTER 12 PLAN

~~(a) — Time for Filing.~~

~~The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within ninety (90) days thereafter unless a judge, pursuant to Section 1221 of the Code, extends the time for filing the plan.~~

**(b) (a) Objections.**

Objections to confirmation of the 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 Federal Rule of Bankruptcy Procedure 9014.

~~(c) — Hearing.~~

~~After notice, as provided in subdivision (d) of this rule, a judge shall conduct and conclude a hearing within the time prescribed by Section 1224 of the Code and rule on confirmation of the plan. If no objection is timely filed, a judge may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues.~~

**(d) (b) Notice.**

Notice shall be made by the debtor or plan proponent according to LBR 2002.3(b). Unless a judge fixes a shorter period, notice of such hearing shall be given not less than twenty-five (25) days before the hearing. A copy of the plan shall accompany the notice.

**(e) (c) Order of Confirmation.**

The order of confirmation shall conform to the Official Forms and notice of entry thereof shall be mailed promptly by the clerk to the debtor, the trustee, all creditors, all equity security holders, and other parties in interest.

**(f) (d) Retained Power.**

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

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**Related Authority:**

11 U.S.C. §§ 1221, 1224, 1225  
Federal Rules of Bankruptcy Procedure 2002, 3015

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### Advisory Committee Notes:

Section 1221 and F.R.B.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 Section 1224 and rule on confirmation of the plan. If no objection is timely filed, F.R.B.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.

**LOCAL BANKRUPTCY RULE 2014.1**  
**APPROVAL OF EMPLOYMENT OF PROFESSIONAL PERSONS**

**(a) Applications for Approval of Employment of Professional Persons.**

~~Applications for approval of employment of professional persons shall comply with this Local Rule and other applicable bankruptcy statutes and rules. The application in addition to including the information required by F.R.B.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 specific facts showing the necessity for the employment;~~

~~(2) — The name of the person to be employed;~~

~~(3) — The reasons for the selection;~~

~~(4) — The professional services to be rendered;~~

~~(5) (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~~

~~(6) (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) — Verified Statement of Person to be Employed.~~

~~The application for approval of employment of the professional shall be accompanied by a verified statement of the professional person to be employed, setting forth the person's connections with the debtor, creditors, 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.~~

~~(c) (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(s) and any attorneys appointed to represent the committee(s). 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.

(d) (c) **Entry of an Order of Approval of Employment.**

If no objection to the application for approval of employment of the professional is filed by the U.S. Trustee or other party in interest within fourteen (14) calendar 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 appointment entered by the court will relate back to the date of service of the application.

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**Related Authority:**

11 U.S.C. §§ 327, 328  
Federal Rules of Bankruptcy Procedure 2014, 9034

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**Advisory Committee Notes:**

~~F.R.B.P. 2014 governs applications for employment of professional persons.~~ The ~~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.

Additionally, the court generally will not approve employment of a professional who proposes to seek compensation on a non-hourly basis without an actual hearing, nor approve a predetermined fee.



LOCAL BANKRUPTCY RULE 3002.1  
FILING OF PROOFS OF CLAIM IN CHAPTER 12 CASES

(a) **Filing.**

~~All proofs of claim in a chapter 12 case, an original proof of claim together with one (1) duplicate copy shall be filed with the clerk in duplicate (with the duplicate to include copies of all supporting documents to the original), shall be filed within ninety (90) days after the first date set for the meeting of creditors scheduled pursuant to Section 341(a) except as provided in subsection (b) of this Rule or as allowed in Federal Rules of Bankruptcy Procedure 3002(c)(1), (2), (3) and (4), 3004 or 3005.~~ The clerk will forward the copy of the claim to the chapter 12 trustee.

(b) **Governmental Units.**

A claim of a governmental unit shall be filed before 180 days after the date of the order for relief, except as otherwise provided in the Federal Rules of Bankruptcy Procedure.

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**Related Authority:**

11 U.S.C. § 1226  
Federal Rules of Bankruptcy Procedure 3002, 3004, 3005, 3010

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**LOCAL BANKRUPTCY RULE 3002.2**  
**FILING OF PROOFS OF CLAIM IN CHAPTER 13 CASES**

**(a) Filing.**

All proofs of claim in chapter 13 cases, filed pursuant to Section 501, shall be filed with the clerk in duplicate (with the duplicate to include copies of all supporting documents to the original), and a copy will be forwarded by the clerk to the chapter 13 trustee appointed for that case.

~~(b) Time to File.~~

~~A proof of claim shall be filed by all creditors within ninety (90) days after the first date set for the meeting of creditors scheduled under Section 341(a), except as otherwise provided in subsection (c) of this Rule or in Federal Rules of Bankruptcy Procedure 3002(c)(1)-(4), 3004 or 3005.~~

~~(c)~~ **(b) Governmental Units.**

A claim of a governmental unit shall be filed before 180 days after the date of the order for relief, except as otherwise provided in the Federal Rules of Bankruptcy Procedure.

~~(d)~~ **(c) Objections.**

Debtor(s) and the chapter 13 trustee shall have the right to object to claims filed between confirmation of the plan and the bar date set forth in this rule, as well as to untimely claims.

~~(e)~~ **(d) Distributions.**

If a secured creditor fails to timely file a proof of claim, the trustee may distribute, to general unsecured creditors, the funds attributable to that claim, and may do so without notice, hearing or court order.

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**Related Authority:**

11 U.S.C. §§ 501, 1305, 1325  
Federal Rules of Bankruptcy Procedure 3002, 3004, 3007

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### Advisory Committee Notes:

This rule has been amended to eliminate initial filing of claims with the trustee, but is still designed to be consistent with, and necessary to achieve, accelerated confirmation of uncontested chapter 13 plans. See LBR 2002.5.

~~Subdivision (b) of the rule applies to secured claims as well as unsecured claims, contrary to Federal Rule of Bankruptcy Procedure 3002(a).~~

Subdivision (d) makes unnecessary the current practice of a chapter 13 trustee seeking a court order to distribute funds to unsecured creditors when a secured creditor fails to file a timely proof of claim. See LBR 3002.2(b).

**LOCAL BANKRUPTCY RULE 4001.2**  
**MOTIONS REQUESTING RELIEF FROM THE AUTOMATIC STAY**

**(a) Motions.**

A request by a party in interest for relief from the automatic stay pursuant to Section 362(d), Section 1201(c), or Section 1301(c) shall be made by filing a written motion filed with the court, and paying the applicable fee. There is no fee for co-debtor motion for relief under Section 1201 or Section 1301. (See Appendix II Miscellaneous Fees Item #21)

**(b) Requisite Information.**

The motion shall identify the nature of the stay relief sought; provide the details of the underlying obligation or liability upon which the motion is based; shall contain an itemization of amounts claimed to be due upon the obligation; and, if appropriate, shall state the estimated value of any collateral for the obligation, and the method used to obtain the valuation. If applicable, there shall be attached to the motion accurate copies of all documents evidencing the obligation, and the basis of perfection of any lien or security interest.

**(c) Service.**

(1) Co-debtor stay. If relief is sought under Section 1201(c) or Section 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.

(2) Other Motions. If relief is sought under Section 362(d), the motion shall be served upon the debtor, debtor's attorney, the trustee if one has been appointed, upon any committee or its authorized agent, and on any other party known to movant claiming an interest in any property subject of the motion.

**(d) Hearings.**

(1) Objections. Any party in interest may oppose the motion by filing and serving on the moving party a written objection thereto at least five (5) days prior to the preliminary hearing. The objection shall reasonably identify those matters contained in the motion which are to be at issue, and any other basis for opposition to the motion. Absent the filing of a timely response, the court may grant the relief sought without a hearing. The written objection need not be filed if the moving party sets the preliminary hearing for less than twenty (20) days after the filing of the motion, however, the opposing party must be prepared to present the information required by this rule at the preliminary hearing.

(2) Scheduling. The moving party may schedule a preliminary hearing on any motion, and shall serve notice thereof upon those parties on whom service of the motion is required above. Absent such a hearing, at the time of filing of any objection to a motion, the objecting party shall schedule a preliminary hearing and shall serve notice thereof upon the moving party.

(3) 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 final hearing, and of the identity of any witnesses expected to testify, and a summary of the expected testimony. The court shall have the right to impose appropriate sanctions against any party who fails to prosecute or defend the motion in good faith contrary to the representations made at the preliminary hearing.

(e) **Section 362(e) Notice.**

In any motion filed under this rule, the movant shall serve with the motion a written notice of the requirement of the filing of a response as provided in this rule. In addition, if relief is sought from the automatic stay against acts against property of the estate under Section 362(d) and (e), the notice shall also advise the party against whom relief is sought of the requirements of Section 362(e). ~~Absent such a notice, it will be presumed by the court that the moving party intends to waive the requirements of paragraph (d)(1) of this rule and Section 362(e).~~

(f) **Proof of Service.**

Any motion filed under this rule shall be accompanied by an appropriate written proof of service of the motion and notice and compliance with the terms hereof.

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**Related Authority:**

11 U.S.C. § 362  
Federal Rules of Bankruptcy Procedure 4001, 9013, 9014

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**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., F.R.B.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 also F.R.B.P. 9011 (F.R.C.P. 11).

**LOCAL BANKRUPTCY RULE 4003.1  
EXEMPTIONS**

**(a) Claim of Exemptions.**

~~A debtor shall claim exemptions, as required by Section 522, on schedule C, pursuant to Federal Rule of Bankruptcy Procedure 1007. The Idaho Code section under which the 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 Section 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. ~~Notice of the objection must be given to the trustee, the debtor(s), and the debtor's attorney.~~ The objection may be granted 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.

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**Related Authority:**

11 U.S.C. § 522  
Idaho Code §§ 11-604, 11-605 and 55-1001, *et seq.*  
Federal Rules of Bankruptcy Procedure 1007, 4003

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**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 F.R.C.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.

**LOCAL BANKRUPTCY RULE 4003.3**  
**DEBTOR'S FAILURE TO PERFORM ACCORDING TO STATED INTENTION**

**(a) Request for Hearing.**

In the event a debtor who is required to file a statement of intention with respect to consumer debts secured by property of the estate, fails to timely perform according to his stated intention, as provided by Section 521(2), then upon request of either the trustee or a creditor affected thereby, the debtor(s) shall be required to appear before a judge to provide an explanation for such failure to perform. Such a request shall be made by motion ~~in accordance with Federal Rules of Bankruptcy Procedure 9013 and 9014~~ and shall be served upon the debtor(s), debtor's attorney, the trustee, and the creditor affected thereby, if applicable.

**(b) Hearing and Order.**

At the hearing on the motion, a judge may order the debtor(s) to perform or may provide such other relief to the estate and creditor as may be appropriate, including granting relief from the automatic stay in favor of the affected creditor and/or imposing sanctions.

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**Related Authority:**

11 U.S.C. §§ 521(2), 522(b), 524(c), 704(3), 722  
Federal Rules of Bankruptcy Procedure 1007(b)(2) 4002, 4003(f), 4008, 6008, ~~9013, 9014~~  
Bankruptcy Official Form No. 8

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**Advisory Committee Notes:**

This rule is designed to allow enforcement without unduly burdening the trustee to determine whether the stated intentions have been fully and properly performed by the debtor(s). Much of the referenced authority concerns alternatives available to the debtor(s) in dealing with property under Section 521, but is not intended to be limiting.

**LOCAL BANKRUPTCY RULE 5005.2  
DOCUMENTS FOR FILING OR ADMINISTERING**

**(a) Petition in bankruptcy.**

At Except as provided in F.R.B.P. 5005(a), the time of filing a petition the document will be reviewed for legibility; correct size of paper (8 1/2 x 11); sufficiency of amount of copies; correctness of fee or application for payment of fees in installments; Master Mailing List (MML); attorney's disclosure statement, if application for payment of fees in installments is submitted; and signatures of the debtor/joint debtor.

**(b) No filing fee or an inappropriate amount submitted; and Facsimile pleadings.  
See General Order No. 97**

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**Related Authority:**

Federal Rule of Bankruptcy Procedure 5005  
LBR 1002.1, 1006.1, 1006.2, 1007.1, 1007.3, 4001.2, 5007.1, 5010.1, 7003.1, 9004.1, 9004.2  
District Court LBRI DR 3.1 and 5.1  
District of Idaho General Order No. 97

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**LOCAL BANKRUPTCY RULE 5007.1  
FILES, RECORDS AND EXHIBITS**

**(a) Custody and Withdrawal.**

All files and records of the court shall remain in the custody of the clerk, subject to examination by the public without charge. No record or 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 ten (10) 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. ~~Electronic sound recordings of the Section 341(a) meeting of creditors shall be retained and preserved for two (2) years from the date of such meeting, unless otherwise ordered by the court.~~ Retention and preservation of electronic sound recordings of the Section 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 tape duplication fee. Transcripts may be obtained upon written request. Requests for

either duplicate tapes 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

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**Related Authority:**

11 U.S.C. § 107,  
28 U.S.C. § 156(e)  
Federal Rule of Bankruptcy Procedure 5007 and 2003(c)  
District of Idaho Court Reporter Management Plan

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**Advisory Committee Notes:**

Subsection (e) reflects the current administrative requirements which control the clerks and U.S. Trustee's retention of electronic recordings of meetings and proceedings. Transcription from the duplicate tape of the Section 341(a) meeting 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.

LOCAL BANKRUPTCY RULE 5009.1  
CLOSING OF CASES

(a) **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 (20) days of the filing of the motion, or where an order has not been submitted by the moving party within twenty (20) days of the date when such an order could properly be executed.

(b) **Final Decree in Chapter 11 Reorganization Case.**

(1) ~~Entry of a final decree in a confirmed case will not be delayed solely because the payments required by the plan have not been completed.~~ Certain statistical information must be supplied by the debtor to the clerk, ~~including:~~

(A) Percent of dividend to be paid;

(B) 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;

(C) Total amounts for claims allowed (listed separately)

Secured

Priority

Unsecured

Equity security holders.

(2) 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.

(3) 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.

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**Related Authority:**

11 U.S.C. § 350

Federal Rules of Bankruptcy Procedure 3022, 5009

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### 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. F.R.B.P. 3022. 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. ~~Note, further, that the court may close a chapter 11 case subsequent to entry of confirmation.~~ See also LBR 5010.1.

Upon request, the clerk will furnish a chapter 11 form for the required closing statistical information.

~~LOCAL BANKRUPTCY RULE 5011.1~~  
~~WITHDRAWAL OF REFERENCE~~

~~A motion for withdrawal of reference is to be filed with the bankruptcy clerk, together with the required filing fee as prescribed in Federal Rules of Bankruptcy Proceeding 5011.~~

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**Related Authority:**

~~28 U.S.C. § 157(D)~~  
~~District Court of Idaho General Order No. 38~~  
~~Federal Rule of Bankruptcy Procedure 5011-~~

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**LOCAL BANKRUPTCY RULE 7005.1**  
**NON-FILING OF DISCOVERY AND LIMITATIONS ON DISCOVERY**

**(a) Adversary Proceedings.**

~~Pursuant to Federal Rule of Bankruptcy Procedure 7005 and Federal Rule of Civil Procedure 5(d), all papers after the complaint initiating an adversary proceeding which are required to be served upon a party shall be so served and filed with the clerk either before service or within a reasonable time thereafter; provided, however, that~~ 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 Federal Rule of Bankruptcy Procedure 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 Federal Rule of Bankruptcy Procedure 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 ~~fifteen (15) 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 ~~fifteen (15) twenty-five (25)~~ requests for admissions.

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**Related Authority:**

Federal Rules of Bankruptcy Procedure 7005, 7026, 7033, 7036, 9014

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**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. ~~This is consistent with District Court practice.~~

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 Rule 9014 regarding "contested matters" while still preserving availability and usefulness of discovery in proper circumstances. If appropriate, and in what are believed to be extraordinary circumstances, the court may modify the limitations. A similar limitation is not imposed in adversary proceedings, though the Advisory Committee considered adoption of the limitations of the Idaho Rules of Civil Procedure. A responding party may still, however, seek protection of the court in regard to burdensome or oppressive discovery. See, e.g., Federal Rule of Civil Procedure 26(b)(1) and 26(c) and Federal Rule of Bankruptcy Procedure 7026.

**LOCAL BANKRUPTCY RULE 7041.1**  
**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 ~~six (6)~~ **four (4)** months may be dismissed, without prejudice, at any time.

**(b) Notice.**

At least twenty (20) 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.

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**Related Authority:**

Federal Rule of Bankruptcy Procedure 7041

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**Advisory Committee Notes:**

The rule does not refer to "contested matters" under Federal Rule of Bankruptcy Procedure 9014 since justification for a similar rule is not present for motions within a case.



## CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named persons(s) at the following addresses on the date shown below:

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One Columbus Circle NE, Ste # 4-250  
Washington, D.C. 20544

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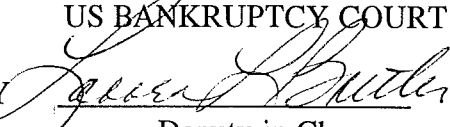
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Boise ID 83701

Larry E Prince  
Holland & Hart  
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DATED: February 15, 1996

CAMERON S. BURKE, Clerk  
US BANKRUPTCY COURT

BY   
Deputy in Charge

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