

HISTORY, BACKGROUND AND COMMENTS LOCAL BANKRUPTCY RULES DISTRICT OF ALASKA

[FIRST EDITION – 2002]
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Prepared By
Thomas J. Yerbich, Esq.

Introductory Note: This compilation was prepared from notes and various sources to provide a history of the development of the local bankruptcy rules in the District of Alaska intended to aid in the interpretation and application of the local bankruptcy rules. Unfortunately, at the time it was prepared, which in some cases was some substantial length of time after their adoption, the history and “legislative intent” of the Committee in drafting the rules is, at best, murky.

The materials on the revision effective January 1, 1996 and later amendments through 2001 were taken from the author’s notes as chair of the Local Bankruptcy Rules Advisory Committee and principal draftsman of those amendments. These the author believes reasonably reflect the “intent” of the Committee; however the “intent” of the court, the ultimate authority adopting the rules, certainly is beyond the ken of the author of this history.

The materials on the 2002 Revision, effective October 1, 2002, were all compiled during the revision process, of which the author, as Court Rules Attorney, was the draftsman. The comments contained in this document are the comments that accompanied the drafts as they were presented to the Committee and the judges.

Various drafts, memos and other source documents are retained by the Librarian of the Federal Courts, District of Alaska.

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GENERAL BACKGROUND

The initial local bankruptcy rules adopted in 1984 were the product of Bankruptcy Judge J. Douglas Williams II, his law clerk (Marilyn Ames, Esq.), and the estate administrator (Anthony Guerriero, Esq.). In 1987 a committee was formed by the Bankruptcy Section of the Alaska Bar Association to review and revise the 1984 Rules. Chaired by Paul A. Paslay, this committee was initially comprised of David S. Bundy, Dennis G. Fenerty, Gary A. Sleeper, and Diane F. Vallentine; later (1989) expanded to include Michelle Boutin, Robert P. Crowther, Deitra L. Ennis, Jan S. Ostrovsky, and Thomas J. Yerbich. This committee proposed substantially revised local rules adopted effective March 1, 1992. Unfortunately, few memoranda or other notes related to the drafting and deliberative process of the 1992 edition survived. Consequently, any definitive history for the rules prior to the 1996 edition is lacking.

1996 EDITION

In 1994 a new committee was formed composed of: Deitra L. Ennis; Dennis G. Fenerty; Barbara L. Franklin; Bonnie J. Stratton; Steven J. Shamburek; and Thomas J. Yerbich (Chair). The work of this committee, that eventually culminated in the comprehensive revised rules effective January 1, 1996, started as a “fine tuning” process to address a few items of concern and incorporate the 1993 amendments to Rule 26, Federal Rules of Civil Procedure [the automatic disclosure of discovery materials] into the local rules. The process (originally expected to take four to six months) ended up taking nearly two years and became a wholesale revision of the rules. During the process: (1) new district court local rules were adopted; (2) the Bankruptcy Reform Act of 1994 was enacted; (3) the Ninth Circuit Judicial Council comments on the 1992 edition of the rules was received; and (4) the Judicial Conference proposed a uniform numbering system for local rules coinciding with the corresponding national rule number. These “events” resulted in “going back to the drawing board” on several occasions to address the changes mandated.

The Ninth Circuit Judicial Council “comments” were the easiest to address as, for the most part, they simply required deletion of rules as either unnecessary or in conflict with the Federal Rules of Bankruptcy Procedure. The 1992 edition rules deleted as a result were: 5(g); 9(d)(2); 51(a); 51(b)(1) [second sentence]; 51(b)(2) [second sentence]; 51(d)(1); 70(d)(2) [specifications of fees]; 90(e) [substituted “fee as established by the Clerk of the Court” for specific amount].

Because of the significant changes wrought by BRA 94, several new rules were required. The substance of some of the rules were suggested by the Judicial Conference as interim rules pending adoption of amendments to the national rules; others were rules implementing procedures required by the amendments to the Code made by BRA 94. The revised Local Rules adopted by the District Court were

substantially incorporated into the Local Bankruptcy Rules wherever possible. The general intent was to minimize the differences in practice and procedures between the bankruptcy court and district court civil matters to the greatest extent possible. With respect to adversary actions, the results in this respect were successful; there are few differences between adversary proceedings and civil actions in the district court. Contested matters, which constitute the bulk of the proceedings in the bankruptcy court, involve special proceedings in bankruptcy inherently different from general civil actions in district court. Thus, the vast majority of the Local Bankruptcy Rules address special proceedings peculiar to bankruptcy.

To renumber the rules required dissection of each of the 1992 rules subsection by subsection and then recombining the subsections by subject corresponding to its related FRBP. The result combined parts of different 1992 rules into the same rules and parts of the various 1992 rules being moved to different rules. To aid the practitioner in the transition from the 1992 edition to the 1996 edition cross-reference tables were prepared. One byproduct of this process was the elimination of inconsistencies in language and style, broadening of the related provisions cross-reference materials, and the elimination of those rules that “overlapped” local district court rules and were, therefore, superfluous.

2002 EDITION

In 2002 the local bankruptcy rules were completely revised and redrafted using Garner *Guidelines for Drafting and Editing Court Rules* as suggested by the Judicial Conference of the United States. For the most part the amendments were stylistic, not substantive. The changes consisted primarily of a restructuring of the rules: breaking the subsections into paragraphs, subparagraphs, and items to improve readability and ensure that elements of a rule were more clearly delineated; elimination of the somewhat nebulous “shall,” replacing it with “must,” “will,” “may,” or “should” as appropriate; and, to the extent possible, using plain English, *i.e.*, elimination of “legalese” and Latin phrases. In addition, the rules were carefully examined to ensure that the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code were not replicated or paraphrased. The rules were divided into parts coinciding with the Federal Rules of Bankruptcy Procedure.

The 2002 revision also added Part VII, governing appeals from the bankruptcy court. The general intent in drafting these rules was to have the practice on appeals from the bankruptcy court to the district court “track” as closely as possible the corresponding rule of the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit (“BAP”). The intent was essentially to keep the rules for the two avenues of initial appeal as synonymous as possible; thereby reducing the possibility of error by the practitioner.

Comments to Specific Rules

PART I – COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

1001-1 Scope and Applicability of Local Rules

Prior Rule: Rule 50 (1984); Rules 1, 102 (1992).

1996 Revision. The 1992 rule adopting local District Court Rules in bankruptcy proceedings (102) was limited to adversary proceedings. Subsection (d) was amended to make certain local District Court Rules applicable to all proceedings in the bankruptcy court. Other local District Court Rules may be applicable to a particular proceeding and are specifically adopted by the LBR applicable to that particular proceeding.

2001 Amendments. Added D.Ak. LR 16.2, Alternative Dispute Resolution, to the District Court rules adopted.

2002 Revision. References to District Local Rules were updated to coincide with the revised local rules.

1001-2 Effective Date

Prior Rule: Rule 103 (1992).

2001 Amendments: Existing rule establishing an initial effective date was abrogated and the current rule addressing the effect of amendments to the rules on pending cases was adopted.

2002 Revision. Stylistic.

1002-1 Petitions

Prior Rule: Rule 9(d), (e), 11(a) (1992).

2002 Revision. Stylistic.

1003-1 Involuntary Petitions

Prior Rule: Rule 12 (1992)

2002 Revision. Stylistic.

1004-1 Petitions Filed by a Corporation, Partnership or Limited Liability Company

Prior Rule: Rule 9(c) (1992).

1996 Revision. [See note to LBR 9010 -1]

1998 Amendments. Amended to extend rule to Limited Liability Companies. Caption also amended.

2002 Revision. Stylistic.

1005-1 Caption of Petition

Prior Rule: Rule 9(b) (1992)

1998 Amendments. Added new subsection (e) related to Limited Liability Companies; prior subsection (e) was redesignated (f).

Eliminated language in the rule that conflicted with the format of the revised Official Form 1 (Voluntary Petition).

2002 Revision. The last sentence of subsection (b) removed; simply restated § 302 of the Code.

1007-1 Matrix

Prior Rule: Rule 24 (1984); Rule 9(f), (g) (1992).

1996 Revision. Subsection (c) created a new requirement for including the legal department on the mailing matrix whenever a governmental entity is scheduled as a creditor at the request of the Alaska Department of Law and Anchorage Municipal Attorney's office. Intended to alleviate a problem in responding that occasionally arose when the governmental agency did not forward notices to its legal department. This provision makes applicable to state and local governmental agencies the same requirement imposed by Rule 2002(j), FRBP when the federal government (or an agency thereof) is a creditor.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

1007-2 Form of Schedules and Statements

Prior Rule: Rule 22 (1984); Rule 10(a), (c)-(f), and 11(a) (1992)

2002 Revision. Extensively revised to provide specific and detailed guidelines for the descriptive information of assets required in Schedules A, B, and C. The information to be provided is that reasonably necessary to permit the trustees and other interested parties to determine from the schedules filed what the assets are, whether the value ascribed to the property appears realistic or reasonable, or whether there may be grounds for challenging claims of exemption. There are also specific guidelines provided for reporting items of income and expense. In addition to providing guidance and standardizing reporting income and expenses, the guidelines are intended to ensure that items of income and expense are neither over- nor under-reported, e.g., the requirement that reported taxes withheld from paychecks be determined using the proper amounts required by the Internal Revenue

Code, not necessarily the amount actually withheld, which may be overstated because the debtor claims less than the full number of exemptions allowed in completing the Form W-4 provided to his/her employer.

1009-1 Amendment of Schedules and Matrix

Prior Rule: Rule 15 (1992)

2001ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

1015-1 Joint Administration and Substantive Consolidation

Prior Rule: Rule 11(b) (1992).

1996 Revision. Added Subsections (a), (b) and (c) — intended to fill a “gap” by providing specific procedures for obtaining joint administration or consolidation of cases other than joint petition cases. Due process requires that consolidation, which affects the substantive rights of the creditors of both estates, be noticed to all interested parties. Although the effect of joint administration on substantive rights is less pervasive and due process may not require it, the same notice is given to all creditors of both estates when joint administration is sought.

Subsection (d). The 1992 Rule provided for “automatic” consolidation of joint cases. The validity of exercising a discretionary function by a rule of general application is dubious at best. Moreover, as the prior rule affected the substantive rights of interested parties, it ran afoul of 28 U.S.C. § 2075 [“shall not abridge, enlarge, or modify any substantive right”]. Rule was redrafted to provide for automatic *joint administration* of joint cases [husband and wife] and extending the time for any objection thereto until 30 days after the conclusion of the § 341 creditors’ meeting. [*Joint administration* is a procedural matter having but a tangential effect on upon substantive rights and little, if any, harm can arise in the period before an interested party can move to reverse the situation.] Consolidation, on the other hand, because it can definitely adversely impact the rights of interested parties must be done on noticed motion. The filing of a joint petition operates as a motion for joint consolidation with a requirement that any objection to consolidation be filed not later than the last day to file proofs of claim. It is believed this “semi-automatic” consolidation procedure with its relatively lengthy period for interested parties to object satisfied procedural process while simultaneously providing a simple method for consolidation, which is the rule not the exception. Notice of the last day to object to substantive consolidation will be included in the initial notice of filing sent by the clerk’s office. [Note: Consolidation will only be required in asset cases — in a no asset case, there being no estates to be administered, there is nothing to consolidate.]

2002 Revision. Stylistic.

Rule 1017-1 Conversion of Cases

2002 Revision. Added this rule governing the so-called “of right” conversions from chapter 7 to chapter 11, 12, or 13, and chapter 11 to chapter 7. Neither 11 U.S.C. § 706(a) nor § 1112(a) require notice or a hearing before conversion at the request of the debtor. FRBP 1017 makes those motions governed by FRBP 9013, not FRBP 9014. FRBP 2002(a)(4) requires 20 days notice of any *hearing* on a motion to convert, but there is no hearing required in a § 706(a) or § 1112(a) situation. The proposed rule makes the motion under either section an *ex parte* motion but requires transmittal to the U.S. trustee in both cases and service on the trustee for conversion of a chapter 7 or the committees for conversion of a chapter 11. The procedure of 9013-2(a) [as revised and renumbered] for *ex parte* motions places the necessary safeguards on conversion motions under 706(a) and 1112(a). In most cases, counsel for the debtor will have consulted with the United States trustee and the trustee or committee before seeking conversion and may so advise the court in the motion of their respective position. The proposed rule removes an existing ambiguity as to the necessity for 20-day notices and allows the court to act on the motions expeditiously as Congress seemed to indicate it wished. Time can be critical in the case of a conversion from 11 to 7 as the debtor is essentially “throwing in the towel” and speed in getting a trustee appointed and in place can be critical. The proposed rule preserves and promotes all legitimate interests in the cases to which it applies.

*PART II – OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS;
ATTORNEYS AND ACCOUNTANTS*

2002-1 Notices

Prior Rule: Rule 4.E (1984); Rule 70(a)–(d), (I) (1992).

2001 Amendments. Clarified paragraph (c) (1) to provide that less inclusive service may be by court rule or order of the court.

New paragraph (c)(3) added to clarify and make explicit that in any case where less inclusive notice is permitted, a party may, as a substitute, give more inclusive notice to the entire mailing matrix.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Added a provision in subsection (c) for use of the electronically retrieved matrix in addition to the matrix obtained from the clerk’s office.

2003-1 Meeting of Creditors and Security Holders

Prior Rule: Rule 25(a), (c), (d) (1992)

2000 Amendments. Subsection (a) abrogated as unnecessary and potentially in conflict with national rules.

Subsection (c) amended by deleting the language related to waiver of personal appearances. Although the U.S. trustee is empowered to authorize telephonic appearances, only the court can waive a personal appearance by the debtor.

Subsection (d) added to provide for waiver of personal appearances, which is by noticed motion. In addition to the affidavit/declaration, the debtor must suggest alternative means of examination. When examination is by deposition on written questions, the burden on the interrogating party(ies) is reduced by limiting the requirements of Rule 31(a)(3), (4), and (c) of service on “parties” to those who actually participate. Otherwise, it could be construed that all “interested parties” were included in the process, which would make it unduly cumbersome and expensive.

Given modern telecommunications capabilities, it is anticipated that this rule will be seldom used. However, with the increasing frequency that active duty personnel stationed in Alaska and Alaska reservists/national guard personnel are shipped to “remote hot spots” it is a proactive measure.

2002 Revision. Stylistic.

2004-1 Rule 2004 Examinations

Prior Rule: Rule 34.A (1984); Rule 100 (1992).

2002 Revision. Stylistic.

2015-1 Funds of the Estate

Prior Rule: Rule 38 (1984); Rule 16(b), 60(b) (1992).

1996 Revision. Paragraph (2) added at the request of the U.S. trustee.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

2015-2 Financial Reporting Requirements

Prior Rule: Rule 27 (1984); Rule 60(c), 65(d) (1992)

2001 Amendments. Existing rule was designated subsection (a). In addition, the word “monthly” was stricken from the title to clarify that all reports, including initial and periodic reports are included.

Subsection (b) added to make explicit that which has been implicit with respect to the filing and service of the reports.

Subsection (c) added to make explicit that which has been implicit in the past: that the reports can be reviewed by interested parties at the office of counsel for the debtor in possession (or trustee) and the principal place of business of the debtor (or trustee).

2002 Revision. Stylistic.

2004 Amendment. Subsection (b) is amended to provide that in all cases the original of a financial report is retained by the U.S. trustee.

2016-1 Administrative Expenses and Professional Fees

Prior Rule: Rule 23 (1982); Rule 40 (1992).

1996 Revision. Subsection (h) added to provide an abbreviated method for approval of fees and expenses in chapter 13 cases where the total fees to be paid do not exceed the specified amount is designed to reduce the costs of estate administration and lessen the burden on counsel in most “garden variety” chapter 13 cases.

1998 Amendments. Paragraph (c)(1) amended by adding a sentence clarifying that unless otherwise provided by statute, rule or court order, professional fees may not be paid without further order of the court. While most orders authorizing employment of professionals do not permit payment without further order of the court, certain professionals, e.g. real estate agents and auctioneers, have established percentage fees previously adopted as reasonable by custom or usage and the order authorizing employment may appropriately authorize payment with out further

application. The committee was not unmindful of the limited authority of the court to alter contingency fees after authorizing employment under a contingency fee agreement under *In re Reimers*, 927 F.2d 1127 (9th Cir. 1992); however, approval of payment by the court is necessary before payment unless otherwise provided by law or court order.

In keeping with the recent increase in monetary amounts for bankruptcy cases, the “automatic” amounts in subsections (b) and (h) were increased. Paragraph (b)(2) as adopted in 1996 required a separate application if the compensation is to exceed \$500; originally derived from FRBP 2002(a)(6). Although the amount in 2002(a)(6) has not changed, the committee recommended that figure be replaced by a reference to 2002(a)(6) so that in the event the Judicial Conference changes the FRBP there will be no need to make a corresponding change in the LBR.

Adoption of LBR 2016-3 required two minor changes to 2016-1: change in the title and deletion of paragraph (a)(1).

2000 Amendments. Subsection (I) added to address problems encountered in making final distributions and closing chapter 7 cases. In general, this provision requires professionals to file applications not later than 7 days after the trustee transmits the Final Report before Distribution to the U.S. trustee. This gives time for the U.S. trustee to review the application and make a meaningful review of the Final Report before it is filed with the court.

The rule also addresses the fact that the professional’s work may not be completed before the court rules on the trustee’s final report and allows for a “reasonable” estimate of attorney’s fees to be incurred (similar to the current provision in chapter 13 plans). The rule takes into consideration the situation where an objection is made to the trustee’s final report and, as a result, the professional must perform otherwise unanticipated work by permitting the court to allow the additional fees without re-noticing (which simply further delays closing and seldom, if ever, is of any benefit). However, this is permissive with the court, and the court may require a re-noticing if, in the court’s discretion it is deemed appropriate or necessary. Excluding defense of the fee application follows the holding in *In re Riverside-Linden Inv. Co.*, 945 F.2d 320, 323 (9th Cir. 1991).

2002 Revision. Stylistic.

2016-2 Compensation of Debtor, Officers, Directors, Shareholders, Partners, Managers and Members

Prior Rule: Rule 60(d) (1992).

1998 Amendments. Amended to include members and managers of Limited Liability Companies.

2002 Revision. Stylistic.

2016-3 General Administrative Expenses.

1998 Amendments. Added to provide a separate procedure for administrative expense claims other than professionals [AK LBR 2016-1] and insiders [AK LBR 2016-2]. Although LBR 14 apparently presumed the existence of a procedure for applying for payment of administrative expenses other than for professional fees, no procedure existed in either the National or local rules. 2016-3 fills this gap by providing for a procedure and deadlines for filing administrative expense claims. The rule is not intended to change current practice of paying wage, trade and other administrative expense claims without the need for an application. The rule is intended to cover those situations where the debtor fails to make payment, whether through inadvertence, oversight, or deliberate action, e.g., a dispute over the amount. The committee believed the rule sets a deadline sufficiently short to facilitate prompt administration, yet of sufficient length to permit claimants to make timely application for payment, if they are not paid. The provision requiring the debtor (or trustee) to give specific notice is a critical feature of the rule to ensure that administrative expense claimants who may not otherwise get notice of the confirmation get notice of the bar date.

2002 Revision. Stylistic.

2081-1 Status Conferences in Chapter 11 Cases

1996 Revision. Rule added to implement the BRA 94 amendment adding Code § 105(d). In normal practice the status conference will not occur before 45 days after the petition is filed with the intent that counsel for the debtor will need that time to get a handle on matters and will result in a more meaningful status conference. The requirement for a status conference report “places counsel’s feet to the fire” to get matters at least partially organized. By requiring the debtor to provide the information required by subsection (c), the court will be better able to effectuate case management and control with respect to scheduling major events in a chapter 11 proceeding, reducing the number of continued or aborted hearings. This provision does little more than formalize and disseminate to practitioners what the court has been doing in major cases with, perhaps, a more structured information input. Other parties may, but need not, file similar statements with the court. This is intended to provide the court with any additional information that the court may find useful in scheduling events in a chapter 11 proceeding, particularly a complex case. This provision replaced the “fast track” provision of former Rule 60(l).

2002 Revision. Stylistic.

2081-2 Chapter 11 Small Business Cases

1996 Revision. Rule added.

Subsection (a) was adopted at the suggestion of the National Judicial Conference.

Subsection (b) and (c) are intended to facilitate expeditious processing of small business cases.

1997 Amendments. Subsection (a) deleted as superceded by FRBP Rule 1010. Subsections (b) and (c) renumbered (a) and (b) respectively. New subsection (c) added.

2002 Revision. Stylistic.

2083-1 Chapter 13 Cases

Prior Rule: Rule 65(a)(4), (d) (1992)

2002 Revision. Stylistic.

2004 Amendment. Deleted the words “as the confirmation hearing” at the end of the section. With the adoption of the AK LBR 3015-2, confirmation hearings should be the exception not the rule. The amendment does preserve the intent to have all other matters related to the chapter 13 plan heard simultaneously.

2090-1 Admission and Practice of Attorneys

Prior Rule: Rule 1.A-D (1984); Rule 5(a), (b) (1992).

1996 Revision. Added subsection (c). Although consideration was given to simply adopting D.Ak. LR 83.1 in its entirety, retention of the prior rule, with its somewhat more liberal provisions for appearances by out-of-state attorneys was deemed appropriate.

2002 Revision. Stylistic.

3002-1 Claims

Prior Rule: Rule 33.A (1984); Rule 20(a)–(e), (h), (I) (1992).

2002 Revision. Subsection (e) abrogated; matters covered by that subsection are fully covered by Rule 1019(2), (3), FRBP.

3002-1 Claims.

Prior Rule: Rule 33.A (1984); Rule 20(a)–(e), (h), (i) [1992].

1996 Revision. Subsection (g) added to eliminate the gap with respect to procedures to be used when § 506(b) applies. Prior to adoption of this rule no procedure applied for processing post petition claims for interest and/or attorney’s fees/costs. The rule is designed to include other parties having a direct interest and provides a procedural mechanism for having those matters handled expeditiously. The rule provides for service of the motion on parties having a direct interest in the matter, the debtor, case trustee, U.S. trustee, five largest unsecured creditors, and other creditors having a security interest in the same collateral.

2002 Revision. Subsection (e) abrogated. The matters covered by that subsection are fully covered by Rule 1019(2), (3), FRBP.

2004 Amendment. Subsection (b) is amended to provide for a complete copy of the proof of claim to be filed with the clerk’s office in all cases whether the proof of claim is filed conventionally or electronically. This copy will be for the use of the case trustee or the debtor in possession. Subsection (f) is abrogated: service of the proof of claim is unnecessary in light of the use made of the copy provided to the court.

3003-1 Proof of Claim in Chapter 9 and 11 Cases

Prior Rule: Rule 33.B (1984); Rule 20(f), (g) (1992).

1996 Revision. Added ¶ (a)(2), requiring special notice to creditors scheduled as unliquidated, disputed or contingent in chapter 11 cases, to alleviate concern over the adequacy of notice of the claims bar date in light of the U.S. Supreme Court decision in *Pioneer Investment*.

Subsection (c) added to eliminate the gap with respect to procedures to be used when § 506(b) applies. Prior to adoption of this rule no procedure applied for processing post petition claims for interest and/or attorney’s fees/costs; it was handled on an *ad hoc* basis, informally between the debtor and the creditor. The rule is designed to include other parties having a direct interest and provides a procedural mechanism for having those matters handled expeditiously. The rule also provides a mechanism for an agreement between the debtor and the creditor as an alternative to a motion and provides for service of the stipulation or motion on other parties having a direct interest in the matter, the U.S. trustee, committees, and other creditors having a security interest in the same collateral. It is believed that, as a practical matter, if the debtor and creditor are unable to agree, both will want the matter resolved as expeditiously as possible; accordingly, the 60-day provision for filing a motion for

allowance should not be a matter of concern—the motion will be made in most, if not all, cases long before the 60 days have lapsed.

2002 Revision. Paragraph (a)(1) deleted; the subject of that paragraph is fully covered by Rule 3003(c)(2), FRBP. Subsection (a) renamed accordingly and consists solely of former paragraph (a)(2).

3004-1 Claim by Debtor or Trustee

Prior Rule: Rule 20(d) (1992)

2002 Revision. Stylistic.

3015-1 Chapter 13 Plans

Prior Rule: Rule 65(a), (c) (1992).

2001 Amendments. Paragraph (a)(3) amended to conform to the requirements that a national rule not be paraphrased or “parroted.” This change is non-substantive.

Added ¶ (a)(6) making it explicit that a plan may not contain a provision that discharges otherwise nondischargeable debts. Although this should not be necessary, it appears that some practitioners have assumed that the enumeration of specific matters that may not be accomplished through a plan in ¶¶ (4) and (5) is somehow a license to attempt to discharge otherwise nondischargeable debts, notably student loans, through a chapter 13 plan. The proposed amendment makes clear that, like lien avoidance and claims adjudication, a plan is not the proper vehicle to determine dischargeability.

Subsection (c) added requiring the debtor and the attorney must sign the plan certifying that the plan complies with the Code and the rules.

2002 Revision. Removed the Alaska PFD from the regular periodic payments. Since the PFD is a once-a-year payment it should not be included in the periodic payments. If a debtor can make monthly payments based on an assumed 1/12th of the PFD being distributed each month, it is more likely than not that the debtor is understating disposable income. LBF 5 was revised accordingly.

2003 Amendment. Minor changes to the rule, simply abrogating current subsection (d) and adding cross-references to new rules 3015-2 and 3015-3.

3015-2 Confirmation of Chapter 13 Plans

Prior Rule: None

2003 Amendments. Added this rule.

LBR 3015-2, the “Arizona Plan,” is adapted from the Arizona Procedure [AZ LBR 2083.1 – 2083.12 and the separate “Confirmation Procedure”]. This rule adopts what may be appropriately referred to a “launch and forget” rule. Unless the plan does not meet the requirements of the Code and is objected to by either a creditor or the trustee, confirmation will be virtually automatic without further action on the part of any party.

3015-2(b) – Eliminates the need for a hearing in the majority of chapter 13 cases. Under current practice and procedure a hearing is required in all cases, whether or not there is an objection to the plan by either the trustee or a creditor. This is an inefficient use of resources and serves no apparent useful function. It also allows for resolution of objections without the necessity of court intervention if the objecting party(ies) and the debtor can come to an agreement that resolves the objection.

3015-2(c) – Requires early service of the plan on interested parties. In most cases, by the time of the creditors’ meeting under § 341(a) is held, all interested parties should have received and had an opportunity to review the plan. This may allow early resolution of any objections and eliminate to some extent the need for formal objections either by creditors or the trustee.

3015-2(c)(2) – Provides an enforcement tool in those cases where plans are not timely filed and served.

3015-2(d)(1)[B] – Sets the last day for objecting to the plan as the same date as the last day for filing a proof of claim. Making objections to the plan coincide with the bar date eliminates the burden on creditors of tracking two separate dates or creating a trap for the unwary creditor who may not recognize the significance of, or track, the two dates, *i.e.*, a creditor may miss the last day to object to confirmation yet still have time within which to file a proof of claim, or *vice versa*.

3015-2(d)(2)[B] – This provision allows the court to disregard a non-specific objection, or one that does not address a proper grounds for objection, *e.g.*, the “I want to be paid in full” type, which if processed simply slows the process and makes it administratively more burdensome. Many of these objections are by *pro se* creditors who are not likely to withdraw the objection. In those cases, it will be necessary to hold a hearing and more likely than not the objecting creditor will not appear.

3015-2(e) – Gives the trustee ample time to assess and, perhaps, resolve, any objections to the plan and its feasibility or conformance to the Code. Under current practice and procedure, the time between the last day for filing objections and the confirmation hearing is so short that it is frequently impossible to resolve objections before the hearing date requiring a continuance. If the trustee recommends approval

and no objections have been filed, unless the court has concerns not raised by the trustee, confirmation of the plan becomes virtually automatic

3015-2(e)(2)[C] only requires service of the trustee's recommendation on objecting parties, not all parties. Any objecting creditor is made privy to the trustee's position, which may cause the creditor to either withdraw an objection or "ride the coattails" of the trustee.

3015-2(f)(4) – Limits the requirement for notice to only those creditors who may be adversely affected. Any modification of the plan is likely to affect some other creditor, most likely the general unsecured creditors. However, if the effect is not adverse, e.g., the trustee forces the payment of all disposable income, which increases the dividend to unsecured creditors, giving additional notice serves no apparent useful purpose and simply increases the administrative burden and cost, as well as delaying the inevitable confirmation. On the other hand, a modification of a plan that reduces the amount payable to unsecured creditors would adversely impact those creditors and they must be given notice.

3015-3 Objections to Valuation

Prior Rule: None

2003 Amendments: Added this rule.

3015-3(a) – Requires the creditor to make a timely objection to a proposed "strip-down" in a chapter 13 plan. It also requires the objecting party to set forth the basis of the objection to the "strip-down," including the value and basis for the value. 3015-3(a)(3) requires the debtor to make the collateral available for inspection by the creditor upon request.

3015-3(b) – Provides a procedure for bringing valuation issues before the court in a timely manner. Places the burden on the debtor to respond to the creditor's objection and a failure to do so results in acceptance of the creditor's valuation.

3015-3(c) – adaptation of Rule 26(a) disclosure requirements.

3016-1 Chapter 11 Disclosure Statement

Prior Rule: Rule 60(e)(2), (3) (1992).

1996 Revision. The line of demarcation between "large" and "small" cases tracks the definition of a "small business" added by the 1994 amendments to the Code.

Added ¶ (c)(5) to more clearly define those related entities to ensure that it encompasses those entities that may be controlled by the debtor or jointly controlled by those persons controlling the debtor. Eliminated some of the uncertainty of what

constituted a “related party” that must be disclosed that existed in the 1992 version of the rule.

Paragraph (c)(6) amended to extend the comparison period for backlogs from 1 to 2 years; the longer “look-back” period provides a better picture of trends in business activities. The provision related to regulatory agencies was amended to provide additional information of the extent to which the debtor is regulated and any difficulties the debtor has with the agency. This information will provide, with respect to regulated industries, a better base upon which to determine feasibility.

Paragraph (c)(9) amended to limit information on officers, directors, and general partners to those to be continued in office after plan confirmation. Information on those leaving (whether voluntarily or involuntarily) has little, if any, bearing on postconfirmation matters.

Paragraph (c)(10) amended to change the tax return summaries from the calendar year to the tax year [subparagraph (A)]. It is incredibly difficult and probably prohibitively expensive for a debtor having a tax year other than the calendar year to provide summaries on a calendar year basis [requires recomputation of return on a calendar year basis from records maintained on a fiscal year basis].

Subparagraph (c)(10)[E] amended to limit financial projections to a maximum of 5 years. Projections beyond 5 years are virtually meaningless because they are inherently unreliable. 5-year projections should provide sufficient information to any interested party about the plan and how it is expected to work.

Subparagraph (c)(10)[G] amended to add a requirement that the debtor disclose any changes to working capital during the initial 12 months of the plan. This information can usually be projected with a reasonable degree of accuracy and will provide a better picture of overall probable feasibility.

Paragraph ¶ (c)(12) amended to clarify the definition of those persons deemed, as a minimum, to be included within “management.”

Paragraph (c)(13) was added. Although the plan may place restrictions, if not prohibitions, on withdrawals other than salaries and expenses, if it does not, then what is to be withdrawn from the debtor, other than salaries and expenses, should be disclosed.

Paragraph (c)(15) amended to remove any ambiguity by substituting “12 months preceding the disclosure statement” for “recent.”

Paragraph (c)(16) added to require disclosure of any known or reasonably anticipated changes during the first 12 months of the plan that affect revenue and/or expenses; designed to better inform interested parties of the feasibility of the plan.

Subsection (d) added to provide an abbreviated disclosure requirement for small business cases.

Subsection (e) amended to require consultation with the U.S. trustee a requirement for all cases; principally designed to provide practitioners with the assistance of the U.S. trustee to avoid technical errors and reduce the administrative lag and expense of responding to objections by the U.S. trustee that could have been avoided by consultation before hand.

1998 Amendments. In addition to the changes to include LLCs, three other clarifying amendments were made.

Paragraph (c)(4) amended to include all equity interests not just shares of stock. Thus any partner or member owing 10% or more of the equity interest in a partnership or LLC will be identified, not just shareholders in corporations. The committee believed this change is consistent with the original intent and purpose of ¶ (c)(4).

Paragraph (c)(13) amended two particulars. First, to clarify that disclosure under this paragraph is not to duplicate disclosures required by ¶ (c)(12). Second, to include payments made for or on behalf of equity owners as well as those to them. The Committee intended that there be disclosed any payment made on behalf or for the benefit of the equity owners such as payments made directly to the lessor of equipment where the equity owner is the actual lessee and the equipment is utilized by the debtor (“pass through leases”). The Committee did not intend that all payments that have or may have an incidental benefit to the equity holders, e.g. loans or leases guaranteed by the equity holder, need be separate disclosed. Disclosure of these is covered by ¶ (c)(14).

Subsection (d) amended by adding subparagraph (c)(13) to the information that must be disclosed in small business disclosure statements. The committee believed that the omission of this information while requiring the disclosure of other payments/distributions to equity holders was probably inadvertent or an oversight. As amended, disclosure statements for small businesses make disclosure of all forms of compensation, payments or distributions to equity holders.

2001 Amendment. Subsection (a) amended to require that the disclosure statement be transmitted to the U.S. trustee at the same time as it is filed.

The last sentence of subsection (e) was eliminated as redundant and unnecessary. The other modification permits waiver by the U.S. trustee of the consultation requirement when the U.S. trustee deems consultation unnecessary in a particular case: formalized existing practice.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

3016-2 Chapter 11 Plan

Prior Rule: Rule 60(f) (1992).

2001 Amendments. Subsection (e) added to clarify that both the plan and disclosure statement must be transmitted to the U.S. trustee at the same time they are filed with the court.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

3017-1 Hearing on Chapter 11 Disclosure Statement

Prior Rule: Rule 60(e)(1), (4) (1992).

1996 Revision. Subsection (a) amended to remove ambiguity by substituting “5 days” for “promptly” in filing a calendar request for a hearing on the disclosure statement.

Subsection (c). Language added specifying that objections to the disclosure statement are to be limited to the disclosure statement. Many objections to the disclosure statement have actually been objections to the plan; in fact, experience has indicated instances where an objection ostensibly to the disclosure statement addressed nothing but items contained in the plan.

Subsection (d), an adaptation of a rule suggested by the National Judicial Conference, added. The local rule was drafted to include the provisions that had previously been utilized by the court for “fast track” cases regarding transmission to the U.S. trustee and the opportunity for the U.S. trustee to review and voice objections before it is promulgated. Also retained the hearing (conference) with the court, counsel for the proponent and the U.S. trustee to discuss any perceived deficiencies. This provision is intended to reduce technical deficiencies that could result in aborting the confirmation and, thus, prolong the proceeding contrary to the intent of “small business” cases.

1997 Amendments. Subsection (d) amended by removing ¶¶ (1), (4), (5), (6), and (8) to avoid duplication as result of adoption of FRBP 3017.1. Paragraphs (2), (3), and (7) renumbered (1), (2), and (3) respectively.

2002 Revision. Stylistic.

3018-1 Report of Balloting

Prior Rule: Rule 60(I) (1992).

1996 Revision. Requirement that balloting results be served on any committee was apparently an oversight when the rule was originally drafted in 1992, which was corrected.

2002 Revision. Stylistic.

3018-2 Acceptance of Rejection and Objections to Chapter 11 Confirmation

Prior Rule: Rule 60(h) (1992).

1996 Revision. Amended to make clear that 5-day requirement for filing objections refers to “court days” not calendar days. Prior to amendment, the effect of Rule 9006(a), FRBP (excluding intervening weekends and holidays from the computation) was either overlooked or ignored. Amendment requiring the objecting party to refer to the specific Code provisions intended to eliminate objections based on a simple dissatisfaction with the plan. Objections to the plan are separate and distinct from a “rejection” of the plan based upon dissatisfaction. Objections should be limited to noncompliance with §§ 1122, 1123, 1124, or 1129(a) [§ 1129(b) only comes into play in the event that the proponent requests confirmation notwithstanding the failure to satisfy § 1129(a)(8) and need not be raised as an objection because the requirements of § 1129(b) must be met before the plan may be confirmed in any event].

2001 Amendments. Amended to insure that any objection to the plan is timely received by the proponent in order to permit the proponent to respond in a timely manner before the confirmation hearing. In addition, it clarifies that ballots are not filed with the court. This makes this rule consistent with the requirements of Rule 3017-1(c) on objections to the Disclosure Statement.

2002 Revision. Stylistic.

3019-1 Modification of Chapter 11 Plan

Prior Rule: Rule 60(k) (1992)

1996 Revision. Subsection (a) added to cover amendments/modifications both before and after the disclosure statement is approved; the difference being in the scope of service of amendments/modifications. In both instances, service is intended to ensure that the parties affected and all committees get the information. Unless the court orders otherwise in an appropriate situation, service of amendments/modifications to the plan and disclosure statement on all interested parties is generally unnecessary and unduly expensive. Where wider service is required, it usually requires rescheduling the hearing on approval of the disclosure statement or the confirmation hearing, delaying confirmation. This was a major factor considered in drafting the service requirements.

In most cases amendments/modifications arise prior to approval of the disclosure statement as a result of objections to the disclosure statement or to correct “drafting errors” that may slip through. The scope of service is limited to those who were provided copies of the “original” documents; service on others may be confusing and unduly expensive, particularly if, as often is the case, there are two or three modifications before the approval process is satisfied.

Post-approval-preconfirmation modifications to the plan are generally in response to objections by a creditor or committee and usually are a result of negotiations between the debtor/proponent and the objecting party. Service on the committees and affected creditors is considered sufficient; creditors whose interests are unaffected need not be advised of the modification in treatment given to another class of creditors. If the modification is to a class and that class is represented by a committee, service on the committee should suffice in most cases.

The requirement for a “redlined” chambers copy was included at the request of the law clerks.

2002 Revision. Paragraph (a)(3) amended to make clear that the redline chambers’ copy of the amended plan/disclosure statement is a paper copy, not filed electronically.

3020-1 Chapter 11 Confirmation Hearing

Prior Rule: Rule 60(g) (1992).

1996 Revision. Eliminated inconsistencies/conflict FRBP and use of the official form.

2002 Revision. Stylistic.

3022-1 Postconfirmation Reports/Closing of the Case

Prior Rule: Rule 60(j) (1992).

1996 Revision. Subsection (a) amended to have the report date run from effective date of the plan. As the effective date of the plan is usually delayed in reference to the confirmation order, it makes sense for the initial report on plan implementation to be made after the plan commences. Also changed the time for making the initial report to 45 days to give the debtor a little more time to complete the initial implementation process (e.g., issue promissory notes or participation certificates) and make the report.

Subsections (b) and (c) were added to fill the “gap” by providing a procedure for closing the case. Rule 3022 mandates closing of the case when the estate has been fully administered. Generally, when the confirmation order becomes final and the plan

becomes effective, the “estate” ceases to exist. In most cases there are loose ends that must be resolved by the court, e.g., fee applications by counsel for the debtor and the committees, unresolved claim objections, unpaid administrative expense claims, and, occasionally, an unresolved adversary action that may impact plan performance/consummation. When these matters are completed, administration is complete and the case should be closed. Closing a case is an administrative act; should court involvement be required in the future, the case may be reopened under § 350(b).

Although it is unclear whether notice to all interested parties is required under the FRBP, the committee, at the urging of the Office of the U.S. Trustee, opted to provide a 30-day notice requirement to all parties in interest so that anyone who might have reason to delay closing the case could voice that objection.

2000 Amendments. Subsection (a) amended to conform to 11 U.S.C. § 1930(a)(6) and avoid multiple reports. All post confirmation reports will be filed quarterly coinciding with the calendar quarters to facilitate the U.S. trustee fee payment requirements. LBF 29, used in conjunction with LBR 3022-1, has a corresponding revision to include a certification by the debtor of disbursements made.

2002 Revision. Stylistic.

4001-1 Motions for Relief From Stay

Prior Rule: Rules 4.L, 31 (1984); Rule 41 (1992)

1996 Revision. Subsection (a). The form for the motion for relief from stay [LBF 1] was modified substantially. Although the creditor and the debtor may be privy to the information now required to be included in the motion for relief for stay [LBF 1], other interested parties, e.g., the trustees and/or committees, were not. The intent of the modification to LBF 1 was to provide the basic information regarding the current status of the debt and the collateral as it related to the basic issues involved in relief from stay into a single document in a reasonably understandable/decipherable format.

Subsection (c) amended to eliminate a noticing requirement conflict with FRBP 4001.

Subsection (e) amended to eliminate an inconsistency with §§ 1201/1301 [stated that the co-debtor stay was terminated if no hearing was requested with 20 days]. While there is a provision in §§ 1201/1301 for automatic termination if no objection is filed by the debtor/co-debtor within 20 days, there is no automatic termination if there is no hearing within a specified period. Subsection was modified to comply with the different procedures applicable between “regular” requests for relief from stay and relief from co-debtor stays.

Subsection (g) added requiring an objecting party must state with specificity the grounds for the objection and the basis for therefore. This provision is necessary to apprise both the moving party and the court of the precise issues being contested. It also facilitates discovery exchange by either including or excluding those materials that must be produced under subsection (h).

Subsection (h) added to provide for those items of mandatory exchange under Rule 26(a)(1), (2), F.R.Civ.P. The committee considered a rule specifically delineating those items that the parties must exchange but declined to adopt such a rule as being either over-inclusive or under-inclusive. It is expected that the parties will exchange relevant materials depending on the issues; e.g., if value is at issue, appraisals and expert witness data, if the amount due is at issue, information on how the amount claimed due was computed.

2002 Revision. Added subsection (f), a procedure for requesting leave to present testimony at the preliminary hearing on a motion for relief from stay. The purpose of the preliminary hearing is to determine if there is sufficient cause to believe that the debtor may prevail at the final hearing. Consequently, the preliminary hearing is designed to be heard on affidavits submitted prior to the hearing. Testimony at the

preliminary hearing should be an exception and the proposed language tracks that intent.

The reference to adopting District of Alaska Local Rules related to discovery deleted. The discovery rules had a local option provision that permitted local rules to supplant, not merely supplement, the national rules. The District Court had elected to utilize this option; however, this provision was eliminated by the December 2000 amendments to the Federal Rules of Civil Procedure and the District Local Rules amended effective October 1, 2002 to implement this change making the references to rules that would no longer exist.

4001-2 Use Of Cash Collateral And Obtaining Post Petition Credit

2000 Amendments. Added this rule. Several districts or individual bankruptcy judges have established guidelines to be followed in cash collateral utilization and debtor in possession financing situations. It is believed that although judicially issued written guidelines are indeed useful, there is an inherent difficulty in disseminating those guidelines. Rules on the other hand are published and, at least with respect to the Alaska Local Bankruptcy Rules, easily accessible through the internet. Moreover, rules have a more binding effect than guidelines. The proposed draft was derived from various sources and the provisions in proposed subsections (e) and (f) are fairly universal.

Subsections (a), (b), and (c) set forth certain minimum information required to be included in motions related to use of cash collateral or obtaining postpetition financing and is designed to provide the court with the minimum information necessary for the court to make an informed decision in the “best interests of the estate,” as well as provide other interested parties with sufficient information to determine whether or not an objection is warranted. Providing this information in the motion, whether or not a further evidentiary hearing is required, should expedite the proceeding and permit the court and interested parties to focus on those issues critical to the decision making process.

Where use of cash collateral is at issue, the court is required to decide essentially two elements: (1) is use of cash collateral necessary; and (2) the extent that the affected creditor requires adequate protection. The required items directly address this decision making process. This includes: the basic information about the creditor and amounts involved; the debtor’s initial expectations regarding operations; and information necessary to measure the necessity for and scope of adequate protection for the creditor.

The provisions regarding postpetition financing serve essentially the same purpose as the provisions regarding use of cash collateral. In addition, the rule requires the

movant to alert the court to any other creditor directly adversely impacted by the proposed postpetition, the nature of that impact and whether or not the creditor consents.

The rule also establishes a procedure for emergency motions providing for short-term, interim relief pending a hearing in the ordinary course. Since the interim order is intended to be just that, the rule limits the effect of the order to 20 days after the motion is filed, which is both protective of the possibly impaired interests of interested parties and requires that the final hearing be heard expeditiously. Of course, if circumstances require or justify a longer (or, perhaps, shorter) period, the court may address that in the interim relief order or in a later order.

Subsection (e) lists those provisions that may be included in any order or agreement and should be normally approved. These provisions are standard provisions that protect the creditor but usually have no direct adverse impact on the estate or other creditors. They permit termination of use of the cash collateral or continuation of the financing upon default, allowing monitoring by the creditor, allow for maximum time periods, and restrictions on use of the proceeds. They also permit replacement liens in like collateral (postpetition continuation of after-acquired clauses) or on other collateral, as long as it does not prime administrative expenses in the event of conversion to a chapter 7, to preserve the creditor's secured position.

Subsection (f) enumerates 21 provisions that may, in some circumstances, result in the creditor improving its position to the detriment of the estate and the other creditors or, to an extent, circumvent a provision of the Bankruptcy Code designed to either protect or enhance the position of the estate. These provisions are made subject to scrutiny by the court even in the absence of an objection. The rule and its corresponding local forms [new LBF 35 and 36] are designed to alert the court and interested parties whenever it is proposed that any of these provisions be included. The committee does not intend that the rule create an inference that inclusion of any such provision is unnecessary or inappropriate. Whether inclusion of one of the enumerated provisions is necessary or appropriate in any given instance is within the discretion of the court dependent upon the facts and circumstances involved. The requirement for "highlighting" these provisions is intended solely to ensure that full and complete disclosure is made.

4002-1 Property in Need of Attention

Prior Rule: Rule 37 (1984); Rule 16(a) (1992).

1996 Revision. Renumbered without change.

2002 Revision. Stylistic.

4003-1 Objections to Claims of Exemptions

2000 Amendments. Added to establish a procedure for objecting to exemptions. It is designed to keep the process somewhat uncomplicated and yet provide for bringing it to a relatively speedy conclusion. Also added LBF 34 for making objections to exemptions under LBR 4003-1, patterned in part after the current form used in the claim objection process.

2002 Revision. Stylistic.

4008-1 Reaffirmation Hearing

Prior Rule: Rule 27 (1992).

1998 Amendments. New subsection (c) added requiring the party filing the reaffirmation agreement to provide a conformed copy to the other party. Debtors' counsel have encountered situations where reaffirmation agreements are signed and returned to the creditor, with nothing ever heard thereafter. A sampling of creditor counsel has indicated the same occasionally happens in reverse. When this occurs the nonfiling party must check the court file to determine whether the reaffirmation has been executed and filed. This rule is designed to alleviate that problem. [However, if the reaffirmation agreement is properly filed but no notice given, under current law, it appears the reaffirmation is effective irrespective of whether a party has "notice" of the filing.]

2001 Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

2004 Amendment. Paragraph (c)(1) is amended to delete the requirement that an envelope be provided with a conventionally filed reaffirmation agreement.

5003-1 Access to Court Records and Business Hours

Prior Rule: Rules 7, 19 (1984); Rule 4 (1992).

2001 ECF Amendments. Amended to implement CM/ECF. It is imperative that there be a “no-charge” procedure for access to ECF files as presently exists for conventionally filed documents in the clerk’s office. Subsection (a) was amended to provide for access to ECF case files as for conventionally filed cases. Internet access similar to the current RACER system will unquestionably be available. However, this “off-site” access is not a proper subject for the rules.

2002 Revision. Deleted subsection (c). With the advent of the CM/ECF system, it is no longer necessary for a separate record to be maintained by attorneys or debtors in satellite locations. The court records are retrievable electronically at each of the satellite locations.

5005-1 Place of Filing

Prior Rule: Rules 6.A, 48 (1984); Rules 3(b), 90(b) (1992).

2002 Revision. Stylistic.

5005-2 Electronic Case Filing.

2001 CM/ECF Amendments. Added to implement CM/ECF.

Derived from the General Orders of the four pilot districts (Southern California, Northern Georgia, Southern New York, and Eastern Virginia). In drafting the rule, focus was on the impact and general, non-technical, aspects of electronic case filing. The technical aspects and operational details are left to a procedural manual to be promulgated through the clerk’s office. The rationale for this is that technology and systems will change and it is much less cumbersome for necessary amendments to the technical operational details to be changed or amended through a manual promulgated by the Clerk than through the considerably more complex rule amendment procedure. This approach is essentially the approach taken in the current rules regarding the U.S. trustee operating reports. It is simply more clerical than judicial in nature.

Subsection (a). Establishes the ECF program and makes compliance with the Procedural Manual mandatory.

Subsection (b). Paragraph (1) establishes the registration procedure. Participation is expected to be limited to attorneys; however, it is possible that non-attorneys may become participants. Dealing with that eventuality has not been addressed at this time. Paragraph (2) was universally used by the pilot districts and appears to be most

consistent with the basic underlying philosophy of ECF, *i.e.*, eliminate paper. Paragraph (3) was likewise universal and is based on the premise that it is essential to maintain system integrity. Restricting it to attorneys (no permissive use by other firm members/employees) would enhance integrity but ignores the fact that most document preparation will be staff not the attorney. It is incumbent on the attorney to insure that staff personnel are adequately and properly trained and supervised. Paragraph (4) emphasizes the necessity for integrity by providing for the cancellation of a compromised password. Determining when the extent to which password integrity is breached is, for the most part, in the discretion of the participant. Paragraph (5) covers withdrawal from the system.

Subsection (c). Paragraph (1) dispenses with the requirement for documents filed electronically to bear the actual signature of the attorney. Paragraph (2), together with the local form (AK LBF 37) provides the means by which electronic filed documents are signed by the client. Paragraph (3) covers other documents. [Note: There is no clear consensus as to the time the documents bearing the original signatures are to be maintained. The shortest period is until the time for appeal has lapsed. Experience indicates that the substantially longer period provided here will not be a burden on attorneys and may very eliminate any potential problem should a 60(b) issue arise, as unlikely as that may be, or it be necessary for the original signature to be available in the event a case is reopened. **(Compilers Note:** Between the time proposed rule was submitted to the court and its final adoption, ¶ (c)(3) was amended to its current (2002) language and subsection (4) added. The proposed version had original verified documents retained by the attorneys; as finally adopted the rule provides for retention of those documents by the court.)]

Subsection (d). Paragraph (1) makes clear that ECF is not optional for participants in the ECF System. Of course, a nonparticipant can not be expected to file electronically and the rule makes that clear. Paragraph (2) permits the use of excerpts from exhibits, *e.g.*, reference may be made to only 2 or 3 pages of a 30-page document. This permits a filing to be limited to those 2 or 3 pages without requiring the filing of the remaining pages of the document. However, it does not interfere with the right any party to file either additional excerpts or the complete document. Paragraph (3) governs emergency motions, which are to be also filed electronically. Telephonic notification of the judicial staff is the substitute for the current practice in conventional filing. Paragraph (4) addresses proposed orders, findings, judgments requiring signature by the court. The provision is drafted to make ECF the “norm” but leaving a provision for the court to order otherwise. For example, experience may indicate that ECF is inappropriate for these documents. Rather than have a rule, the court can address the method for submitting court-signed documents in the pre-trial order or by some other means. The problem with electronically filing proposed orders

is that they become part of the file when filed electronically; if submitted conventionally or by using floppy disks they do not become part of the file until signed by the court. Having unsigned proposed court-signed documents creates a potential serious potential problem that a person accessing the file could inadvertently assume an order has been entered when in fact it had not. The second problem involves “electronic signature” by the court, especially as it relates to judgments that affect real property, given the inherently “antsy” approach taken by title companies. **[Compiler’s Note:** The adopted version of the rule provides for electronic filing of proposed orders and judgments.]

Subsection (e). Implements in part the provisions of ¶ (b)(2) by providing that electronic notice is the equivalent of notice by mail. The last sentence requires service on all parties on whom service of a motion or application was required of the deemed withdrawal for failure to pay the required filing fee.

Subsection (f). Paragraph (1) simply makes a ECF System filed document a “docketed” item without the necessity for the clerks office to make a separate EOD entry. Paragraph (2) provides a means of “acknowledging” receipt of the electronically filed document the same as a “conformed” copy using conventional filing. Paragraph (3) makes clear that orders and judgments scanned and entered electronically by the Clerk are also automatically docketed. Paragraph (4) provides for a uniform titling for docketing purposes. [All 4 pilot districts have adopted uniform titling and this seems to be universally acknowledged as necessary by the clerks. Inclusion or exclusion of this requirement is, probably, a matter for the clerk’s office to determine.]

Subsection (g). All pilot districts include the first 3 items, the others vary from district to district. Documents filed under seal and “unscanned” attachments logically can not be filed electronically. Proofs of Claim, since they are included in a separate claims register, likewise are inappropriate for electronic filing. Trial or hearing exhibits are also inappropriate subjects of electronic filing for a number of reasons, principally, they must be made available to the court at the hearing and one does not always know before hand whether an exhibit will be admitted. For transcripts, this draft provides the same treatment as for exhibits to pleadings. [Whether including scanned excerpts is advisable is definitely an open matter, both pro and con.] With respect to orders and judgments, electronic filing may be preferable assuming that they can be printed out by the court, signed by the judge, scanned and electronically filed.

Subsection (h). Paragraph (1) provides for “conventional” payment. The 2-day period is simply a number selected arbitrarily to provide time for the filing party to get the fee to the court. If electronic filing is done from a place outside Anchorage, this may

not be enough time, thus the rule provides the Clerk with “flexibility authority” to deal with unusual situations. Paragraph (2) provides for dismissal for failure to pay the fee upon five (5) days notice; this practice is consistent with the current standing motion of the U.S. trustee. It is assumed that the Clerk will give the notice electronically. It is believed, however, the deemed withdrawal of motions/applications requiring fees, e.g., relief from stay and abandonment, does not run afoul of any notice requirements and can be done without giving additional notice. [**Compiler’s Note:** In the review and adoption process, what was ¶ (h)(2) became ¶ (k)(1).]

Subsection (l). Identical rule for ECF filed documents as for conventionally filed documents.

[**Compiler’s Note:** Subsection (j) was added during the review and adoption process to alleviate practitioner concern over the “all or nothing” nature of electronic filing in the event of system failures.]

2002 Revision. Stylistic.

2003 Amendment. Current ¶ (8) was re-numbered (9). Paragraph (8) was added to include the FRBP 1007(f) Statement of Social Security as among those documents not to be filed electronically. FRBP 1007(f), in conformance with the privacy policy adopted by the Judicial Conference, provides that the Statement of Social Security number is not for disclosure to the public and is to be retained by the Clerk of the Court separately not part of the electronic record accessible by the public.

2004 Amendment. Paragraph (b)(1) is revised to encompass participants in the system other than attorneys, e.g., case trustees and creditors. Participation in the CM/ECF system is mandatory for attorneys admitted to practice in the district, including attorneys representing the United States or its agencies, and case trustees. Attorneys admitted *pro hac vice* and other individuals who file documents and papers in the court may, but are not required to, obtain a password and participate in the CM/ECF system. Individuals, other than attorneys, who represent interested parties that are not individuals must submit evidence that they are authorized to represent the party, e.g., a statement similar to that used by banks to establish banking authority. Conforming amendments to paragraphs (b)(2) – (b)(4) have been made.

Paragraph (b)(5) requires a participant that is no longer authorized to represent a party to immediately notify the court of that fact. Upon receipt of that notification, that participant’s user name and password are cancelled.

Paragraph (c)(1) is amended to encompass all registered participants, not just attorneys. Participants should be aware that Rule 9011 applies to parties as well as attorneys.

Paragraph (c)(3) is amended to provide that if the document is signed by a person other than a participant or is covered by the applicable LBF 37, the electronically filed document must contain an imaged signature.

Paragraph (c)(4) is amended to eliminate the requirement that the originals of verified documents be filed with the Clerk of the Court.

Subsection (h) is amended to provide for payment by credit card.

Paragraph (g)(3) is abrogated. Proofs of claim may be filed electronically. [But see LBR 3002-1 concerning the necessity for filing a complete paper copy of an electronically filed claim.]

Paragraph (g)(7) is abrogated. Certificates of balloting in chapter 11 cases may be filed electronically.

Paragraph (g)(8) is amended to provide that the OF 21, although not filed electronically, is to be filed in accordance with the Administrative Procedures, which will provide that the OF 21 is to be transmitted to the court by e-mail in the same manner as proposed orders.

Subsection (h) is amended to provide for payment by credit card.

Added new subsection (l) defining the term “conventional filing.”

5011-1 Withdrawal of Reference

Prior Rule: Rule 46 (1984); Rule 51(b) (1992).

1996 Revision. Added subsections (b), (c), and (d) to provide specific procedures for noticing, hearing, and deciding motions.

2002 Revision. Stylistic.

5071-1 Continuances

Prior Rule: Rule 2 (1984); Rule 71 (1992).

1996 Revision. Renumbered without substantive change.

2002 Revision. Stylistic.

5074-1 Facsimile Filing and Service

Prior Rule: Rule 90(e) (1992)

1996 Revision. Paragraph (a)(3) changed to comply with 9th Circuit Judicial Council mandate. Subsection (b) added.

2001 CM/ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Deleted subsection (b). Electronic service is covered entirely by other rules.

5075-1 Delegation of Ministerial Orders and Notices

Prior Rule: Rule 28 (1984); Rule 101 (1992).

2001 CM/ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

6004-1 Sale of Estate Property

Prior Rule: Rules 29.C, 41 (1984); Rule 45 (1992).

1996 Revision. Subsection (c) added to implement Rule 26(a)(1), (2), automatic disclosure requirements.

2002 Revision. The reference to adopting District of Alaska Local Rules related to discovery deleted. The discovery rules had a local option provision that permitted local rules to supplant, not merely supplement, the national rules. The District Court had elected to utilize this option; however, this provision was eliminated by the December 2000 amendments to the Federal Rules of Civil Procedure and the District Local Rules amended effective October 1, 2002 to implement this change making the references to rules that would no longer exist.

6006-1 Notice of Motion to Assume, Reject or Assign Executory Contracts or Unexpired Leases

Prior Rule: Rule 4.I (1984); Rule 43 (1992)

1996 Revision. Subsection (c) added.

2002 Revision. The reference to adopting District of Alaska Local Rules related to discovery deleted. The discovery rules had a local option provision that permitted local rules to supplant, not merely supplement, the national rules. The District Court had elected to utilize this option; however, this provision was eliminated by the December 2000 amendments to the Federal Rules of Civil Procedure and the District Local Rules amended effective October 1, 2002 to implement this change making the references to rules that would no longer exist.

6007-1 Abandonment of Property of the Estate

Prior Rule: Rule 29.B (1984); Rule 42 (1992).

1996 Revision. Renumbered without substantive change.

2002 Revision. Stylistic.

6008-1 Redemption of Property in Chapter 7 Cases

2002 Revision. Added provision for approval of redemption agreements. Although § 722 of the Code does not require court approval of redemption, there is a growing trend across the country of bankruptcy courts requiring court approval, based for the most part, on the provisions of FRBP 6008. As a consequence, several major national creditors are understandably getting skittish about redemptions without court approval. The rule creates a somewhat simplified procedure for dealing with the

situation in this district by requiring court approval of all redemption agreements. Two aspects of this rule require some explanation. First, the motion requires information regarding the value and redemption price and is served on the trustee.

This is to give the trustee an opportunity to review the situation to ensure that the debtor is not redeeming property that is otherwise part of the estate to be administered, *i.e.*, existing equity in the property that may be liquidated for the benefit of the estate. It also protects the debtor from later attack by the trustee and possible loss of the property that the debtor believed had been redeemed. Second, the requirement for a hearing in all cases where the debtor is not represented gives the court the opportunity to protect unrepresented debtors from potential overreaching by creditors (same protection as is provided for unrepresented debtors with respect to reaffirmations). In the absence of an objection or an unrepresented debtor, the court is not directly involved in the process (just as is the case with respect to reaffirmations).

7001-1 Adversary Proceedings

Prior Rule: Rule 50(a) (1992)

1996 Revision. Added subsection (b).

2002 Revision. Deleted subsection (a) (dealing with the form of the complaint). FRBP 9009 already mandates use of Official Form 16C. In addition, for clarification, added to former subsection (b), “In addition to the rules adopted by Rule 1001-1(f)” at the beginning of the sentence. Also deleted the reference to D.Ak. LR 39.3 as it is adopted by Rule 1001-1(f).

7003-1 Commencement of Action

Prior Rule: Rule 50(b) (1992).

1996 Revision: Renumbered without substantive change.

2002 Revision. Stylistic.

7005-1 Electronic Service.

2002 Revision. Added this provision implementing the December 2001 amendment to F.R.Civ.P. 5, incorporated by FRBP 7005, permitting electronic service of pleadings in adversary actions. The 25-page limit on facsimile service limitation of ¶ (b)(1) addresses the concerns that overly large transmittals may simply “overwhelm” the recipient’s machine, causing it to run out of paper and memory. This can be particularly troublesome when, as is often the case, the transmittal is made after normal office hours and on weekends, which can result in later facsimiles not being properly received. Informal polling of practitioners having experience with facsimile service has indicated that 25 pages is a reasonable “cut-off” point. However, a person accepting facsimile service may opt to have no limit on the pages. Adobe Acrobat, as required by ¶ (b)(2), is an universally available format (the Acrobat Reader may be downloaded for free); all documents electronically filed with the court must be and documents generated by the court are in portable document format.

7016-1 Pretrial Procedure

Prior Rule: Rule 40 (1984); Rule 81 (1992)

1996 Revision: Renumbered without substantive change.

2002 Revision. Stylistic.

7026-1 Discovery and Depositions

Prior Rule: Rule 8 (1984); Rule 70(k) (1992).

1996 Revision. 7026-1 implements the 1993 amendments to Rule 26. This rule can best be described as “experimental.” One of the more difficult tasks the Committee faced was integrating the broad requirements of the 1993 “automatic disclosure” requirements taking into account the unique circumstances involved in bankruptcy proceedings.

In adversary actions, consistent with the general intent to keep practice between bankruptcy court and district court as identical as possible, except for timing (which was modified to take into account the fact that bankruptcy cases are generally on somewhat of a faster track than civil cases in district court), the discovery rules are identical to district court.

In contested matters on an “across-the-board” basis, here is no change to current practice. Subsection (a) makes clear that Rule 26(a) as amended in 1993 does not lend itself to the majority of contested matters. Implementation of the 1993 Rule 26 amendments was determined to be appropriate on a “case-by-case” and the rule so provides. Three types of contested matters were “selected” as appropriate for the automatic disclosure requirements of Rule 26(a): relief from stay proceedings [4001-1(h)]; sale of estate property [6004-1(c)]; and assumptions of leases and executory contracts [6006-1(c)].

2002 Revision. Abrogated in its entirety. The December 2000 amendments to Rule 26, F.R.Civ.P. eliminated the “local rule option” for modifying the provisions of Rule 26. The reference to applicability to contested matters duplicated Rule 9014, which already makes the discovery rules applicable to contested matters. Thus, except for 7026-1(c), there is no authority for the rule. 7026-1(c) was retained renumbered as 7037-1.

7037-1 Failure to Make Discovery; Sanctions

Prior Rule: Rule 7026-1(c) (1996)

2002 Revision. Renumbered without substantive change [see comment to Rule 7026-1].

7041-1 Dismissal of Discharge Actions

2001 Amendments. Added this rule. An action to bar discharge potentially benefits all creditors whose claims are otherwise not dischargeable under § 523. Conversely, dismissal of that action can be to the detriment of those creditors. In addition, there is an inherent aversion to permitting a debtor to “buy” a discharge whether by payment of money or other consideration, e.g., agreement that a particular debt not be discharged, in exchange for dismissal of the complaint under § 727. This rule is intended to insure that there are no secret agreements and all the information necessary for the court to make an informed decision on whether to allow dismissal,

or conditions to impose on allowance, is made a part of the record. It is also designed to give notice to and permit those interested parties who may be most affected to make any objection to the proposed resolution of the action.

In “asset” cases, notice is limited to those persons who have filed either a request for special notice or a proof of claim as these are the interested parties who have signified an interest in the proceedings. In “no-asset” cases, notice is limited to the five largest nondischargeable unsecured claims. Because not infrequently the largest unsecured claims are otherwise nondischargeable claims under § 523, *e.g.*, priority tax claims, support obligations, and student loans, notice is given to those creditors most likely to be affected by dismissal of the § 727 discharge action.

The rule also recognizes that, although dismissal of § 727 actions is not to be granted as a matter of course, it is difficult and potentially fruitless for the court to attempt to force a recalcitrant plaintiff to continue to pursue an adversary action. Thus, in some cases, dismissal may be dependent upon the willingness of another interested party to pick up the laboring oar.

It is assumed that where there is no consideration to be given to the plaintiff in exchange for dismissal, a hearing may not be warranted. However, in cases where any consideration is to be given to the plaintiff, including nondischargeability of the debt owed the plaintiff where § 727 claim is joined with a § 523 claim, dismissal should not be allowed without a hearing.

2002 Revision. Stylistic.

7056-1 Summary Judgment

1998 Amendments. Reinstates a requirement contained in LBR 70(l)(2) (1992) that was inadvertently deleted during the major restructuring/renumbering effective January 1, 1996.

2002 Revision. Stylistic.

Rule 8001-1 Appeals

2002 Revision. Added this rule. Subdivision (a) places in the rules essentially the effect of the current general order of the district court consenting to appeals being heard by the BAP. Subdivision (b) serves as a reminder to the parties that it is necessary to refer to the FRBP and clarifies that, in the event of any conflict, the FRBP prevails.

Rule 8009-1 Extension of Time to File Briefs

2002 Revision. The time for filing briefs is set forth in FRBP 8009. This rule provides a procedure for obtaining an extension for the filing of briefs and is based on BAP Rule 8009(a)-1(b). For short delays, no order of the court is necessary. The intent is to reduce the necessity for judicial involvement in those, more or less, routinely granted matters that have little significant impact on bringing the matter to a relatively speedy conclusion. [BAP Rule 8009(a)-1(b) authorizes the clerk to grant extensions; however, the function of the clerk's office at an appeal court and that of a district court differ somewhat, thus, the difference in procedures.]

Rule 8009-2 Failure to Timely File Briefs

2002 Revision. No current BAP counterpart. The requirements of subdivision (a) essentially mirror 8009-1(b), providing the district judge with the same information without referring to the case file.

8010-1 Form of Briefs; Length

2002 Revision. Subdivision (a) keeps appellate brief contents consistent for appeals within the Ninth Circuit and format consistent with local district court rules with respect to paper, chamber copies, type, etc. FRBP 8010(c) specifies lengths of 50 and 25 pages for principal and reply briefs, respectively, which is identical to D.Ak. LR 10.1(l). Subdivision (b) is adapted from Ninth Circuit Rule 28-3.3, plus providing a definite time within which the motion must be acted upon and the time within which the party must file the brief in any event.

8012-1 Oral Argument

2002 Revision. Under Rule 8012, oral argument is the norm, not the exception. Subdivisions (a) and (b) are adapted from BAP Rule 8012-1. The preliminary proposed rules included a subdivision (c) specifying the time allotted for oral argument; the court declined to adopt that provision.

8015-1 Motion for Rehearing

2002 Revision. Added. No BAP counterpart; adapted from FRAP 40.

8017-1 Stay Pending Appeal to Court of Appeals

2002 Revision. No BAP counterpart; adapted from FRAP 8. This rule is intended to be applied in those cases involving appeals from orders/judgments other than simple money judgments, e.g., relief from stay, authorizing sale of estate property, confirmation orders. It is assumed that the posting of a supersedeas bond under FRBP 7062/FRCP 62(d), will act as an automatic stay pending appeal of a money judgment. If the supersedeas bond was posted upon the appeal to the district court, it is also assumed that continuation of that bond will stay enforcement pending further appeal to the court of appeals.

8018-1 Local District Court Rules Adopted

2002 Revision. Provides procedures if not otherwise provided for in either these rules or Part VIII of the Federal Rules of Bankruptcy Procedure. Those are generally local district rules of general applicability and does not include those rules that have no application to appeals, e.g., discovery, pre-trial procedure, trial matters, etc. [NOTE: The preliminary draft of the rules delineated specific rules adopted; the court did not include those in the rule as adopted.]

PART IX – GENERAL PROVISIONS

9001-1 Meaning of Words and Phrases

Prior Rule: Rule 49 (1984); Rule 2 (1992)

1996 Revision. Added subsection (b).

1998 Amendments. Added definition of “manager” for a Limited Liability Company.

2002 Revision. Stylistic.

9003-1 Reminders to Court

Prior Rule: Rule 99 (1992).

1996 Revision: Renumbered without substantive change,

2002 Revision. Stylistic.

9004-1 Form of Pleadings and Other Papers

Prior Rule: Rule 6 (1984); Rule 90(a)–(c) (1992)

1996 Revision. Renumbered without substantive change.

2001 ECF Amendments. Amended to implement CM/ECF.

2002 Revision: Stylistic.

2003 Amendment. Subsection (e) added to implement the privacy policy adopted by the Judicial Conference of the United States in September 2001 as it relates to the electronic case filing system employed by the bankruptcy court. The proposed rule does not apply to the petition or related documents, or to the Official Forms; procedures concerning those are governed by Rules 1005 and 1007, Federal Rules of Bankruptcy Procedure and the Official Forms approved and adopted by the Judicial Conference. Other than ¶ (1), the rule is patterned on the rule suggested by the Judicial Conference.

9006-1 Motion to Shorten Time

Prior Rule: Rule 70(m) (1992); Rule 9013-2(a) (1996)

2002 Revision. Renumbered without substantive change.

9009-1 Local Forms

1996 Revision. Added to make use of local forms mandatory to the same extent as official forms adopted by the National Judicial Conference.

2002 Revision. Stylistic.

9010-1 Appearances

Prior Rule: Rule 1.E. (1984); Rule 5(c)-(f) (1992).

1996 Revision. Make clear that partnership and corporate debtors must be represented by counsel; the small matter exception for non-debtor corporations and partnerships tracks “small claims” exception in Alaska law rather than a specified amount in keeping with the “general intent” to keep the practice between state and federal courts as consistent as possible. Requirement that employee representatives to be authorized in writing to represent the corporation/partnership eliminates any doubt as to “authority.”

1998 Amendments. Amended to provide same treatment for a Limited Liability Company as for partnerships, associations, and corporations.

2002 Revision. Subsection (a) amended to clarify that a corporation, partnership, or limited liability company, other than the debtor, may appear at and participate in the § 341 meeting without counsel.

2004 Amendment. Minor nonsubstantive clarifying change to the language of ¶ (a)(4)[A].

9011-1 Frivolous and Unnecessary Motions and Objections; Penalty

Prior Rule: Rules 4.J, 21.D (1984)

1996 Revision. This rule was omitted from the 1992 edition and restored in 1996.

2002 Revision. Stylistic.

9013-1 Briefs; Memoranda

Prior Rule: Rule 4.B (1984); Rule 70(e) and (g) (1992).

1996 Revision. Added subsections (a), (c)-(f).

2001 Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

9013-2 Motion Practice

Prior Rule: Rule 70(m), (n) (1992).

1996 Revision. Renumbered without substantive change.

1998 Amendments. Subsection (a) amended to clarify that all motions for orders shortening time must be served on the party or parties to be affected by the motion, and any other party the court may direct.

Subsection (c) added. Although an *ex parte* motion is by definition made without notice to other parties, common courtesy as well as the need that parties adversely affected by orders be apprised of the basis for that order, suggest that service of the motion is appropriate. Subparagraph (1)(A) serves this purpose. However, it is also recognized that there are situations where the party will be adversely affected in the event prior notice is given. This is also provided for. If the court believes notice is appropriate, it is anticipated the court will require the moving party to give notice. Subparagraph (1)(B) is designed to in part to ensure that moving parties do not make inappropriate use of *ex parte* motions. Subparagraph (1)(C) is intended to acquaint the court with the possibility of opposition or nonopposition to the motion and will materially aid in processing the motion. It is not anticipated that this requirement will apply where the motion has universal effect or an objection would be futile, e.g. a motion to convert or dismiss a chapter 13 case where the debtor has an absolute right.

Although LBR 9021-1(a) specifically excepts *ex parte* motions from the “no submission of order” provision, subparagraph (1)(D) clarifies that an *ex parte* motion is to be accompanied by an order. Paragraph (2) codifies existing court practice

2000 Amendments. Subsection (d) added to provide notice to party against whom a motion is directed of the date by which a response to the motion is required. Concern exists that with respect to *pro se* parties, motions for which no notice independent of the motion itself is required by the rules does not impart to the respondent the need for filing a response, e.g., motions to compel turn over of property.

2002 Revision. Subsection(a) (motion to shorten time) renumbered without substantive change as 9006-1.

Subsection (b) (motion for reconsideration) removed and renumbered without substantive change as 9023-1.

Subsections (c) (*Ex Parte* Motions) and (d) (Non-Noticed Motions) redesignated as (a) and (b), respectively, without substantive change.

9014-1 Contested Matters

2003 Amendment. The October 1, 2002 amendments inadvertently deleted the provision in the local rules that discovery documents were not to be filed with the court in contested matters. Prior to October 1, 2002, the local bankruptcy rules incorporated by reference D.Ak. LR 26.4, which provided that discovery documents were not to be filed with the court until used or otherwise ordered. LR 26.4 was abrogated effective October 1, 2002 because the subject matter is now covered in F.R.Civ.P. 5(d). That does not present a problem in adversary actions because Rule

7005 incorporates F.R.Civ.P. 5 for adversary actions. However, it does not cover the rare situation when there is discovery in a contested matter under Rule 9014. Rule 9014 does not incorporate Rule 7005. Consequently, there is no current provision covering the routine filing of discovery documents in a contested matter. As amended, 9014-1(b) restores the matter of filing discovery documents in contested matters to the pre-October 1, 2002 status.

9015-1 Jury Trials

1996 Revision. Rule added. An adaption of a proposed rule promulgated by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

1997 Amendments. Subsection (a) abrogated; subject covered by FRBP 9015.

Paragraph (c)(1) — A minor amendment to former subsection (c) moving the “start date” for consenting to jury trials before the bankruptcy court from the later of the filing of the last answer or the demand is made. Prior to amendment, 9015-1(c) required the consent to be filed 30 days after the demand is made. However, if the demand for a jury trial is endorsed on the complaint as it frequently is, the time for consent runs concurrently with the time to file answer or, in the case of a governmental entity, before the answer is due; an absurdity. The revision is more in line with reality while keeping the deadline reasonably short. It should also be noted that nothing in the rule prevents the court from extending the time or permitting late filing of a consent on an appropriate motion for such cause as the court may deem sufficient.

Paragraph(c)(2)—A new provision providing that a “general” consent to having non-core proceedings heard and determined by the bankruptcy court is *ipso facto* consent to a jury trial in the bankruptcy court. It is logical to assume that consent to entry of a final judgment by the bankruptcy court sitting without a jury is also consent to entry of a final judgment by the bankruptcy court on the verdict entered by a jury. [See 1 King, *Collier on Bankruptcy*, ¶¶ 3.03[4], 3.08[3] (15th ed. Rev. 1996); cf. *In re Mann*, 907 F.2d 923, 926 (9th Cir. 1990)] While the rule does not affect the right of any party to seek leave of court to amend a pleading in which consent to the jurisdiction of the bankruptcy court was signified, any argument based upon “inadvertence” or “lack of informed consent” may be obviated by making this presumption explicit in the rules.

Paragraph(c)(3)—A new provision providing that inconsistent elections under § 157 results in the matter remaining in the bankruptcy court for all purposes. While it is theoretically possible for a party to withhold consent to jurisdiction under § 157(c)(2) and yet consent to a jury trial before the bankruptcy court under § 157(e), that is highly unlikely. *Collier, supra*, takes the position that a consent to either is a consent

to both; the later consent effectively operating as a withdrawal of the earlier nonconsent. 9015-3(c)(3) makes this position explicit in the rules.

9015-2 Jury Trials — District Court

1997 Amendments. Rule added. Governs pre-trial procedures for jury trials in the District Court. In effect, the proceeding goes on in the bankruptcy court without change until the time for trial arises, when it transfers to the district court. However, it does not affect the right of a party to move for withdrawal of the reference prior to the time the matter is set for trial. As far as the district court is concerned, unless it withdraws the reference, the case remains in the bankruptcy court until the time for trial. If the case is disposed of by settlement or otherwise before trial, the district court never gets involved, unless, of course, there is an appeal to it under 28 U.S.C. § 158.

Subsection (a) — Premised upon the assumption that the demand for a jury trial and non-consent to having the jury trial before a bankruptcy judge in core proceedings does not require automatic withdrawal of the reference in core proceedings, the district court may leave the reference in place until it has been determined that the matter is actually going to proceed to trial. The bankruptcy court continues to exercise jurisdiction over all pretrial matters, including discovery, motions, settlement conferences and the like, until the case is ready for trial. [See e.g., *In re Stansbury Poplar Place, Inc.*, 13 F.3d 122 (4th Cir. 1993); *In re Orion Pictures Corp.*, 4 F.3d 1095 (2nd Cir. 1993), cert. den., 114 S.Ct. 1418 (1994); *In re Hardesty*, 190 B.R. 653 (D.Kan. 1995); *Hayes v. Royola*, 180 B.R. 476 (E.D.Tex. 1995); *In re Kirk E. Douglas*, 170 B.R. 169 (D.Colo. 1994); *Stein v. Miller*, 158 B.R. 876 (S.D.Fla. 1993); *In re Palomar Electric Supply, Inc.*, 138 B.R. 959 (S.D.Cal. 1992)]

Subsection (b) — Retains reference of a matter to the bankruptcy court for pre-trial matters in non-core proceedings as authorized by 28 U.S.C. § 157(c). The pre-trial matters are conducted in the same manner as any other non-core proceeding under AK LBR 9033-1.

Subsection(c) — The parties and the bankruptcy court must report the status of the case to the district court; a “planning” or “calendar” tool to advise the district court when the matter may be transferred to it for trial. The 120-day time period is fairly arbitrary; it was believed anything less than 90 days was too short and anything over 150 days probably too long.

Subsection(d) — A mechanism for the bankruptcy court to tell the district court it has completed its work on the case and hand the case and file to the district court for trial. It is assumed that the district court will invoke its own procedures for setting a trial date. It is also assumed that, unless the certification specifies some

unresolved matter, woe be unto the party who gets to the trial setting conference and says “oh by the way, this issue still must be resolved.”

2002 Revision. Stylistic.

9021-1 Orders, Findings, Conclusions and Judgments

Prior Rule: Rules 4.D, 15 (1984); Rule 91 (1992).

1996 Revision. Renumbered without substantive change.

2002 Revision. Stylistic.

9023-1 Motion to Amend Findings or for New Trial, Rehearing, or Reconsideration

Prior Rule: Rules 4.M, 18 (1984); Rule 70(n) (1992); Rule 9013-2(b) (1996).

2002 Revision. Renumbered without substantive change.

9033-1 Non-Core Proceedings

1997 Amendment. Added this rule governing procedures and the authority of the bankruptcy court to “hear” or “hear and decide” matters in non-core proceedings.

Subsection (a) — Premised on the somewhat unclear premise nonconsent to hear a non-core matter does **not** effect an automatic withdrawal of the reference or mandate automatic withdrawal of the matter.

Subsection (b) — This provision on dispositive matters clearly complies with 28 U.S.C. §157(c)(1) and essentially mirrors the procedure applicable when a case is referred to a magistrate judge, using FRBP 9033 instead of FRCP 72(b). It does not permit the bankruptcy court to dispose of the case; disposition is reserved to the district judge. The exception for Rule 12(b) motions is intended to expedite the proceedings where leave to amend is granted and the ruling does not finally dispose of any case or issue. As written, 9033-1(b) allows for the entry of final dispositive orders by the bankruptcy court if the parties have consented as provided in § 157(c)(2).

Subsection (c) — On matters that are nondispositive, the order of the bankruptcy judge is final unless a party objects. Whether this is authorized under § 157(c)(1) is somewhat unclear. However, the language of § 157(c)(1) requiring entry by the district court deals with “final orders and judgments” and nondispositive motions do not result in final orders or judgments as those terms are commonly understood. [See *Celotex Corp v. Edwards*, 514 U.S. 300, 309, n. 7, 115 S.Ct. 1493, 131 L.Ed2d 403 (1995)] The procedure in this rule mirrors FRCP 72(a) applicable to review of nondispositive matters determined by magistrate judges. It is assumed that the intent of Congress, as implicitly endorsed by the Supreme Court in *Celotex* and

embodied in FRBP 9033, is that in non-core proceedings the bankruptcy judge has essentially the same functions and authority as a magistrate judge would have in non-bankruptcy civil cases.

The rule also assumes that the parties have complied with the other rules on pleading, *i.e.*, FRBP 7008(a)/7012(b), regarding designation as a core or non-core proceeding and consent or non-consent to entry of final orders by the bankruptcy judge. Thus, whether a matter is core or non-core will generally have been resolved and consent/nonconsent under § 157(c)(2) signified. However, it may be necessary for the bankruptcy court in those cases where the issue of whether an action is core or non-core is contested to make a determination on that issue. It is assumed that 9033-1 will not “kick in” until the court has made that determination.

2002 Revision. Stylistic.

9033-2 Certification to District Court Under 11 U.S.C. § 110(i)

2003 Amendments. Added this rule.

General. In enacting § 110(i), Congress created somewhat of a hybrid between a core and non-core proceeding. Absent the requirement for certification to and the determination of damages by the district court, § 110(i), which invokes a right created by title 11 or a proceeding that could only arise in the context of a bankruptcy case, would fit within the definition of a core proceeding as defined in 28 U.S.C. § 157(b)(2). [See *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000) (*en banc*)] It is vesting of the power to make the damages award in the district court that creates the non-core flavor. Thus, the procedure has both core (determination of the proscribed acts) committed to the bankruptcy court and non-core (determination of damages) committed to the district court. The procedure contained in this rule is also a hybrid, for the most part treating the matter as non-core proceeding with the exception of 9033-2(c), which empowers the bankruptcy court to effectively “dismiss” a motion as a final order rather than recommend that the district court take the action. In addition to the fact that this part of the process is a core proceeding, this appears to be sanctioned by § 110(i)(1), which requires only that the bankruptcy court certify to the district court the fact that the BPP committed one or more of the acts proscribed, an “affirmative” finding. Nothing in § 110(i) requires, explicitly or implicitly, the certification of a “negative” finding.

9033-2(a)(1) – The process is initiated by filing the motion with the clerk of the bankruptcy court.

9033-2(a)(2) – intended to set forth the minimum pleading requirements in the initiating papers, including the nature and extent of the damages sought.

9033-2(a)(3) – makes the motion a contested matter in the bankruptcy court.

9033-2(a)(4) – eliminates the need for the initiating party to file a separate motion in the district court upon certification by the bankruptcy court, which appears to be somewhat inefficient and of dubious necessity. § 110(i) does not specify how to initiate obtaining certification by the bankruptcy court but indicates that after certification damages are to awarded by the district court upon motion. This provision, at least technically, keeps the rule from conflicting with the statute by deeming the motion initiated in the bankruptcy court as the motion in the district court.

9033-2(b) – sets the time for a responsive pleading. FRBP 9014 does not allow for a response unless otherwise ordered by the court. This subsection fills that gap.

9033-2(c)(1) – authorizes the bankruptcy court to effectively “dismiss” the action rather than to recommend dismissal to the district court for final action. If a proceeding under § 110(i) were a true non-core proceeding, then any action that terminated the proceeding would be subject to the provisions of 28 U.S.C. § 157(c), FRBP 9033 and AkLBR 9033-1. As noted above, a literal reading of § 110(i) does not appear to require that procedure be followed.

9033-2(c)(2) – establishes a “dismissal” by the bankruptcy court as the final order in the matter, presumably appealable at that point. This provision must be read in light of FRBP 9014, which incorporates FRBP 7054, which, in turn, incorporates FRCP 54(b) governing the entry of judgments on multiple claims or parties.

9033-2(d)(1) – provides that FRBP 9033 is the basic procedure to be used in transmitting the certification to and processing by the district court.

9033-2(d)(2) – inclusion of the damages to be awarded is intended to make the proposed findings and conclusions filed by the bankruptcy court complete. Although § 110(i) appears to contemplate a separate hearing in the district court on the issue of damages, it is inefficient to bifurcate the proceeding into two separate evidentiary hearings between liability (bankruptcy court) and damages (district court). By including damages in the proposed findings and conclusions, the matter is presented to the district court in a single “package” with a complete record and a further evidentiary hearing in the district court is within the discretion of the district judge.

9033-2(d)(3) – recognizes the bifurcation between the core and non-core aspects. If 28 U.S.C. § 157(c) and FRBP 9033 were applied in their totality, the entire process at the district court level would require *de novo* review. This paragraph treats the matter at the district court level the same as an appeal except for the award of damages, which Congress has definitely made a non-core proceeding requiring *de novo* review.

9033-2(d)(4) – incorporates the existing rule regarding obtaining a hearing in the district. § 110(i) specifies after hearing in the district court and the parties are afforded an opportunity to request a hearing. Having presumably having had, or, at least, the opportunity for, a hearing, in the bankruptcy court, requiring compliance with LR 7.2 governing hearings on motions should satisfy the requirement in § 110(i) in light of the provisions of 11 U.S.C. § 102(1).

9033-2(d)(5) – utilizes existing procedures for determining the award of attorney’s fees.

9036-1 Request for Notice by Electronic Transmission

1996 Amendments: Added this rule to implement the amendment to FRBP 9036.

9070-1 Number of Copies

Prior Rule: Rule 26 (1984); Rules 9(a), 10(b), and 90(f) (1992)

1996 Revision. Added subsection (b).

2001 Amendments. Amended to add one (1) additional copy of the petition, schedules, and statement of financial affairs to be filed in cases filed other than those filed in Anchorage. [This copy is retained in the outlying district.]

2001 CM/ECF Amendments. Amended to implement CM/ECF.

2002 Revision. Stylistic.

2004 Amendment. Paragraph (2) is amended to require two copies in all chapter 9 and 11 cases, and three copies in chapter 11 cases where the debtor is a publicly traded entity.

9075-1 Hearings; Trial

Prior Rule: Rule 4.C. (1984); Rules 3(a)(1) and 70(f), (h), and (j) (1992)

1996 Revision. Added Subsection (e) a “catch-all” provision implementing Rule 26(a)(3), Federal Rules of Civil Procedure and intended to make sure that all affidavits are exchanged and lodged with the court and all witnesses and exhibits identified. This provision is only applicable if the required materials have not already been served and filed.

2002 Revision. Subparagraph (b)(2)(a) amended to clarify that a hearing is required for conversion or dismissal only if the Code requires a hearing. This excludes those situations where the Code does not require a hearing, e.g., 706(a), 1112(a), 1208(a), (b), 1307(a), (b).

Subparagraph (c)(2)(A) amended to provide for a 5-day delay between the time an objection is filed and deemed submission without a hearing to permit the parties time to submit a calendar request.

The reference to adopting District of Alaska Local Rules related to discovery deleted. The discovery rules had a local option provision that permitted local rules to supplant, not merely supplement, the national rules. The District Court had elected to utilize this option; however, this provision was eliminated by the December 2000 amendments to the Federal Rules of Civil Procedure and the District Local Rules amended effective October 1, 2002 to implement this change making the references to rules that would no longer exist.

9076-1 Telephonic Participation by Parties in Interest

Prior Rule: Rule 3(a)(2) (1992).

1996 Revision. Renumbered without substantive change.

2002 Revision. Stylistic.