UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: **Administrative Order 2020-10**

PROPOSED AMENDED LOCAL RULES,
OPPORTUNITY FOR PUBLIC COMMENT
_____/

Pursuant to 28 U.S.C. § 2077(b), the Court appointed an advisory committee to undertake a review of the Court's local rules and the advisory committee recommended proposed amendments. The Court, having reviewed the recommendations of the dvisory committee and, in accordance with 28 U.S.C. § 2071(b), Fed. R. Civ. P. 83, Fed. R. Bankr. P. 9029, and Local Rule 87.1 of the United States District Court, Southern District of Florida, gives notice that it is considering the adoption of proposed amendments to the local rules, and **ORDERS** as follows:

1. The proposed rules are subject to further modification prior to final approval as a result of public comments submitted and further judicial review.

2. Comments on the proposed amendments must be submitted in writing and electronically mailed to Joe_Falzone@flsb.uscourts.gov or conventionally mailed to **Joseph Falzone, Clerk of Court, United States Bankruptcy Court, C. Clyde Atkins United States Courthouse, 301 North Miami Avenue, Room 150, Miami, FL 33128**, to be received not later than **July 2, 2020**. Each comment must identify the specific local rule being addressed together with any supporting authority.

3. If the Court determines that the issues raised in the public comments necessitate an *en banc* hearing, the court shall schedule, and the Clerk of Court shall publish notice of, such hearing.

4. After review of timely submitted comments and conclusion of any scheduled *en banc* hearing, the court will determine if any additional amendments to the published proposed rules are necessary, and enter an administrative order adopting amended local rules and clarifying status of current administrative orders, local forms, clerk's instructions and court guidelines, as appropriate.

5. The clerk of court shall post a copy of this Order and the proposed amended local rules on the court's website for review and submission of comments by the deadline indicated in paragraph two above.

ORDERED in the Southern District of Florida, this 1st day of June 2020.

Laurel Myerson Isicoff
Chief United States Bankruptcy Judge

c: All SD Bankruptcy Judges
Clerk of Court

PROPOSED USBC LOCAL RULES AND FORMS

USBC Southern District of Florida Proposed Local Rule Modifications (2020)

Table of Contents

Proposed New Section to Local Rule 1001-1(F). Definitions ("Chapter 13 Consent Calendar").

***(☞ 2020 (proposed) Local Rule**: The 2020 Amendment to Local Rule 1001-1(F) is a proposal to define Chapter 13 Consent Calendar and create a new Section (16) to L.R. 1001-1(F)).*

Rule 1001-1. Scope of Rules; Sanctions; Waiver, Definitions; Acronyms.

(F) Definitions. Acronyms.

[. . .]

(16) "CHAPTER 13 CONSENT CALENDAR" means a "Consent Calendar" conducted by a Standing Chapter 13 Trustee at which time plan confirmations, motions, objections, and other properly noticed matters may be announced as resolved by agreement, consent, or that the same are uncontested. Matters resolved on the Chapter 13 Consent Calendar are not considered to be heard "by the court."

Comment: Matters heard on the "Chapter 13 Consent Calendar" are not to be considered matters heard by the Court. As a result; orders resulting from the Chapter 13 Consent Calendar are not to include language indicating (or implying) that the matter "was heard by the Court"; instead any such order should reflect the matter "came before the Court on the chapter 13 consent portion of the calendar."

Proposed New Local Rule 1002-1(C). Filing on Debtor's Behalf by a Court-Appointed Representative, Holder of Power of Attorney, or Proposed Guardian Ad Litem

***(☞ 2020 (proposed) Local Rule 1002-1(C)**: Local Rule 1002-1(B) establishes procedures for the filing of voluntary petitions by court-appointed representatives, holders of powers of attorney, or proposed guardians ad litem. This rule – modeled after Middle District of Florida Bankruptcy Court Local Rule 1002-1 – specifies the information and documents that must be filed in support of a motion or in response to an order to show cause. In all cases, the Court will schedule a status conference to consider the filing party's authority to file the case on the debtor's behalf and the dismissal of the case if the listed requirements are not met).*

Rule 1002-1. Commencement of Case.

[. . .]

(C). Filing on Debtor's Behalf by a Court-Appointed Representative, Holder of Power of Attorney, or Proposed Guardian Ad Litem.

(1) ***Filing of a Petition by a Court-Appointed Representative.*** If a bankruptcy petition is filed on a debtor's behalf by a representative, such as a guardian, conservator, or like fiduciary, appointed by a court of competent jurisdiction before the filing of the petition, a copy of the appointment instrument must be filed with the petition**.**

(2) Filing of a Voluntary Petition by the Holder of a Power of Attorney or Proposed Guardian Ad Litem.

(a) ***Declaration Required.*** Petitions filed by the holder of a power of attorney or proposed guardian ad litem ("Filing Party") must be accompanied by a copy of the power of attorney, if any, and the Filing Party's declaration under penalty of perjury ("Declaration"). The Filing Party must serve a copy of the petition and the Declaration on the debtor, all creditors, the U.S. Trustee, any governmental entity from which the debtor is receiving funds, and the debtor's closest relative, if known. The Declaration and all attachments must be filed as non-public "restricted documents."

(b) ***Contents of Declaration.*** The Declaration must include the following information:

(1) the reason for filing the bankruptcy petition;

(2) the Filing Party's name, address, and relationship to the debtor;

(3) whether a representative was appointed for the debtor under nonbankruptcy law before the petition was filed;

(4) if applicable, whether the power of attorney expressly authorizes the filing of a bankruptcy petition, and whether the debtor was a minor or has been adjudicated an incompetent person prior to the date of the power of attorney;

(5) if applicable, why appointment of the Filing Party as guardian ad litem is necessary, including the reasons why the debtor is unable to file the petition himself or herself or otherwise unable to manage his or her financial affairs;

(6) if applicable, why appointment of the Filing Party would be in the debtor's best interest;

(7) the fee, if any, that the Filing Party would charge the debtor for serving as guardian ad litem;

(8) the Filing Party's professional and criminal history, if any;

(9) the Filing Party's competence to handle the debtor's financial affairs, including the Filing Party's knowledge of the debtor's financial affairs;

(10) whether the Filing Party has any current or potential future interest in the debtor's financial affairs; and

(11) whether any of the debtor's debts were incurred for the benefit of the Filing Party.

(c) ***Required Documents.*** If appointment as guardian ad litem is sought on behalf of an incompetent person, the Declaration must be accompanied by the following documents:

(1) a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs; and

(2) a copy of any power of attorney or other document giving the Filing Party the authority to act for the debtor.

(d) ***Status Conference Regarding Filing Party's Authority and Appointment of Guardian Ad Litem.*** If a bankruptcy petition is filed on the debtor's behalf by the holder of a power of attorney or proposed guardian ad litem, the Court will schedule a status conference ("Status Conference") to consider the following:

(1) the Filing Party's authority to file the case on the debtor's behalf and, if applicable, the appointment of the Filing Party as the debtor's guardian ad litem;

(2) dismissal of the case if the Filing Party has not complied with the requirements of sections (b) and (c); and

(3) whether the Court should abstain from the appointment of the Filing Party as the debtor's guardian ad litem and instead refer the request in the Declaration for appointment to another court of competent jurisdiction.

(e) ***Limitation on Filing Party's Authority.*** Pending the Status Conference, unless the Court orders otherwise, the holder of a power of attorney or proposed guardian ad litem must take no further action in the bankruptcy case on the debtor's behalf.

Proposed Amendment to **Local Rule 2002-1(C)(5) Chapter 13 Plan; Amended Plan and Local Rule 3015-1(B)(2) Service of Plan**

***(☞ 2020 (proposed) Amendment**: The 2020 amendment to Local Rule 2002-1(C)(5) imposes the obligation to serve a chapter 13 plan if the plan is not filed contemporaneously with the petition in Chapter 13 cases, unless the debtor is appearing pro se. A 2020 amendment to Local Rule 9013(C)(2)– Ex Parte Motions – coincides with the amendment to Local Rule 1007-1(B)).*

Rule 2002-1(C)(5) Chapter 13 Plan; Amended Plan. The Local Form "Chapter 13 Plan" filed by the debtor or debtor's counsel must be served as follows:

a. **Plan filed with Petition.** If the plan is filed with the voluntary petition, the clerk must mail copies of the plan to the trustee, all creditors, and interested parties along with the Official Bankruptcy Form Notice of Chapter 13 Bankruptcy Case containing the time fixed for filing objections to and the hearing to consider confirmation of the plan.

b. **Plan filed after Petition.** If the plan is filed on a date after the date on which the voluntary petition is filed, the debtor's attorney must serve a copy of the plan with the Official Bankruptcy Form Notice of Chapter 13 Bankruptcy Case on the trustee, all creditors, and interested parties, and file a certificate of service.. The attorney for the debtor or clerk, if the debtor is pro se, must serve any subsequently filed amended plan or modified plan and any notice of hearing thereon on the trustee, all creditors, and interested parties, and file a certificate of service. Service must be made pursuant to Local Rules 2002-1(C)(1), 2002-1(F) and 1009-1(D)(2).

* * * *

Rule 3015-1(B)(2) [Abrogated].

Proposed Amendment to Local Rule 2002-1(F). Certificate of Service Substantially Conforming to Local Form Required.

***(☞ 2020 (proposed) Amendment**: The 2020 amendment to Local Rule 2002-1(F) conforms the requirement to file a certificate of service of a notice of hearing only when service is effected for parties who do not receive notice via CM/ECF, as set forth in Local Rule 9073-1(B). The 2020 amendment to Local Rule 9073-1(B)– Filing of Certificate of Service of Notice of Hearing – coincides with the amendment to Local Rule 2002-1(F)).*

(F) **"Certificate of Service" Substantially Conforming to Local Form Required**. A filing party who provides notice of any requested relief, proposed action or other service pursuant to the Bankruptcy Rules, these rules, or by order of the court, other than a notice of hearing which is subject to Local Rule 9073-1(B), must file with the court, within two business days after service, a certificate of service substantially conforming to the Local Form "Certificate of Service", that must list the names and addresses and date and manner of service of all parties required to be served by the filing party. The "Notice of Electronic Filing" (NEF) is not a substitute for the filing of a separate certificate of service but may be incorporated by reference in the certificate of service for the purpose of identifying those parties who were served electronically, even if, by such incorporation, the result is inclusion in the certificate of service of some case participants who received electronic service but were not required to be served.–The certificate of service must reflect that non-registered users or registered users who have yet to appear electronically in a specific case were served by conventional paper or other manner of service required under the federal rules and this court's local rules. Papers previously filed with the court that are the subject of the certificate of service must be referenced as provided under Local Rule 9004-1(D) and not attached to the certificate of service filed with the court. A certificate of service conforming with this local rule may be incorporated into a motion, application or other paper filed with the court.

Proposed Amendment to Local Rule 2081-1(B). Chapter 11 – Required Case Management Summary.

***(☞ 2020 (proposed) Amendment**: The 2020 amendment clarifies that the Case Management Summary is not required to be filed in the case of an individual chapter 11 debtor not engaged in business, consistent with the elimination of that requirement in subparagraph (A) of LR 2081 -1 regarding Payroll and Sales Tax Reports. The revision of this rule will also render the Local Rule consistent with the Clerk's Guidelines for Individual Chapter 11 Debtors, which indicates that the Case Management Summary and the Payroll and Sales Tax Report are not required of an individual debtor not engaged in business). Finally, the revision of the format of LR 2081-1(B)(1) makes it consistent with the format of LR 2081-1(A)(1).*

Rule 2081-1. Chapter 11 – General.

[. . .]

(B) Required Chapter 11 Case Management Summary.

(1) Local Form. ~~The debtor in possession (or chapter 11 trustee, if applicable) is directed to~~ **Chapter 11 debtors (other than individuals not engaged in business) must** file a completed Local Form "Chapter 11 Case Management Summary" providing the information as set forth in the form.

(2) Deadline for Filing. The summary must be filed within the earlier of three business days after relief is entered under chapter 11, or one business day prior to the date of the first scheduled hearing.

(3) Service. The summary must be served on all parties of record.

Proposed New Local Rule 2081-1(C). Authority to Operate Business and Manage Financial Affairs.

Proposed New Local Form Orders. Order Authorizing Business Debtor to Operate its Business and Manage its Financial Affairs; Order Authorizing Individual Debtor(s) to Manage Financial Affairs

*(☛ **2020 (proposed) Local Rule 2081-1(C)**: The Committee has proposed implementing the entry of an order in chapter 11 cases to authorize the debtor in possession to continue to operate its business and to manage its financial affairs. Such order – which will be automatically generated upon the filing of a Chapter 11 petition – authorizes the debtor in possession to open DIP accounts, among other things. Local Rule 2081-1 will be amended by adding a new subsection (C) to direct the issuance of this order in chapter 11 cases to facilitate the debtor in possession maintaining its business operations and opening up DIP accounts.)*

Rule 2081-1. Chapter 11 – General.

[. . .]

C. **Authority of Chapter 11 Debtor to Operate Business and/or Manage Financial Affairs.**

(1) The operation of a business by a debtor-in-possession in cases filed under Chapter 11 will be facilitated by the entry of an order authorizing the debtor-in-possession to operate its business and substitute debtor-in-possession bank account for pre-petition bank accounts, which must be entered upon the filing of the petition or entry of the Order for Relief.

(2) The management of the financial affairs of individual Chapter 11 debtors not engaged in business will be facilitated by the entry of an order authorizing the debtor(s)-in-possession to manage their financial affairs and substitute debtor-in-possession bank accounts for pre-petition bank accounts, which must be entered upon the filing of the petition or entry of the order for relief.

(☛ 2020 (proposed) Form Order Amendments)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: Case No. _____

Chapter 11

Debtor.
_____/

ORDER AUTHORIZING DEBTOR IN POSSESSION TO CONTINUE OPERATION OF ITS BUSINESS, CLOSE PRE-PETITION BANK ACCOUNTS, AND OPEN DEBTOR IN POSSESSION BANK ACCOUNTS

THIS MATTER came before the Court upon the petition filed on _____, ____. This Court, finds that, pending further order of this Court, the Debtor-in-Possession should be authorized to operate its business and substitute debtor-in-possession bank accounts for its pre-petition bank accounts, in accordance with §§1107 and 1108 of Title 11, United States Code Accordingly, it is

ORDERED that:

(a) The Debtor, as Debtor-in-Possession, is authorized and allowed to remain in full operation of its business and to manage its property as a debtor-in-possession, consistent with all applicable provisions of Chapter 11 of Title 11 of the United States Code, until further order of this Court.

(b) Unless otherwise ordered by the Court, the Debtor, as Debtor-in-Possession, must close the existing bank accounts of the Debtor and open new accounts in the name of the Debtor−in−Possession. All deposits or investments of money of the estate must be made in accordance with 11 U.S.C. §345.

# # #

The Clerk of the Court is directed to service this Order on All Parties in Interest.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

Bankruptcy Case No.:
Chapter: 11

Debtor.

ORDER AUTHORIZING INDIVIDUAL CHAPTER 11 DEBTOR(S) TO MANAGE FINANCIAL AFFAIRS

THIS MATTER came before the Court upon the petition filed on _____, ____. This Court, finds that, pending further order of this Court, the Debtor(s)-in-Possession should be authorized to manage his/her financial affairs and substitute debtor-in-possession bank accounts for pre-petition bank accounts, in accordance with §§1107 and 1108 of Title 11, United States Code Accordingly, it is

ORDERED that:

1. Absent further order of the Court, the Debtor(s) will continue in possession and control of his/her property and, as debtor(s)-in-possession, is/are authorized to manage his/her financial affairs and property, and has/have the powers of a trustee to the extent provided by 11 U.S.C. §§ 1107 and 1108.

2. The debtor(s)-in-possession, consistent with 11 U.S.C. § 345 of the Bankruptcy Code, is/are authorized to open and maintain bank accounts for the deposit, investments, and disbursement of monies of the estate.

# # #

Service to: Debtor(s)
Debtor(s)' Attorney
United States Trustee

Proposed Amendment to Local Rule 2090-1(C)(2). Pro Hac Vice Appearances.

***(☞ 2020 (proposed) Amendment**: The current version of Local Rule 2090-1(C)(2) incorporates by reference alone Southern District of Florida, Local Rule 4(b)(2). The 2020 revision to Local Rule 2091- 1(C)(2) includes the actual text of the Southern District's Local Rule 4(b)(2), so that Bankruptcy Court Local Rule 2090-1(C)(2) is self-containing).*

Rule 2090-1. Attorneys.

[. . .]

(C) Appearances Permitted as Exceptions to Qualification Requirements .

(2) Pro Hac Vice Appearances. Any attorney who is a member in good standing of the bar of any state, territory or insular possession of the United States, and who is otherwise qualified to practice in this court but is (a) not a member of the bar of the United States District Court for the Southern District of Florida, or (b) a member of the bar of the United States District Court for the Southern District of Florida but is not in compliance with subsection (A)(3) (a "visiting attorney"), may seek to appear *pro hac vice* in any case or proceeding before this court. Any applicable fee authorized under these local rules or General Orders of the United States District Court for the Southern District of Florida for *pro hac vice* appearances in the bankruptcy court must be paid at the filing of a motion to appear *pro hac vice*. Such visiting attorney must associate with an attorney who (a) is qualified to practice with this court, (b) is a member in good standing of the bar of the United States District Court for the Southern District of Florida, and (c) maintains an office in this District for the practice of law (a "local attorney"). Such local attorney must file the Local Form "Motion to Appear *Pro Hac Vice*" and proposed Local Form "Order Admitting Attorney *Pro Hac Vice*" in the relevant main bankruptcy case, unless the visiting attorney intends to appear only in a specific adversary proceeding, in which case the motion must be filed only in such adversary proceeding and the local form motion and proposed order may be edited accordingly. In the motion, the local attorney must certify that he or she is a member in good standing of the bar of the United States District Court for the Southern District of Florida and qualified to practice before this court, that he or she is willing to act as local counsel, and that he or she will participate in the preparation and presentation of, and accept service of all papers in, the case in which the motion is filed and any adversary proceedings in which the visiting attorney appears on behalf of the same client or clients (unless the motion is limited to a particular adversary proceeding). If the motion is filed in the main case, the local attorney must acknowledge that if he or she declines to serve as local counsel in any adversary proceeding involving the same client or clients, separate local counsel must file an additional Motion to Appear *Pro Hac Vice*, and that absent such separate motion and an order of this court approving the same, he or she will continue to act as local counsel for the client(s) in all such proceedings.

In a separate affidavit filed with or as part of the motion, the proposed visiting attorney must certify that he or she is qualified to practice before this court, and that he or she is a member in good standing of the bar of at least one state, territory, or insular possession of the United States, and a member in good standing of the bar of at least one United States District Court, and indicate such jurisdictions. The proposed visiting attorney must certify that he or she has never been disbarred, that he or she is not currently suspended from the practice of law in the State of Florida or any other state, territory, or insular possession of the United States, and that he or she is not currently suspended from the practice of law before any United States Court of Appeals, United States District Court, or United States Bankruptcy Court. The proposed visiting attorney must designate local counsel consistent with this local rule. The proposed visiting attorney

must acknowledge that local counsel is required to participate in the preparation and the presentation of, and accept service in, the case and any adversary proceedings in which the visiting attorney appears on behalf of the same client or clients, unless and until other local counsel is designated under this local rule (except where the motion is limited to a particular adversary proceeding). The proposed visiting attorney must certify that he or she is familiar with and will be governed by the local rules of this court, the rules of professional conduct and all other requirements governing the professional behavior of members of The Florida Bar.

The court may waive the requirement of association with a local attorney upon good cause shown after the filing of a motion requesting such relief. The Local Form "Motion to Appear *Pro Hac Vice*" and proposed Local Form "Order Admitting Attorney *Pro Hac Vice*" may be modified as necessary for this purpose.

Lawyers who are not members of the bar of the United States District Court for the Southern District of Florida are not permitted to engage in general practice in the District. For purposes of this rule, the filing of more than three motions to appear *pro hac vice* within a 365-day period in separate representations before the courts of the United States District Court for the Southern District of Florida will be presumed to be a "general practice." Upon written motion and for good cause shown, the court may waive or modify this prohibition. The Local Form "Motion to Appear *Pro Hac Vice*" and proposed Local Form "Order Admitting Attorney *Pro Hac Vice*" may be modified as necessary for this purpose.

Proposed Amendment to Local Rule 2091-1(C). Substitution of Attorney in Same Firm. (with proposed new local form)

***(☞ 2020 (proposed) Amendment**: Section (C) of Local Rule 2091-1 provides the notice requirements for an attorney of record to withdraw from an active bankruptcy case in this court, and substitute into the case an attorney working within that retained law firm. The 2020 Amendment now references this court's Notice of Substitution of Counsel form, which the new attorney at the retained law firm will file.)*

Rule 2091-1. Attorneys – Changes in Attorney of Record for Parties in Cases or Proceedings.
Withdrawal from representation of a client requires leave of court, after notice served on all affected parties, except in the following instances:

[. . .]

(C) Substitution of Attorney in Same Firm: An attorney with the same firm as an attorney initially employed by a client pursuant to Local Rule 2014-1, may substitute as counsel for that client by filing ~~a notice~~ the Local Form **"Notice of Substitution of Counsel"** in each affected case or proceeding containing a statement that the client has consented to the substitution, and serving the notice on all interested parties, unless the attorney initially employed was the signatory to the "Affidavit of Proposed Attorney for Debtor in Possession/Trustee" or new counsel, if applicable, is not disinterested or represents a materially adverse interest.

The provisions of this rule are subject to the requirements of the Bankruptcy Code, the Bankruptcy Rules and this court's Local Rules with regard to retention of professionals, disclosure, payment of professionals and related matters and is not intended as an exception to any other requirement.

Proposed Local Form. Notice of Substitution of Counsel.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: Case No ____ _____

Chapter _____

Debtor.
_____/

NOTICE OF SUBSTITUTION OF COUNSEL

The undersigned counsel, pursuant to Local Rule 2091-1(C), hereby files this *Notice of Substitution of Counsel* (the "Notice") in relation to [Departing Attorney's] representation with [Retained Law Firm]. [Departing Attorney] is no longer employed by [Retained Law Firm] and requests that the Clerk of Court remove [Departing Attorney] from all cases in this District in which [Retained Law Firm] appears, and substitute [New Attorney] – currently employed by [Retained Law Firm] – in his/her place.

1. Pursuant to Local Rule 2091-1(C), an attorney with the same firm as an attorney initially employed by a client pursuant to Local Rule 2014-1, may substitute as counsel for that client by filing a Notice in each affected case or proceeding containing a statement that the client has consented to the substitution, and serving the notice on all interest parties.

2. [Retained Law Firm] has been engaged in legal representation in this action.

3. [Retained Law Firm]'s client in this action consents to substitutions of counsel within the same law firm.

4. The filing of this Notice serves as notice to all interested parties of such substitution.

WHEREFORE, the undersigned respectfully requests that the Clerk of Court add the name and address of the undersigned to the matrix of creditors prepared in connection with the case.

[New Attorney Signature Block]

Proposed Amendment to Local Rule 3007-1(A). Objections to Claims – Service.

***(☞2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 3007-1(A) is to abrogate this subsection of the Local Rule).*

Rule 3007-1. Objections to Claims.

(A) [Abrogated.]

Proposed Amendment to Local Rule 3007-1(D)(1). Objections to Claims – Relief Without Hearing; Hearings.

***(☞2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 3007-1(D)(1) is amended to clarify that the negative notice procedure for claims objections may be used in a case filed by a pro se debtor, so long as the relief sought in the objection is not adverse to the debtor.*

Rule 3007-1. Objections to Claims.

[. . .]

(D) **Relief Without Hearing; Hearings.**

(1) If no written response contesting the objection is filed within 30 days after the date of service, the failure to respond will be deemed a consent by the affected claimant and the court may grant the relief requested by the objecting party without hearing. In a case involving a pro se debtor, the court may grant the relief requested by the objecting party without hearing so long as the relief requested does not affect the rights of the pro se debtor and the objection was filed by a party in interest other than the pro se debtor.

Proposed Abrogation of Local Rule 3016-1 and Proposed Amendment to Local Rule 3017-2. Conditional Approval of Disclosure Statement for Small Business Cases.

***(☞ 2020 (proposed) Amendment**: The 2020 Amendment proposes to strike Local Rule 3016-1 because the majority of small business debtors do not use the official disclosure or plan forms. To streamline and simplify the procedure, the Committee proposes to also supplement Local Rule 3017-2 and allow for conditional approval of the disclosure statement in a small business case because such approval should not prejudice creditors, who may still object to the adequacy of a disclosure statement at a combined hearing on confirmation).*

~~**Rule 3016-1. Filing of Plan and Disclosure Statement in Small Business Chapter 11 Cases.** In small business chapter 11 cases, a chapter 11 plan and disclosure statement filed by any plan proponent must conform to the Official Bankruptcy Forms "Plan of Reorganization in Small Business Case under Chapter 11" and "Disclosure Statement in Small Business Case under Chapter 11."~~

Rule 3017-2. ~~Disclosure Statement Approval and Confirmation – Small Business Cases.~~ ~~The provisions in this subdivision apply to any chapter 11 plan and disclosure statement filed by a small business debtor~~. **Conditional Approval of Disclosure Statement for Small Business Cases.** In a small business case, the court may combine the hearing on approval of the disclosure statement with the hearing on confirmation of the chapter 11 plan, by issuing its "Order Conditionally Approving Proposed Disclosure Document, Setting Hearing on Final Approval of Proposed Disclosure Document and Confirmation of Chapter 11 Plan, Setting Various Deadlines and Describing Plan Proponent's Obligations." Upon entry of such order, the plan proponent must serve the order, plan and disclosure statement on the parties required by Bankruptcy Rule 3017(d), along with a ballot in the form required by Local Rule 3018-1.

~~**(A) Procedures for Conditional Approval of Disclosure Statement.** Upon filing a plan and disclosure statement, a combined plan and disclosure statement or a plan that contains the disclosures required by 11 U.S.C. §1125(a) (each being referred to as a "Proposed Disclosure Document"), the plan proponent shall serve a copy of the Proposed Disclosure Document on the U.S. Trustee and each party in interest that is entitled to receive a copy thereof, together with a notice that objections based on inadequate disclosure under Bankruptcy Code §1125(a), must be filed within 14 days after service of the Proposed Disclosure Document. If no objection is filed within 14 days after service of the Proposed Disclosure Document, and the court does not otherwise determine to set a hearing on approval, the court may issue its "Order (I) Conditionally Approving Proposed Disclosure Document; (II) Setting Hearing on Final Approval of Proposed Disclosure Document and Confirmation of Plan; (III) Setting Hearing on Fee Applications; (IV) Setting Various Deadlines and (V) Describing Plan Proponent's Obligations" which the plan proponent shall serve as provided under subdivision (B) below. If an objection to the adequacy of the Proposed Disclosure Document is timely filed, the court may, in its sole discretion, enter the order described in this subparagraph, or set a final hearing to determine the adequacy of the Proposed Disclosure Document prior to transmission of the plan pursuant to Bankruptcy Rule 3017(d).~~

~~**(B) Combined Hearing on Approval of the Disclosure Statement and Confirmation of the Plan.** If a plan proponent files with this court a separate chapter 11 plan and disclosure statement, or a combined chapter 11 plan and disclosure statement, the form of which has been approved for use in small business cases by this court, then the plan proponent may request that the court combine the hearing on approval of the disclosure statement with the hearing on confirmation of the chapter 11 plan. Upon approval of the request and entry of an "Order (I) Setting Hearing on Approval of the Disclosure Statement and Confirmation of Plan; (II) Setting Hearing on Fee Applications; (III) Setting Various Deadlines; and (IV) Describing Plan Proponent's Obligations", the plan proponent shall serve the~~

~~foregoing order on the parties required by Bankruptcy Rule 3017(d), along with a ballot in the form required by Local Rule 3018-1, on all creditors and equity security holders entitled to vote on the plan, as well as the U.S. Trustee. The order shall schedule a hearing on confirmation no later than 30 days from its issuance. Objections to the disclosure statement based on inadequate disclosure under Bankruptcy Code §1125(a), or to confirmation of the chapter 11 plan under §§1122, 1123, 1124, 1126, 1127 or 1129 of the Bankruptcy Code, shall be filed with the court within three business days prior to the confirmation hearing. Even if no timely objections are filed, the court shall proceed with the confirmation hearing at the scheduled date and time. The proponent of the plan must serve the customized ballot and instructions via U.S. mail on all parties who have received the order and copies of the plan and disclosure statement electronically.~~

Proposed Amendment to Local Rule 3070-1(B). Payment Changes and Post-Petition Fee Notices ("3002.1 Notices"). (with proposed new local form)

***(☞ 2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 3070-1(B) changes the title of the rule from "Post Confirmation Payment Changes or Charges" to "Notice of Payment Changes and Post-Petition Fee Notices ("3002.1 Notices"). The Amendment to the Local Rule also makes clear that the requirements of Bankruptcy Rule 3002.1 and Local Rule 3070-1(B) cease upon the creditor obtaining relief from the automatic stay. Prior to entry of an order granting stay relief, 3002.1 Notices must be filed and are required to be filed. However; after entry of an order granting stay relief , the secured creditor must not file a 3002.1 Notices in any case in which the plan payments to that creditor are not made by the trustee or are not going to change under the loan documents. The amendment also incorporates the Mortgage Modification Mediation ("MMM") program and makes clear that 3002.1 Notices are for notice purposes only during the mediation process, and the debtor is not required to file an objection due to the pending mediation. Finally, the Amendment to Local Rule 3070-1(B) adds a requirement for the debtor's Response to a 3002.1 Notice to be prepared on the District's Local Form. However, the debtor and creditor may elect to avoid the expense of modifying the debtor's chapter 13 plan and instead to reconcile the modified payments due to the creditor annually by filing a "Joint Motion to Abate 3002.1 Notices and Reconcile Annually.")*

(B) ~~Post Confirmation Payment Changes or Charges~~ Notice of Payment Changes and Notice of Fees, Expenses and Charges ("3002.1 Notices").

(1) Applicability of Bankruptcy Rule 3002.1 to Additional Types of Claims Related to Real Property. Bankruptcy Rule 3002.1 also applies to claims ~~that are~~:

(a) that are secured by a security interest on real property of the debtor other than the debtor's principal residence (including without limitation claims of condominium associations and homeowner's associations); and

(b) for which the plan provides that either the trustee or the debtor will make contractual installment payments and which payments are subject to change.

(2) ~~If the plan's treatment of a claim secured by a security interest in real property is not covered by subsection (B)(1) of this rule, filing of notices of payment change is prohibited.~~
Prohibited Notices and Sanctions. If the plan's treatment of a claim secured by a security interest in real property is not covered by subsection (B)(1) of this rule and the stay has been lifted in relation to the creditor's claim, the creditor is prohibited from filing a 3002.1 Notice. Upon motion by the debtor, the court will consider awarding sanctions against a creditor that files a 3002.1 Notice that is not required under Bankruptcy Rule 3002.1, as expanded by ~~or~~ subsection (B)(1) of this rule, and that is expressly deemed unnecessary under this rule.

(3) ~~With respect to claims in connection with which creditors are directed not to file notices of payment change under subsection (B)(2) of this rule, the holder of the claim may send notices of payment change and escrow notices directly to the debtor without violating the automatic stay~~. **Relief from Automatic Stay.** Upon entry of an order granting a creditor relief from the automatic stay, such creditor must resume sending notices of payment change and escrow notices directly to the debtor pursuant to such creditor's underlying contract with the debtor.

(4) ~~Upon motion by the debtor, the court will consider awarding sanctions against a creditor that files a notice of payment change not required under Bankruptcy Rule 3002.1 and that is expressly~~

~~deemed unnecessary under this rule.~~ **Mortgage Modification Mediation Program**. If the debtor and creditor are currently participating in the Mortgage Modification Mediation ("MMM") Program, the following provisions will apply to 3002.1 Notices:

(a) 3002.1 Notices filed and served by such creditor are for notice purposes only and are abated pending the outcome of the mediation. If the MMM does not result in a modification of the mortgage, the 3002.1 Notices will become effective upon the filing of the Final Report of Mortgage Modification Mediator.

(b) The debtor is not required to file an objection to a 3002.1 Notice filed and served by a creditor during the pendency of a mediation with such creditor.

(c) In the event the mediation ends in a Final Report of No Agreement, the debtor will have 14 days from the date on which such Final Report is filed to modify the debtor's chapter 13 plan to respond to the 3002.1 Notice(s) pursuant to subsection (B)(6) of this rule.

(5) **Modifications to Official Bankruptcy Form "Notice of Mortgage Payment Change" Required.** When a 3002.1 Notice ~~of payment change~~ is filed addressing a claim covered under subdivision (B)(1) of this Rule, the Official Bankruptcy Form "Notice of Mortgage Payment Change" must be modified accordingly to reflect the actual type of claim for which the notice is being filed.

(6) Debtor Response to 3002.1 Notice. Counsel for the debtor must review all 3002.1 Notices and conform or object to these notices within 30 days, except during the pendency of an MMM in which case the deadline set forth in (C)(4) of this rule will apply, by filing Local Form "Debtor's Response to Rule 3002.1 Notice" and selecting one of the following response options:

(a) object to the creditor's 3002.1 Notice, and request a hearing on such objection;

(b) indicate that the debtor does not object to the 3002.1 Notice and the debtor will propose an amended or modified plan to provide for the payment change, fee, charge or expense referenced in the 3002.1 Notice;

(c) indicate that the debtor does not object to 3002.1 Notice; however, due to the *de minimis* amount referenced in the Notice, (i) the debtor will not propose a modified plan to provide for the payment change, fee, charge or expense; (ii) the debtor will address such amounts outside of the debtor's bankruptcy case; and (iii) the debtor acknowledges that the chapter 13 trustee will not remit payment of any *de minimis* amount, and any such *de minimis* amount is not subject to discharge unless paid in full; or

(d) indicate that the creditor and the debtor are filing a Joint Motion to Abate 3002.1 Notices and Reconcile Annually, under (B)(7) of this rule.

(7) Joint Motion to Abate 3002.1 Notices and Reconcile Annually. The debtor and the creditor may file a Joint Motion to Abate 3002.1 Notices and Reconcile Annually, when the contractual payment to such creditor remitted by the chapter 13 trustee adjusts periodically during the term of the plan. The order granting the motion must (a) include language that the debtor and the creditor agree to annually reconcile the claim to account for any payment change, fee, charge or expense that impacted the claim in the previous year; (b) specify how the parties intend to notify the court of the annual reconciliation, (c) require that the creditor file with the court a notice of the annual reconciliation of the claim, (d) to the extent that the debtor contests the amount due the creditor as a

result of the annual reconciliation of the claim, require the debtor to file an objection to such notice and request a hearing, within 21 days of the date such notice is filed, (e) if the debtor does not object to the annual reconciliation of the claim, direct the debtor to pay such amount directly to the creditor and acknowledge that the chapter 13 trustee will not remit payment of such amount, and any such amount is not subject to discharge unless paid in full; and (f) amend any confirmation order previously entered in the case by providing that the debtor will remit the amount of any payment change either agreed to by the debtor or approved by the court directly to the creditor outside the plan.

Proposed Local Form: Debtor's Response to Rule 3002.1 Notice

Issue/Committee Review. The proposed form *Debtor's Response to Rule 3002.1 Notice* relates to the Committee's proposed amendment to Local Rule 3070-1(B). The proposed rule change requires the debtor to file a form notice indicating whether and how the Rule 3002.1 Notice will be addressed in a Chapter 13 Plan.

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: Case No. _____

Chapter _____

Debtor.
_____/

DEBTOR'S RESPONSE TO RULE 3002.1 NOTICE [ECF No. ___]
IN RELATION TO CLAIM NO.[CLAIM NO.]

The Debtor(s), through the undersigned attorney, responds to _____("Secured Creditor") Notice of Payment Change effective _____, as follows:

☐ Debtor objects to Secured Creditor's notice of payment change or notice of charge, fee or expense, and requests a hearing on this matter. Documentation supporting the payment change or charge, fee or expense was not attached to the notice. Accordingly, Debtor requests documentation substantiating said payment change within 14 days of the date of this response.

☐ Debtor objects to Secured Creditor's notice of payment change or notice of charge, fee or expense, and requests a hearing on this matter. [State reason(s):_____
_____.]

☐ Debtor does not object to Secured Creditor's notice of payment change and will propose a modified plan to provide for these fees and costs.

☐ Debtor does not object to Secured Creditor's notice of payment change. Due to the de minimis amount of the payment change, charge, fee or expense, Debtor will not propose a modified plan to provide for the payment of these de minimis fees and/or costs, and will instead address such fees and/or costs outside of the bankruptcy case. Debtor acknowledges that the chapter 13 trustee will not remit payment of the de minimis amount of the payment change, charge, fee or expense, and the de minimis amount of the payment change, charge, fee or expense is not subject to discharge unless paid in full by Debtor.

☐ Debtor and Secured Creditor are filing a Joint Motion To Abate 3002.1 Notice and Reconcile Annually, under Local Rule 3070-1(B)(7).

Dated: _____

_____

Attorney for Debtor(s)_____
Address:_____
_____
Phone:_____
Fax:_____
Email:_____

_____
Debtor

_____
Joint Debtor

Proposed Local Form *Motion to Abate 3002.1 Notices and Reconcile Annually*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

_____,

Debtor.
_____ /

Case No.:
Chapter: 13

AGREED *EX PARTE* MOTION TO ABATE 3002.1 NOTICES AND RECONCILE ANNUALLY

[Creditor Name] (the "Secured Creditor") and the Debtor (collectively the "Parties") file this *Agreed Ex Parte Motion to Abate 3002.1 Notices and Reconcile Annually* (the "Motion"), and state:

1. Secured Creditor filed Proof of Claim # [X] (the "Claim").

2. Secured Creditor holds a mortgage lien against the Debtor's real property located at [property address] (the "Property").

3. Debtor is providing for Secured Creditor's Claim through the Chapter 13 Plan.

4. Pursuant to Bankruptcy Rule 3002.1 and Local Rule 3070-1(B), Secured Creditor is required to file a 3002.1 Notice for each payment change that occurs in connection with the Claim, and Debtor is required to file an amended or modified plan to conform to such notices.

5. Pursuant to the terms of the mortgage/note, the amount due Secured Creditor is a variable amount that changes periodically due to either interest rate changes or escrow adjustments. In order not to burden the chapter 13 trustee and the Debtor, Secured Creditor agrees to file one 3002.1 Notice (the "Payment Change Notice") annually during the month of [*insert month in which the debtor's petition was filed*], as it relates to the payment change(s) during the preceding year.

6. In each annual Payment Change Notice, Secured Creditor must include a table that describes the amount of the monthly payment at the beginning of the annual period, and for each payment change that occurred during the preceding year: the date of such payment change; the amount of such

payment change; the reason for the payment change; and the aggregate amount Secured Creditor has not received from the chapter 13 trustee as a result of the Parties' election to remit the additional amount owed by the Debtor as a result of such payment change directly to Secured Creditor annually.

7. If the Debtor contests the amount due Secured Creditor as a result of a Payment Change Notice, the Debtor must file an objection to the Payment Change Notice and request a hearing thereon, within 21 days of the date such Payment Change Notice is filed with the Court. If the Debtor agrees with the Payment Change Notice, the Debtor agrees to pay the additional amount due the Secured Creditor as reflected on the Payment Change Notice directly to the Secured Creditor within 28 days of the date on which the Payment Change Notice is filed.

8. The Debtor acknowledges that the chapter 13 trustee will not remit the additional amount(s) due Secured Creditor as a result of the Payment Change Notice(s), and any such additional amount(s) due Secured Creditor will not be subject to discharge unless paid in full.

9. The Parties request that the court amend the confirmation order previously entered in this case, if any, to direct the Debtor to remit the amount of any payment change, either agreed to by the Debtor or approved by the Court, directly to Secured Creditor outside the Plan.

WHEREFORE, the Parties requests that the Court enter an order approving the *Agreed Ex Parte Motion to Abate 3002.1 Notices and Reconcile Annually*, and for such other and further relief as the Court deems just and proper.

<< SIGNER>>
(Secured Creditor Attorney signature block)

<< SIGNER>>
(Debtor Attorney signature block)

Certificate of Service

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

[NAME OF DEBTOR],

Bankruptcy Case No.:
Chapter: 13

Debtor.

ORDER GRANTING AGREED *EX PARTE* MOTION TO ABATE 3002.1 NOTICES AND RECONCILE ANNUALLY [DE #___] AND AMENDING CONFIRMATION ORDER [DE #___]

THIS cause came on for consideration by the *Agreed Ex Parte Motion to Abate 3002.1 Notices and Reconcile Annually* [DE #____] (the "Motion"). Based on the agreement of the parties detailed in the Motion, the Court deems the relief requested by the parties to the Motion appropriate. Accordingly, it is **ORDERED that:**

1. The Motion is GRANTED.
2. In order not to burden the chapter 13 trustee and Debtor, Secured Creditor may file one 3002.1 Notice (the "Payment Change Notice") annually during the month of [*insert month in which the debtor's petition was filed*], as it relates to the payment change(s) during the preceding year.
3. In each annual Payment Change Notice, Secured Creditor must include a table that describes the amount of the monthly payment at the beginning of the annual period, and

for each payment change that occurred during the preceding year: the date of such payment change; the amount of such payment change; the reason for the payment change; and the aggregate amount Secured Creditor has not received from the chapter 13 trustee as a result of the Parties' election to remit the additional amount owed by the Debtor as a result of such payment change directly to Secured Creditor annually.

4. If the Debtor contests the amount due Secured Creditor as a result of a Payment Change Notice, Debtor must file an objection to such Payment Change Notice and request a hearing thereon, within 21 days of the date such Payment Change Notice is filed with the Court.
5. If the Debtor agrees with the Payment Change Notice, the Debtor must pay the additional amount due the Secured Creditor as reflected on the Payment Change Notice directly to the Secured Creditor within 28 days of the date on which the Payment Change Notice is filed.
6. The Debtor will be bound by its acknowledgement in the Motion that the chapter 13 trustee will not remit the additional amount(s) due the Secured Creditor as a result of the Payment Change Notice(s), and any such additional amount(s) due the Secured Creditor will not be subject to discharge unless paid in full by the Debtor outside the Plan.
7. The confirmation order previously entered in this case [DE #____] is amended so as to direct the Debtor to remit the amount of any payment change, either agreed to by the Debtor or approved by the Court, directly to the Secured Creditor outside the Plan.

# # #

Service to: Debtor(s)
Debtor(s)' Attorney
Chapter 13 Trustee

Proposed Amendment to Local Rule 4001-1(C). Stay Relief – Negative Notice.

***(☞ 2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 4001-1 expands negative notice for motions for relief from the automatic stay in Chapter 13 cases where the debtor has proposed a chapter 13 plan that provides for surrender of creditor's collateral, treats creditor's collateral outside the plan, or fails to provide treatment of creditor's collateral through the Chapter 13 plan. For confirmed chapter 13 plans, the creditor may file a motion requesting entry of an order confirming that no automatic stay is in place on an ex parte basis. The 2020 Amendment also clarifies that relief from stay cannot be obtained on negative notice if the debtor is not represented by an attorney).*

Rule 4001-1. Relief from Automatic Stay.

[. . .]

(C) Requests for Relief on Negative Notice. Subject to the limitation in chapter 7 **and chapter 13 cases** set forth below, creditors in chapter 7, 11, ~~or~~ 12, **or 13 cases**, in which the debtor is represented by an attorney, may seek relief from stay on negative notice if the motion meets the requirements of the Guidelines referred to in subdivision (B) above, is served in accordance with subdivision (A) above, and includes above the preamble and below the title of the motion the following bulletin in bold print so as to make it more prominent than the remainder of the text:

Any interested party who fails to file and serve a written response to this motion within 14 days after the date of service stated in this motion, pursuant to Local Rule 4001-1(C), will be deemed to have consented to the entry of an order granting the relief requested in the motion.

(1) **Chapter 7.** ~~In a chapter 7 case,~~ Negative notice under this rule is not available for a motion for relief from stay filed (a) prior to the commencement of the meeting of creditors in the case**;** or (b) in any chapter 7 case in which the debtor is not represented by an attorney.

~~When this bulletin is included in the motion, no hearing will be scheduled unless a response is filed. Notwithstanding Bankruptcy Rule 9006(f), the failure of parties, properly served, to file a response within 14 days after service of the motion shall be deemed a consent to the granting of the requested relief. After the time to respond has expired, the moving party shall either (a) promptly submit a proposed order pursuant to Local Rule 5005-1(G), including the following language in the order's preamble:~~

~~"and the movant by submitting this form of order having represented that the motion was served on all parties required by Local Rule 4001-1, that the 14-day response time provided by that rule has expired, that no one has filed, or served on the movant, a response to the motion, and that [either] the form of order was attached as an exhibit to the motion [or] the relief to be granted in this order is the identical relief requested in the motion,"~~

~~or (b) promptly file the Local Form "Certificate of Contested Matter". If a certificate of contested matter is filed, the court will schedule a hearing in accordance with the procedures contained in Local Rule 9073-1(A). The "Notice of Hearing" shall be served by movant in accordance with the procedures contained in Local Rule 9073-1(B). The option provided in this paragraph is not intended to limit the court's ability to grant or deny relief sooner than 14 days after service of the motion, or the court's discretion to grant relief without a hearing either~~

~~by consent of the parties or on verified motions which allege pursuant to 11 U.S.C. §362(f), that immediate irreparable harm will result from the failure to grant emergency relief without a hearing. A party filing a motion for relief from stay pursuant to this subdivision is deemed to have consented to voluntarily extending, to a date 60 days after the filing of a Local Form "Certificate of Contested Matter" by the party filing the motion for relief from stay, the provision of 11 U.S.C. §362(e), which provides for termination of the automatic stay within 60 days absent an order of the court continuing the stay.~~

(2) **Chapter 13. Except in any chapter 13 case in which the debtor is not represented by an attorney,** a motion seeking relief from the automatic stay may be filed on negative notice in a chapter 13 case in which the debtor's chapter 13 plan (a) provides for the surrender of collateral to the movant, (b) provides for the movant's claim to be paid by the debtor directly to the movant rather than through the chapter 13 trustee's office, or (c) does not provide for the payment of the movant's claim. The movant must include a statement in the motion specifying one of the foregoing reasons as the basis for filing the motion on negative notice. Any such motion is exempt from the District's guideline requirement that an affidavit of indebtedness and indebtedness worksheet be affixed to the motion.

(a) **Pre-Confirmation.** Prior to confirmation of a chapter 13 plan, a creditor may file a motion for relief from the automatic stay on negative notice (serving all interested parties), in the manner outlined under this rule.

(b) **Post-Confirmation** (Ex Parte). After confirmation of a chapter 13 plan, a creditor may file a motion on negative notice (serving all interested parties) seeking an order confirming that the automatic stay is not in effect. Movant may file such motion on an ex parte basis, and the court may enter an order granting the motion without a hearing.

(c) **Pro Se Debtors**. Negative notice under this rule is not available for a motion for relief from the automatic stay or seeking confirmation that the automatic stay is not in effect filed in any chapter 13 case in which the debtor is not represented by an attorney.

Comments: Relief from the automatic stay cannot be obtained on negative notice in any chapter – under any circumstance – where the debtor is not represented by an attorney. This amendment also creates an additional exception under Section (D) of the Southern District of Florida's Guidelines for Motions for Relief from the Automatic Stay, by modifying the required exhibits.

Proposed New Section to Local Rule 4001-1(J). Stay Relief – Tax Certificates and (K) Notice to State Court.

(☛ 2020 (proposed) Local Rule: *The 2020 Amendment to Local Rule 4001-1 proposes to include new Section (J) which clarifies that the automatic stay does not prohibit Florida Tax Collectors from selling tax certificates secured by property owned by a debtor's bankruptcy estate. However, this rule does not apply to the sale of tax deeds. This Amendment also proposes to include new Section (K) which requires a stay relief order to be served on a state court clerk if subject property involved in a foreclosure proceeding.)*

Rule 4001-1. Relief from Automatic Stay.

[. . .]

(J) Tax Certificates; Automatic Stay Not Applicable. The automatic stay under 11 U.S.C. § 362(a) is not applicable to and does not prohibit Florida Tax Collectors from selling in the ordinary course tax certificates secured by property owned by a debtor in bankruptcy or a bankruptcy estate. This rule does not permit the sale of tax deeds, unless the automatic stay is terminated by operation of law or is modified by an order of the court.

(K) Notice to State Court. If the court enters an order granting relief from the automatic stay, pertaining to property that is the subject of a state court foreclosure proceeding, the movant must include the clerk of the state court as an interested party on the certificate of service of the order granting relief from the automatic stay.

Comment: Current Section (I) of Rule 4001-1 is "Negotiations Related to Potential Modification of Loan; Automatic Stay Not Applicable." Instead of creating new Section (J), the committee can elect to rename Section (I) to "Automatic Stay Not Applicable" and list various scenarios – including the tax certificate proposal – under this Section.

Proposed New Section to Local Rule 4001-1(L). Motions to Extend or Impose the Automatic Stay.

*(**2020 (proposed) Local Rule:** The 2020 Amendment to Local Rule 4001-1 proposes to include new Section (L) which requires the debtor or debtor's counsel – seeking to extend the automatic stay under §362(c)(3) or impose the automatic stay under §362(c)(4) – to file an affidavit or declaration in support of a motion seeking such relief describing the facts upon which the debtor is relying to rebut the presumption that the case was not filed in good faith.)*

Rule 4001-1. Relief from Automatic Stay.

[. . .]

(L) Motions to Extend or Impose the Automatic Stay. A motion to extend the automatic stay under 11 U.S.C. § 362(c)(3) or to impose the automatic stay under 11 U.S.C. § 362(c)(4) must be accompanied by a declaration or affidavit by the debtor in support of the motion describing the facts upon which the debtor is relying to rebut the presumption that the case was not filed in good faith, or such motion must contain a description of such facts and be verified by the debtor in accordance with 28 U.S.C. §1746.

Proposed Amendment to Local Rule 4004-3(A)(3). Discharge in General – Death of Debtor.

(☞2020 (proposed) Amendment: *The 2020 Amendment addresses the situation of a debtor dying prior to obtaining a discharge and prior to completion of this District's required forms to obtain such discharge. The rule is now revised to require the deceased debtor's attorney to file a copy of the death certificate for the affected debtor(s), and attach the certificate as an exhibit to Local Form 97(A).*

Rule 4004-3. Discharge in General.

(A) The individual debtor will be discharged upon determination that the debtor is eligible to receive a discharge under the Bankruptcy Code and Bankruptcy Rules (including without limitation the provisions of 11 U.S.C. §§707, 727, 1141, 1228, and 1328, and Bankruptcy Rule 4004(c), as applicable), and subject to any established court procedures that provide for delay of entry of the discharge, including but not limited to the following requirements:

[. . .]

(3) in a chapter 13 case, the debtor has filed, as appropriate, either the Local Form "Debtor's Certificate of Compliance, Motion for Issuance of Discharge and Notice of Deadline to Object**"** or the Local Form "Debtor's Certificate of Compliance, Motion for Issuance of Discharge Before Completion of Plan Payments, and Notice of Deadline to Object," as required under Local Rule 2002-1(C)(12) has served a copy on all parties of record providing a 21 day objection deadline and, if any objections were filed, they have been resolved to permit issuance of a discharge. In a case in which the debtor, joint debtor or both are deceased and the instructional course(s) concerning personal financial management had not been completed before their death, the debtor's attorney must obtain a copy of the death certificate for the affected debtor(s), attach it as an exhibit to Local Form 97C, and request that the court waive the requirement that the debtor(s) complete the personal financial management course.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re: Case No. _____

Chapter _____

Debtor.
_____/

~~DEBTOR'S CERTIFICATE OF COMPLIANCE,~~
MOTION FOR ISSUANCE OF DISCHARGE AND
NOTICE OF DEADLINE TO OBJECT

NOTICE OF TIME TO OBJECT
Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service of this motion, pursuant to Local Rules 4004-3(A)(3) and 9013-1(D), will be deemed to have consented to the entry of an order of discharge.

~~The debtor(s)~~ ~~*~~, _____, ~~in the above captioned matter certifies as follows:~~Undersigned counsel for the debtor(s) in the above-captioned matter requests the issuance of an order of discharge for the debtor(s) and represents as follows:

1. The chapter 13 trustee has issued a Notice of Completion of Plan Payments on_____ ___The undersigned counsel for the debtor(s) is requesting the court issue a discharge in this case.

2. The debtor is deceased and attached hereto is a true and correct copy of the redacted death certificate for the debtor, which has been redacted to remove all personal identifiable information such as the debtor's cause of death and social security number.

3. Compliance with 11 U.S.C. §101(14A):

_____ A. To the best of the undersigned's knowledge, the debtor has not been required by a judicial or administrative order, or by statute to pay any domestic support obligation as defined in 11 U.S.C. §101(14A) either before this bankruptcy was filed or at any time after the filing of this bankruptcy,

or

_____ B. To the best of undersigned's knowledge, ~~the debtor certifies that as of the date of this certification~~, the debtor has paid all amounts due under any and all domestic support obligations as defined in 11 U.S.C. §101(14A), required by a judicial or administrative order or by statute, including amounts due before, during and after this case was filed. The name and address of each holder of a domestic support obligation is as follows:

_____(NAME)_____
_____(ADDRESS)_____

4. Prior to the debtor's death, tThe debtor's mailing address for receipt of court notices was as follows: [Note: Providing an updated debtor address here constitutes a change of address pursuant to Local Rule 2002-1(G). No separate Notice of Change of Address is required to be filed.]

(ADDRESS)

5. Prior to the debtor's death, tThe name and address of the debtor's most recent employer was as follows:

(NAME)
(ADDRESS)

6. The following creditors hold a claim that is not discharged under 11 U.S.C. §523(a)(2) or (a)(4) or a claim that was reaffirmed under 11 U.S.C. §524(c):

(NAME)
(NAME)

7. Compliance with 11 U.S.C. §1328(h):

_____ A. The debtor has <u>not</u> claimed an exemption under §522(b)(3) in an amount in excess of $170,350* in property of the kind described in §522(q)(1) [generally the debtor's homestead];

or

*Amounts are subject to adjustment on 4/01/22, and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

_____ B. The debtor <u>has</u> claimed an exemption under §522(b)(3) in an amount in excess of $170,350* in property of the kind described in §522(q)(1) but there is no pending proceeding in which the debtor may be found guilty of a felony of a kind described in §522(q)(1)(A) or found liable for a debt of the kind described in §522(q)(1)(B).

8. The debtor has not received a discharge in a case filed under chapter 7, 11, or 12 during the 4 year period preceding the filing of the instant case or in a case filed under chapter 13 during the 2 year period preceding the filing of the instant case.

~~I declare under penalty of perjury that the information provided in this Certificate is true and correct.~~

~~/s/~~
~~Debtor~~

~~/s/~~
~~Debtor~~

WHEREFORE, undersigned counsel for the Debtor(s) prays that this Court issue an order of discharge, and for any other relief that this Court deems just and appropriate.

Dated:

[Name of Movant
Name of Firm
Address
Main Tel. Number
Direct Dial Tel. Number
Facsimile Number
E-mail Address
Florida Bar No. _____]

BY: _____
[Signature of Movant]

CERTIFICATE OF SERVICE

Abrogate Local Rule 5005-1(A)(3). Ex Parte Motions to Redact Personal Information [See New Local Rule 9037-1]

(☞2020 (proposed) Amendment: *The 2020 Amendment clarifies the procedure for restricting filings that contain personal information, and moves the amended rule to Local Rule 9037-1 to be consistent with the Federal Rules of Bankruptcy Procedure which provides for privacy protection for filings made with the Court in Rule 9037. As a result, local rule 5005-1(A)(3) is abrogated and replaced with local rule 9037-1)*

Rule 5005-1(A)(3). [Abrogated.]

*** * * * ***

Proposed Amendment to Local Rule 5005-1(F). Submission of Papers in Matters Already Set for Hearing.

*(☞ **2020 (proposed) Amendment:** The 2020 Amendment to Local Rule 5005-1 clarifies and supplements the requirements for filing a response to a pleading in order to ensure such response is heard and considered at the hearing on the underlying motion that relates to the response. The amendment details a procedure for submission of the response, memorandum, or affidavit and requires an explanation for the untimeliness of such response.)*

Rule 5005-1. Filing and Transmittal of Papers.

[. . .]

(F) Submission of Papers in Matters Already Set for Hearing.

(1) Deadline for Filing. Form of Response. Responses, memoranda, affidavits and other papers intended for consideration at any hearing already set before the court, must be filed and served so as to be received by the movant and the court not later than 4:00 p.m. on the second business day prior to the hearing, or the papers submitted may not be considered at the hearing. All responsive papers must set forth any applicable defenses or objections in law or fact on which the respondent relies. All responsive papers must be served in accordance with these local rules. This subdivision does not apply to affidavits filed pursuant to Bankruptcy Rule 7056.

(2) Emergency Submittal. Responses, memoranda, affidavits or other papers not filed prior to the deadline established in subdivision (1), but which the filing party deems necessary for the court's consideration at the scheduled hearing, may be considered at the hearing only if ~~accompanied by the Local Form "Notice of Late Filing of Paper Pursuant to Local Rule 5005-1(F)(2)", noting~~ (a) such response, memorandum, affidavit, or other paper sets forth with particularity, under a separate heading in the text or, in the case of an affidavit, on a notice accompanying such affidavit, the emergency nature of the filing or ~~stating the exceptional circumstances for the untimely filing.~~ other exceptional circumstance(s) causing the untimely filing of such paper, (b) the filing party promptly notifies the courtroom deputy or law clerk of the hearing judge, in the manner specified on the hearing judge's homepage on the Court's website maintained at www.flsb.uscourts.gov, that such paper has been filed and the ECF number assigned to such filing, and (c) such paper is sent by email (in addition to any notice of electronic filing generated by the CM/ECF system) promptly after filing to all interested parties for whom an email address is reasonably ascertainable and, for all other parties, by telecopier or other means reasonably calculated to ensure prompt receipt. The requirements of this rule are in addition to the service requirements set forth in the Bankruptcy Rules and these local rules.

~~This provision does not apply to amended chapter 13 plans, schedules or statements filed prior to a scheduled confirmation hearing under the deadlines established by Local Rules 1009-1(D)(4) and 3015-2(A).~~

(3) Rule Not Applicable to Exhibits/Amended Chapter 13 Plans, Schedules, or Statements. This rule does not modify Local Rule 9070-1, regarding the presentation of papers introduced as evidence in a trial or evidentiary hearing, nor does this rule apply to amended chapter 13 plans, schedules, or statements filed prior to a scheduled confirmation hearing under the deadlines established by Local Rules 1009-1(D)(4) and 3015-2(A).

Abrogation of Local Rule 5005-4(C), due to Proposed New Local Rule 9011-1. Signatures and Document Retention.

(☛2020 (proposed) Amendment: *The 2020 Amendment to Local Rule 5005-4(C) and 9011-4(D) abrogates the existing rules and substitutes in their place Local Rule 9011-1 which allows for lawyers to accept digital signatures that are capable of signature authentication, and permits debtor's counsel to retain a digitial image of a signature required on a verified document.)*

Rule 5005-4. Electronic Filing.

[. . .]

(C) ~~**Retention of Original Signed Documents by Registered Users.** Documents that are electronically filed and require original signatures other than that of the registered user must be maintained in paper form at least five years from the date of discharge of the debtor, dismissal of the case or final resolution of all appeals pending in the case, whichever is later. This retention neither affects nor replaces any other retention period required by other laws or rules of procedure. The court may require the production of original documents for review by the court, a trustee, the U.S. Trustee, or any interested party.~~ [Abrograted.]*

Proposed Amendments to Local Rule 7004-2. Summons in Adversary Proceeding. Alias Summons

(☛ 2020 (proposed) Amendment: *Proposed revisions to Local Rule 7004-2 make this rule consistent with the Court's proposed adoption of a new Status Conference Order.)*

Rule 7004-2. Summons in Adversary Proceeding. Alias Summons.

(A) General. The clerk will generate and docket the summons or, if applicable, an alias summons, and electronically transmit it to the plaintiff, who must serve it together with the complaint and ~~pre-trial order~~ status conference order, on all defendants in accordance with the Bankruptcy Rules and these local rules. The electronic summons is a valid summons, signed, sealed and issued by the clerk. The clerk will issue an alias summons upon receipt of a notice of non-service and request for issuance of alias summons, and a third-party summons, when applicable. Requests for issuance of an alias summons that will require rescheduling of the ~~pretrial conference~~ status conference date ~~shall~~ will be considered in accordance with subdivision (B) of this Rule.

(B) Alias summons. A request for issuance of an alias summons that would provide for an answer deadline of less than 30 days before the date of the originally scheduled ~~pretrial~~ status conference must be accompanied by a motion to continue the ~~pretrial~~ status conference to a date such that the answer will be due not later than 30 days before the proposed, re-scheduled ~~pretrial~~ status conference. The court will either set the motion for hearing or enter an order directing the clerk to issue an alias summons which will include a rescheduled ~~pretrial~~ status conference that provides for an answer deadline of no later than 30 days before the date of the ~~pretrial~~ status conference.

Proposed New Summons Form.

(☞2020 (proposed) New Form: *Proposed revisions to the form of summons reflect the Court's proposed adoption of a new Status Conference Order.)*

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

Case No.
Adversary Number:

In re:

Name of Debtor(s):

–– /

Plaintiff(s)

VS.

ALL DOCUMENTS REGARDING THIS MATTER MUST BE IDENTIFIED BY BOTH ADVERSARY AND BANKRUPTCY CASE NUMBERS

Defendant(s)
––/

SUMMONS AND NOTICE OF STATUS CONFERENCE IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court at the address indicated below within 30 days, pursuant to BR 7012, after the date of issuance of this summons, except that the United States and its offices and agencies must submit a motion or answer to the complaint within 35 days.

US Bankruptcy Court
301 North Miami Avenue, Room 150
Miami, FL 33128

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012. Pursuant to BR 7007.1, and Local Rule 7003−1(B)(2) corporate defendants must file a corporate ownership statement.

STATUS CONFERENCE:

Date:

Time:

Location:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

Clerk of Court

By:
Deputy Clerk

Dated:

CERTIFICATE OF SERVICE

I, _____(name), certify that service of this summons and a copy of the complaint was made _____ (date) by:

- ☐ Mail Service: Regular, first class United States mail, postage fully pre−paid, addressed to:

- ☐ Personal Service: By leaving the process with defendant or with an officer or agent of defendant at:

- ☐ Residence Service: By leaving the process with the following adult at:

- ☐ Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

- ☐ Publication: The defendant was served as follows: [Describe briefly]

- ☐ State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date: _____ Signature: _

Proposed Amendments to Local Rule 7016-1. Pretrial Procedure.

(☛ 2020 (proposed) Amendment: *Proposed revisions to Local Rule 7016-1 make this rule consistent with the Court's proposed adoption of a new form of pretrial order and a new form status conference order, as well as the proposed adoption of a new local rule (7026-2) regarding e-discovery.)*

Rule 7016-1. Pretrial Procedure.

(A) Scheduling Conference Requirements Inapplicable. ~~The provisions of~~ Rule 16(b) of the Federal Rules of Civil Procedure ~~shall be inapplicable~~ does not apply to cases or proceedings in this court.

[Comment: See Federal Rule 16(b) (opt-out provision) and Local Rule 87.1 of the United States District Court (bankruptcy court's authority to enact local rules).]

(B) Status Conference ~~Pre-Trial~~ Orders. The clerk will electronically generate and docket the "Order Setting ~~Filing and Disclosure Requirements~~ Status Conference and Establishing Procedures ~~for Determination of Adversary Proceeding~~and Deadlines" in an adversary proceeding and transmit it to the plaintiff who must serve the order together with the summons and complaint on all defendants in accordance with the federal and local rules.

[Comment: See also Local Rules 7026-1 (discovery) and 7026-2 (e-discovery).]

New Local Form Status Conference Order.

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

In re:

Name of Debtor(s)
_____/

Plaintiff(s)

vs.

Defendant(s)
_____/

Case Number:

Adversary Number:

ORDER SETTING STATUS CONFERENCE AND ESTABLISHING PROCEDURES AND DEADLINES

To secure the just, speedy, and inexpensive determination of this adversary proceeding, it is **ORDERED** as follows:

1. **STATUS CONFERENCE**. The Court will conduct a status conference at the date and time set forth in the Summons issued in this adversary proceeding. The parties may not introduce testimony or documentary evidence at the status conference. The Court may, however, consider relevant undisputed facts, judicial notice items, and admissions made during the status conference by parties either directly or through counsel.

2. **RIGHT TO JURY TRIAL; WAIVER**. Unless each party has timely filed a statement of consent under Local Rule 9015−1(B), and unless otherwise ordered by the Court, not later than **fourteen days** before the date first set for the status conference, each party requesting a jury trial on any issue in this proceeding must file with this Court a motion for withdrawal of the reference pursuant

to Local Rule 5011−1. **FAILURE OF ANY PARTY TO FILE A MOTION TO WITHDRAW THE REFERENCE ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH CONSTITUTES WAIVER BY SUCH PARTY OF ANY RIGHT TO TRIAL BY JURY IN THIS PROCEEDING.**

3. **OBJECTION TO ENTRY OF FINAL ORDERS AND JUDGMENTS BY THE BANKRUPTCY COURT; CONSENT**. Unless otherwise ordered by the Court, not later than **fourteen days** before the date first set for the status conference, each party objecting to the entry of final orders or judgments by this Court on any issue in this proceeding must file with this Court a motion pursuant to Rule 7016(b), Fed. R. Bankr. P., requesting that this Court determine whether this proceeding is subject to the entry of final orders or judgments by this Court. Any such motion will be treated as an objection to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THIS PARAGRAPH CONSTITUTES CONSENT BY SUCH PARTY TO THIS COURT ENTERING ALL APPROPRIATE FINAL ORDERS AND JUDGMENTS IN THIS PROCEEDING.** Nothing in this paragraph limits this Court's ability to determine whether this proceeding is subject to entry of final orders or judgments by this Court.

4. **FRBP 7026 AND APPLICABILITY OF RULE 26, FED. R. CIV. P**. Except as otherwise ordered by the Court, Rules 26(d)(1) and 26(d)(2), Fed. R. Civ. P., do not apply to this adversary proceeding, and Rule 26(f), Fed. R. Civ. P. applies only to the extent set forth in this Order.

5. **MEETING OF PARTIES**. At least 14 days before the status conference, the attorneys for the parties (or, if a party is not represented by an attorney, the party) must meet (in person, if geographically feasible, and otherwise by video conference or by telephone) to discuss:

    a. the parties' claims and defenses;

    b. the possibility of settlement;

    c. the initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P.;

    d. a discovery plan as required by Rule 26(f), Fed. R. Civ. P.;

    e. any e-discovery issues in accordance with Local Rule 7026-2; and

    f. proposed dates and deadlines to be set forth in a pretrial scheduling order, including dates and deadlines for:

        (1) making the initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P.;

        (2) completion of discovery;

        (3) expert disclosures as required by Rule 26(a)(2), Fed. R. Civ. P., and completion of expert discovery (if applicable);

        (4) filing motions for judgment on the pleadings or summary judgment;

        (5) conducting mediation;

        (6) pretrial disclosures as required by Rule 26(a)(3)(A), Fed. R. Civ. P.; and

(7) a final pretrial conference.

6. **PRETRIAL SCHEDULING ORDER**. At the status conference, the parties must announce the proposed dates and deadlines as required in paragraph 5.f. above, to be set forth in a proposed form of pretrial scheduling order, which will be entered after the conclusion of the status conference. Unless otherwise permitted by the Court, the pretrial scheduling order must be in substantially the form of this Court's standard form Order Setting Filing and Disclosure Requirements for Pretrial and Trial, with the only material variations being the agreed-upon dates and deadlines required in paragraph 5.f. above. If the parties fail to agree on a pretrial scheduling order by the time of the status conference, the Court will select a date for the pretrial conference and enter the Court's standard form of Order Setting Filing and Disclosure Requirements for Pretrial and Trial with the default dates and deadlines set forth therein (unless the Court determines otherwise).

7. **DISCOVERY DISPUTES**. If a discovery dispute occurs, the parties must first, as required by Fed. R. Civ. P. 37(a)(1), as incorporated by Fed. R. Bankr. P. 7037, confer in good faith to attempt to resolve the issues, before filing a motion with the Court.

8. **DISPOSITIVE MOTIONS**. Absent prior permission of the Court, no party may file any motion to dismiss, motion for judgment on the pleadings, motion for summary judgment, or response thereto, exceeding **twenty pages** in length, and no party may file any reply exceeding **ten pages** in length. Title pages preceding the first page of text, signature pages, and certificates of service are not counted as pages for purposes of this paragraph.

   If a party submits affidavits, declarations, or other materials in support of or in opposition to a motion for summary judgment, then: (A) the movant must serve with the motion all such materials; and (B) the opposing party must serve with the response all such materials in opposition to the motion. Any reply must be strictly limited to rebuttal of matters raised in the response. Absent prior permission of the Court, in connection with any motion for summary judgment no party may file affidavits or declarations that exceed twenty pages in the aggregate.

   Filing multiple motions for summary judgment is prohibited, absent prior permission of the Court. This prohibition is not triggered when, as permitted by Rule 12(d), Fed. R. Civ. P., the Court elects to treat a motion filed pursuant to Rule 12(b) or 12(c), Fed. R. Civ. P., as a summary judgment motion.

9. **COMPLIANCE WITH FEDERAL JUDICIARY PRIVACY POLICY**. All papers, including exhibits, submitted to the Court must comply with the federal judiciary privacy policy as referenced under Local Rule 5005−1(A)(2).

10. **MEDIATION**. Pursuant to Local Rule 9019−2, the Court may order the assignment of this proceeding to mediation at the status conference or at any other time, upon the request of a party or sua sponte.

11. **SETTLEMENT**. If the adversary proceeding is settled, the parties must submit to the Court a stipulation or proposed judgment approved by all parties before the date of trial. If a judgment or stipulation is not submitted to the Court, all parties must be prepared to go to trial in accordance with the pretrial scheduling order. If the adversary proceeding is removed from the trial calendar based upon the announcement of a settlement, the adversary proceeding will not be reset for trial if the parties fail to consummate the settlement. In such event, the Court will consider only a motion to enforce the settlement, unless the sole reason the settlement is not consummated is that the Court did not approve the settlement, in which case the matter will be reset for trial at a later date.

12. **DEFAULT**. If any defendant fails to answer or otherwise respond to the complaint in a timely manner, the plaintiff(s) must promptly seek entry of a clerk's default pursuant to Fed. R. Bankr. P. 7055(a), and Local Rule 7055−1, and must promptly move for default judgment. Unless judgment has been entered or the Court advises the plaintiff(s) that the status conference has been continued or canceled, the plaintiff(s) must appear at the status conference.

13. **SANCTIONS**. Failure to comply with any provision of this order or failure to appear at the status conference may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or entry of default judgment.

14. **CONTINUANCES**. Except for brief continuances sought pursuant to Local Rule 7004-2(B) or to accommodate the schedules of counsel (or the parties, if unrepresented), the Court will continue the status conference only in extraordinary circumstances. Any request to continue the status conference or any deadlines set forth in this order must be presented by written motion, and must set forth the status of service of process, the pleadings, and the pendency of any potentially dispositive motions, and must state the reasons why the party or parties seek a continuance.

15. **SERVICE**. Plaintiff('s)(s') counsel must serve a copy of this order on the defendant(s) with the summons and complaint.

# # #

A copy of this order was furnished to _____ on behalf of the Plaintiff on _____.

By: _____
Deputy Clerk

New Local Form Pretrial Order

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

In re:

Name of Debtor(s)
_____/

Plaintiff(s)

vs.

Defendant(s)
_____/

Case Number:

Adversary Number:

ORDER SETTING FILING AND DISCLOSURE REQUIREMENTS FOR PRETRIAL AND TRIAL

To expedite and facilitate the trial of this adversary proceeding, it is **ORDERED** as follows:

1. **ATTENDANCE AT PRETRIAL CONFERENCE**. Unless judgment has been entered or the Court advises the parties that the pretrial conference has been continued or canceled, counsel for all parties (or the parties themselves, if unrepresented) must appear at the pretrial conference.

2. **PRETRIAL CONFERENCE DATE AND TRIAL DATE**. The pretrial conference will be held at:

   Date:

   Time:

   Location:

At the pretrial conference, the Court will set the trial of this adversary proceeding.

3. **CONTINUANCES**. Continuances of the pretrial conference or trial or any deadlines set forth in this order must be requested by written motion. Any request for continuance or amendment to this order must set forth the status of discovery, including exchange of disclosures required under this order, must state the reasons why the party or parties seek a continuance, and must state whether the client and other parties consent to a continuance. The stipulation of all parties is not sufficient grounds, standing alone, for a continuance.

4. **DEADLINE FOR DISPOSITIVE MOTIONS**. The deadline for filing motions for judgment on the pleadings or motions for summary judgment is **ten days**[*] before the pretrial conference. Absent good cause, failure to file and serve such a motion in a timely manner constitutes waiver of the right to do so. All dispositive motions, responses, and replies must comply with the page limits set forth in the Scheduling Order. Any motion for summary judgment must also comply with Local Rule 7056−1, if applicable.

5. **DISCLOSURES**. The disclosures required by Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A), Fed. R. Civ. P. must be made by the following deadlines:

    a. The initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P., must be made not later than **14 days*** after entry of this Order.

    b. The disclosures of expert testimony under Rule 26(a)(2), Fed. R. Civ. P., must be made (i) at least **60 days*** before the pretrial conference or (ii) within **14 days*** after an opposing party's disclosure of evidence that gives rise to the need for the expert, whichever is later. The party disclosing an expert witness must, within **14 days*** of the disclosure, provide to each opposing party a written report prepared and signed by the witness as required by Rule 26(a)(2)(B), Fed. R. Civ. P.

    c. The pretrial disclosures under Rule 26(a)(3)(A), Fed. R. Civ. P., must be made no later than one business day before the pretrial conference.

    d. All disclosures under Rules 26(a)(1), 26(a)(2), and 26(a)(3)(A), Fed. R. Civ. P., must be made in writing, signed, served, and, except for copies of exhibits and expert witness reports, be filed with the Court.

6. **SUMMARIES TO PROVE CONTENT**. If any party intends to offer in evidence at trial a summary, chart or calculation to prove content as permitted by Federal Rule of Evidence 1006, that party must provide to the other parties a notice of the location(s) of the books, records, and the like, from which each summary has been made, and the reasonable times when they may be inspected and copied by adverse parties, as soon as practicable but in no event later than **seven days**[*] before the pretrial conference.

7. **DISCOVERY**. The parties must complete discovery not later than **14 days**[*] before the pretrial conference, except that any previously scheduled depositions may be completed up to one business

[*] This deadline is the default and minimum deadline required by the Court, however the parties are free to agree to and propose any other reasonable deadline, subject to Court approval at the Status Conference.

day before the pretrial conference. The Court will allow discovery after the pretrial conference only upon a showing of good cause.

8. **JOINT PRETRIAL STIPULATION WHERE ALL PARTIES REPRESENTED BY COUNSEL**. If any party is not represented by counsel in this proceeding as of the date of entry of this Order, this paragraph will not apply. All parties to this proceeding must meet (in person, if geographically feasible, and otherwise by video conference or by telephone) not later than **14 days** before the pretrial conference to confer on the preparation of a Joint Pretrial Stipulation in substantially the form of Local Form 63C. The plaintiff must file the fully executed Joint Pretrial Stipulation no later than **one business day** before the pretrial conference. The Court will not accept unilateral statements and will strike sua sponte any such submissions. Should any of the parties fail to cooperate in the preparation of the Joint Pretrial Stipulation, any other party may file a motion requesting an order to show cause why such party or parties (and/or their counsel) should not be held in contempt and sanctioned for failure to comply with this order.

9. **SUBMISSION AND EXCHANGE OF EXHIBITS**.

   a. **SUBMISSION AND EXCHANGE OF EXHIBITS**. All exhibits must be submitted and exchanged pursuant to the requirements of Local Rule 9070-1.

   b. **OBJECTIONS TO EXHIBITS**. Any objection to the admissibility of any proposed exhibit must be filed and served, so as to be received **no later than 4:00 p.m. two business days** before trial. Objections to any deposition transcripts, including a recording (audio or video) or summary thereof, must follow the procedure specified in this paragraph:

      (1) The objection must: (a) identify the exhibit, (b) state the grounds for the objection, and (c) provide citations to case law and other authority in support of the objection.
      (2) An objection not so made − except for one under Federal Rule of Evidence 402 or 403 − is waived unless excused by the Court for good cause.
      (3) All parties must comply with the requirements regarding exhibits set forth in Local Rule 9070-1.

10. **EXHIBITS TO BE USED DURING TRIAL.** The parties are strongly encouraged to use the Court's information technology equipment to show exhibits at trial. The parties are further encouraged to contact the courtroom deputy in advance of the trial for access to the equipment to ensure counsel can properly use the equipment at trial. Unless otherwise ordered, each party must bring at least one paper copy of its exhibit register for the Court's use, and at least two hard-copy books of all its exhibits, for witnesses and the Court.

11. **FINAL ARGUMENT**. At the conclusion of the trial, in lieu of final argument, the Court may request that each party file with the Court (a) a written closing statement with supporting legal argument or (b) a proposed memorandum opinion with findings of fact and conclusions of law with a separate proposed final judgment. Each submission must contain individually numbered paragraphs and follow the formatting requirements set forth in Part Two of the Court's Guidelines for Preparing, Submitting, and Serving Orders. Each proposed finding of fact must be supported by a citation to the record, or it will be disregarded. Each proposed conclusion of law must be supported by a citation to applicable law, or it will be disregarded. Absent prior permission of the Court, submissions may not exceed a total of **twenty pages**. If specifically requested, the Court may *also* direct the parties to submit a copy of the proposed memorandum opinion with findings of fact and conclusions of law, along with a copy of the separate proposed final judgment, in word

processing format to an electronic mailbox designated by the Court. The filer must include in the "subject" line of the email the case name and number and the date of the relevant hearing.

12. **FAILURE TO ATTEND PRETRIAL CONFERENCE; SANCTIONS**. Failure to comply with any provision of this order or failure to appear at the pretrial conference may result in appropriate sanctions, including the award of attorney's fees, striking of pleadings, dismissal of the action, or entry of default judgment.

13. **SERVICE**. Plaintiff('s)(s') counsel must serve a copy of this Order on the defendant(s) and file an appropriate certificate of service in accordance with Local Rule 5005-1(G)(2).

# # #

Proposed Amendments to Local Rule 7026-1 (subsections A-F). Discovery-General.

(☞ 2020 (proposed) Amendment: *Proposed revisions to Local Rule 7026-1 (as to subsections A-F only) make this rule consistent with the Court's proposed adoption of a new form of pretrial order and a new form status conference order. The revisions also include a new subsection (E)(1) addressing discovery disputes.)*

Rule 7026-1. Discovery – General.

(A) Affirmative Disclosure Requirements. Except as otherwise ordered by the court, the provisions of Rules 26(a), (d) and (f) of the Federal Rules of Civil Procedure, ~~shall~~ apply to cases and proceedings in this court only to the extent set forth in the "Order Setting Status Conference and Establishing Procedures ~~for Determination of Adversary Proceeding~~and Deadlines," and "Order Setting Filing and Disclosure Requirements for Pretrial and Trial".

(B) Subpoena Forms. Subpoenas served in adversary proceedings or main cases ~~shall~~ must conform to, as applicable, the Administrative Office of the U.S. Courts Director's Procedural Form "Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case (or Adversary Proceeding)", the Administrative Office of the U.S. Courts Director's Procedural Form "Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding)" or the Administrative Office of the U.S. Courts Director's Procedural Form "Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)".

(C) Service and Filing of Discovery Material. The following discovery requests and responses:

- notices of deposition upon oral examination;

- transcripts of deposition upon oral examination;

- depositions upon written questions;

- responses or objections to depositions upon written questions;

- written interrogatories;

- answers or objections to written interrogatories.

- requests for production of documents or to inspect any tangible thing;

- objections to requests for the production of documents or to inspect any tangible thing;

- written requests for admission; and

- answers or objections to written requests for admission;

must ~~shall~~ be served upon other attorneys and parties, but ~~shall~~ are not to be filed with the court, nor may any ~~shall~~ proof of service be filed, unless upon order of the court or as provided in subdivision (D). The party responsible for service of the discovery material ~~shall~~ must retain the original and become the custodian. The original of all transcripts of depositions upon oral examination ~~shall~~ must be retained by the

party taking the depositions.

(D) Filing of Discovery Materials Permitted in Certain Circumstances. If depositions, interrogatories, requests for documents, requests for admission, answers or responses are to be used at an evidentiary hearing or trial or are necessary to a pretrial or post-trial motion, the portions to be used ~~shall~~ must be filed with the clerk at the outset of the evidentiary hearing or trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties having custody of the materials. When documentation of discovery not previously in the record is needed for appeal purposes, upon order of the court or by written stipulation of attorneys, the necessary discovery papers may be filed with the clerk.

(E) Discovery Disputes, Motions to Compel, Motions for Protective Order, Required Certification.

(1) Discovery Disputes. If a discovery dispute occurs, the parties must first, as required by Fed. R. Civ. P. 37(a)(1), as incorporated by Fed. R. Bankr. P. 7037, confer in good faith to attempt to resolve the issues. ~~If the parties are unable to resolve the dispute, any party may – if permitted by the judge to whom the adversary proceeding or contested matter is assigned – request a telephone conference with the Court so that the Court may render an informal, preliminary ruling on the discovery dispute, without prejudice to the right of any party to file a formal motion.~~

~~(1)~~ (2) **Motions to Compel.** Except for motions grounded upon complete failure to respond to the discovery sought to be compelled, or upon assertion of general or blanket objections to discovery, motions to compel discovery in accordance with Bankruptcy Rules 7033, 7034, 7036 and 7037, ~~shall~~ must quote verbatim each interrogatory, request for admission or request for production and the response to which objection is taken followed by: (a) the specific objections, (b) the grounds assigned for the objection (if not apparent from the objection); and (c) the reasons assigned as supporting the motion, all of which ~~shall~~ must be written in immediate succession to one another. Such objections and grounds ~~shall~~ must be addressed to the specific interrogatory or request and may not be made generally.

(3) Motions for Protective Order. A party may file, ~~prior to~~ before the date of a proposed deposition or other discovery deadline, a motion for a protective order stating the reasons for prohibiting, limiting or rescheduling the deposition or other discovery request~~,~~. The filing of a motion for protective order stays the deposition or response deadline until the court rules on the motion.

(F) Certificate of Attorney as to Motion to Compel or Motion for Protective Order. ~~Prior to~~ Before filing a motion to compel discovery or a motion for protective order pursuant to Bankruptcy Rule 7026, the attorney for the moving party ~~shall~~ must confer with the attorney for the opposing party and ~~shall~~ must file with the clerk at the time of filing the motion a statement certifying that the movant's attorney has conferred with the attorney for the opposing party in a good faith effort to resolve by agreement the issues raised and that the attorneys have been unable to do so. If certain of the issues have been resolved by agreement, the statement ~~shall~~ must specify the issues so resolved and the issues remaining unresolved.

[Comment: See also Local Rule 9073-1(D) (conference with opposing attorneys required generally.)]

Proposed New Section to Local Rule 7026-1(G). Assertion of Privilege. Discovery – General.

(☞ 2020 (proposed) Local Rule: *The 2020 Amendment to Local Rule 7026-1 creates new Section "G" – Assertion of Privilege. Subsections (1) and (2) of new Section (G) was derived from United States District Court, Southern District of Florida Local Rule 26-1(e)(2) regarding privilege logs including the exclusion of communications between counsel after the filing of the litigation. Subsection (3) of new Section (G) was derived from United States District Court, Southern District of New York Local Rule 26.2(c) regarding the use of "categorical" privilege logs. See also Rule 26 advisory committee notes of the 1993 amendment ("The rule does not attempt to define for each case what information must be provided when a party asserts a claim of privilege or work product protection. Details concerning time, persons, general subject matter, etc., may be appropriate if only a few items are withheld, but may be unduly burdensome when voluminous documents are claimed to be privileged or protected, particularly if the items can be described by categories")*

(G) Assertion of Privilege.

(1) Where a claim of privilege or protected work product is asserted in objecting to any interrogatory or production demand, or sub-part thereof, and a complete answer is not provided on the basis of such assertion, the party asserting the privilege or protected work product:

(a) must identify the nature of the privilege or protected work product being claimed; and

(b) must provide in the objection the following information, unless divulgence of such information would cause disclosure of the allegedly privileged or protected information:

(i) For documents or electronically stored information, to the extent the information is readily obtainable: (1) the type of document (e.g., letter or memorandum) and, if electronically stored information, the software application used to create it (e.g., MS Word, MS Excel); (2) general subject matter of the document or electronically stored information; (3) the date of the document or electronically stored information; and (4) such other information as is sufficient to identify the document or electronically stored information, including, where appropriate, the author, addressee, and any other recipient of the document or electronically stored information, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

(ii) For oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (2) the date and the place of communication; and (3) the general subject matter of the communication.

(2) This rule requires preparation of a log with respect to all documents, electronically stored information, things and oral communications withheld on the basis of a claim of privilege or work product protection; provided, however, written and oral communications between a party and its counsel made or work product material created after the commencement of the adversary proceeding or contested matter need not be logged absent a court order providing otherwise.

(3) Efficient means of providing information regarding claims of privilege and protected work product are encouraged, and parties are encouraged to agree upon measures that further this end. For example, when asserting privilege or protected work product on the same basis with respect to multiple documents, notwithstanding the other provisions of this rule, it is presumptively proper to provide the information required by this rule by group or category. A party receiving a log that groups documents or otherwise departs from a document-by-document or communication-by-communication listing for alleged privileged or protected work product may not object solely on that basis, but may object if the substantive information required by this rule has not been provided in a comprehensible form.

Proposed New Local Rule 7026-2. E-Discovery.

(☞2020 (proposed) Local Rule 7026-1: *Proposed new Local Rule 7026-2 is adapted in part from United States Bankruptcy Court for the Middle District of Florida Local Rule 7026-2 and United States Bankruptcy Court for the District of Delaware Local Rule 7026-3.)*

(A) General. The Court's e-discovery goal is to facilitate fair, open, and proportional discovery of the facts underlying a dispute so that the dispute is resolved on the merits and not by gamesmanship. Achieving this goal requires cooperation among counsel. It is expected that parties to a contested matter or adversary proceeding will cooperatively reach agreement on how to conduct e-discovery. The discovery of electronically stored information ("ESI") stands on equal footing with the discovery of paper documents. The parties should exercise reason and good faith at all times, including, without limitation, when discussing issues concerning ESI.

(B) Preservation. A party has a duty to retain ESI that may be relevant to pending or reasonably anticipated litigation. The scope of a party's preservation obligation is determined on a case-by-case basis. Preservation issues, to include each party's records management policies and procedures, ideally should occur before suit is filed but certainly no later than the conference required by the Court's Order Setting Status Conference and Establishing Procedures for Determination of Adversary Proceeding (and, with respect to any contested matters where application of Fed. R. Civ. P. 26(f) is ordered by the Court pursuant to Fed. R. Bankr. P. 9014(c)) (the "Rule 26(f) Conference"). On the topic of preservation, counsel should be informed and otherwise prepared to articulate both good cause for the preservation of ESI and the costs and burdens of maintaining ESI.

(C) ESI Conference. The following is a list of topics counsel should discuss before or at the beginning of the adversary proceeding or contested matter, and no later than the Rule 26(f) Conference in an adversary proceeding or in a contested matter where Rule 26(f) has been made applicable by court order. In other contested matters, such discussions should occur before or concurrently with the service of written discovery. Counsel are strongly encouraged to include their clients' information technology employees and vendors in these discussions. Counsel is expected to be prepared to discuss each of the following topics to the extent possible based on the state of the pleadings and, where a meaningful discussion on any particular topic is precluded by the state of the pleadings, the parties must agree on a date by which a further conference will occur, agree on a date for a mutual exchange of supplemental information, and/or submit the issue(s) for resolution by the Court:

(1) The format or formats of ESI that will be most likely to provide the information needed to establish the relevant facts in the adversary proceeding or contested matter.

(2) The locations and sources where relevant ESI is likely to be found. This includes the identity of people likely to have relevant ESI and their titles and responsibilities.

(3) Reasonable steps to preserve ESI.

(4) The relevant time period(s).

(5) The manner and forms of preservation and production including the production of live database-based materials. *See* Fed. R. Civ. P. 34(b).

(6) The need for metadata and the types of metadata that will be preserved and produced, including:

(a) the potential relevance of the metadata;

(b) the importance of reasonably accessible metadata to facilitate the parties' review, production and use of ESI; and

(c) the locations of metadata that will be sought in discovery.

(7) The accessibility of ESI in the form requested.

(8) The requesting party's ability to manage and use ESI in the form requested.

(9) The risks associated with the inadvertent production of privileged or confidential information associated with the different forms of production.

(10) The difficulty of redacting ESI in the form requested.

(11) The extent to which alternative forms of production will satisfy a party's needs.

(12) The relative costs and other burdens associated with production, review and processing ESI.

(13) The allocation of the costs of production.

(14) The use of search terms, sampling, de-duplication, "quick-peeks," technology-assisted review methods including, for example, predictive coding and other strategies to reduce the volume of ESI that must be preserved and produced.

(15) How to deal with issues of confidentiality and privilege including the use of "claw-back agreements."

(16) Tiered discovery in which ESI is produced sequentially in tranches.

(17) Disposal of ESI at the appropriate time.

(D) Procedure. Counsel is expected to have sufficient technical knowledge to propound educated and reasonable requests for ESI and to provide educated and reasonable responses to requests for ESI, as applicable. To reduce the volume and expense of discovering ESI, requests for production should, to the extent possible, clearly specify what is being sought including by topic and reference to persons involved. Responses to requests for ESI should state objections and the reasons for such objections clearly and specifically. Responses to requests for ESI should also clearly state the extent to which discovery of ESI will be permitted, the sources from which ESI has been obtained, and potential sources of ESI that were not searched.

(1) Rule 34(b) establishes that unless requested in another form, the producing party must produce electronically stored information in the form or format in which it is usually maintained or in a form or format that is reasonably usable. The Rule permits testing and sampling as well as the inspection and copying of ESI. Ordinarily, information should only be produced once, i.e., electronically or by paper copies, not both.

(2) Ordinarily, the costs of discovery will be borne by each party, however, the Court may apportion the costs of electronic discovery upon a showing of good cause.

(3) Electronic searches of documents identified by a party as being of limited accessibility ordinarily will not be conducted until the initial electronic document search has been completed in response to a request. Requests for information expected to be found in limited accessibility documents must be narrowly focused with some basis in fact supporting the request. Documents of limited accessibility include documents created or used by electronic media no longer in use, maintained in redundant electronic storage media, or for which retrieval involves substantial cost.

(4) Inspection of an opponent's computer system is the exception, not the rule and the creation of forensic image backups of computers should only be sought in exceptional circumstances that warrant the burden and cost and in which good cause and a specific need have been demonstrated. A request to image an opponent's computer should include a proposal for the protection of privacy rights, protection of privileged information, and the need to separate out and ignore non-relevant information.

(E) Privilege. Except to the extent that a "claw-back agreement" establishes a different procedure by agreement, electronic documents that contain privileged information or attorney work product must be immediately returned if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production within 28 days of such inadvertent production.

(F) Discovery from Non-Parties. Rule 45 does not require a party issuing a subpoena for ESI to a non-party to confer with the non-party in advance. Nevertheless, where practical, the party issuing the subpoena and the non-party responding to the subpoena should discuss, in advance, the same issues a party would discuss with an opposing party before commencing discovery of ESI. Except as otherwise ordered by the Court, once produced, metadata is reviewable without notice to the producing party.

[Comment: Adapted in part from United States Bankruptcy Court for the Middle District of Florida Local Rule 7026-2 and United States Bankruptcy Court for the District of Delaware Local Rule 7026-3.]

Proposed Amendments to Local Rule 7090-1. Continuance of Adversary Proceeding Status Conference, Pretrial Conference, and Trial.

*(☛ **2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 7090-1 includes a new subsection A) addressing the procedure to be used for continuances following the Court's (proposed) adoption of adversary proceeding status conferences.)*

(A) Continuance of Adversary Proceeding Status Conference. ~~The adversary proceeding status conference is an important part of the Court's case management and oversight of adversary proceedings. As such, continuances of an adversary proceeding status conference are disfavored and, e~~Except for brief continuances sought pursuant to Local Rule 7004-2(B) or to accommodate the schedules of counsel (or the parties, if unrepresented), the Court will continue the status conference only ~~be granted~~ in extraordinary circumstances. Any request to continue an adversary proceeding status conference or any deadlines set forth in the Order Setting Status Conference and Establishing Procedures ~~for Determination of Adversary Proceeding~~and Deadlines must: (1) be ~~requested~~ presented by written motion filed no later than the earlier of two business days before the pretrial conference, or as soon as a scheduling conflict is identified ~~filed no later than two business days before the status conference~~; (2) set forth the status of service of process, the pleadings, and the pendency of any potentially dispositive motions; and (3) state the reasons why the party or parties seek a continuance. ~~The moving party must submit a proposed order that provides blank spaces for the date and time of the rescheduled status conference in the event that the court grants the motion without hearing.~~

(B) Continuance of Pretrial Conference and Trial. Requests for continuance of a pretrial conference or trial must be requested by written motion filed no later than the earlier of two business days before the pretrial conference, or as soon as a scheduling conflict is identified. The motion must set forth (1) why the parties seek a continuance; (2) whether a continuance has previously been granted; (3) whether the client and opposing party consent to a continuance; and (4) the status of the litigation, including exchange of initial disclosures and status of discovery. The moving party must submit a proposed order that provides blank spaces for the date and time of the rescheduled trial or pretrial conference in the event that the court grants the motion without hearing. Motions for continuance of a pretrial conference or trial will be granted only under exceptional circumstances, and the stipulation of all parties is not sufficient grounds, standing alone, for a continuance.

[Comment: Compare Local Rule 5071-1 (continuances of hearings), and Local Rule 9013-1(C)(8) (no hearing necessary on motion for continuance).]

Proposed New Local Rule 9011-1. Signatures and Document Retention.

Abrogation of Local Rule 9011-4(D). Retention Requirements.

(☞2020 (proposed) Amendment: *The new Local Rule 9011-1 abrogates the existing local rules regarding signatures and document retention. In order to file a document electronically with the signatory's signature indicated by "/s/" followed by the printed name of the signatory, lawyers may accept a copy or digitally scanned image of the entire document with a wet ink signature by the signatory, in addition to the existing requirement of the lawyer obtaining the original wet ink signature of a signatory on a document. If the attorney is relying upon a copy or digitally scanned image of the document with the wet ink signature, the attorney must obtain the version of the document with the signatory's original wet ink signature within 14 days after the attorney's receipt of the digital or scanned image of the document. Both the document with the original wet ink signature and, if applicable, the digital image upon which the attorney relied in order to file the document electronically, must be retained for a 5-year period after the case is closed and all appeals are resolved. For purposes of clarification, it is insufficient for the attorney to receive solely the signature page with the image of the wet ink signature from the signatory; the signatory must transmit an electronic file with the entire document containing an image of the wet ink signature on the signature page.)*

9011-1 SIGNATURES AND DOCUMENT RETENTION

(A) Petitions, lists, schedules and statements, amendments, pleadings, affidavits, and other documents which must contain original wet ink signatures or which require verification under Fed. R. Bankr. P. 1008, or an unsworn declaration as provided in 28 U.S.C. § 1746, must be filed electronically and may include, in lieu of the original wet ink signature, a signature in any of the signature types set forth in subparagraphs 1, 2, and 3 of paragraph B below.

(B) As used in these local rules and the Federal Rules of Bankruptcy Procedure, all of the following constitute a signature on an electronically filed document:

(1) A copy or digitally scanned image of the entire originally signed document containing a wet ink signature; or

(2) An original wet ink signature on an original document.

Subject to paragraph D below, a filing party may indicate a signature of any party to a document by showing "/s/" followed by the printed name of the signatory where the filing party has received the signature of the signatory. If the filing party has relied upon (B)(1) above for the signatory's signature, the filing party must obtain the original document containing the wet ink signature from the signatory within 14 days from the date of the filing party's receipt of the copy or digitally scanned image of the document containing the wet ink signature.

(C) An attorney's use of the login and password issued for CM/ECF constitutes the signature of the attorney and client(s) for all purposes, including Fed. R. Bankr. P. 9011.

(D) Any electronically filed document containing "/s/" for a debtor or non-filing party in lieu of one of the other signature types referenced in paragraph B above constitutes a representation under penalty of perjury by the registered CM/ECF filer that he or she has the document with the signature of such party or, if the signing party is also a registered CM/ECF filer, that the filing party has evidence of permission to indicate the party's signature by use of "/s/." The registered

CM/ECF filer must retain the original signed document with the original wet ink signature and, if applicable, the digitally scanned image of the originally signed document containing a wet ink signature, for at least five years from the later of the date of entry of the order of discharge, the date on which the case is dismissed, or the date on which all appeals are finally resolved. Upon request, the signed document, digitally scanned image, or evidence of permission must be provided to other parties or the Court for review.

(E) Except as provided in paragraph D above, the intent and purpose of this Rule is to eliminate most document retention requirements when a copy, scan, or other reliable digital evidence of a signature is present. For purposes of clarification, even if the Rules do not require retention of documentation in certain circumstances, all attorneys are encouraged to consider establishing their own "best practices" for document retention.

(F) Notwithstanding any other provision to the contrary, there is no record retention requirement for electronically filed proofs of claim.

Local Rule 9011-4(D)

(D) ~~Registered users must retain electronically filed documents signed by other than the registered user for as provided under Local Rule 5005-4(C).~~ [Abrograted.]*

* This rule has been replaced by Rule 9011-1.

Proposed Amendments to Local Rule 9013-1(C)(15). Ex Parte Motions – Motions for Orders Confirming Termination of Automatic Stay.

***(☞ 2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 9013-1(C)(15) makes motions for orders confirming termination of the automatic stay its own section of the rule [Section (C)(15)] and now allows for motions to confirm termination of the automatic stay to be filed ex parte in chapter 13 cases where a debtor's confirmed plan provides for the surrender of creditor's claim, direct treatment of creditor's claim, or fails to provide for creditor's claim. Former Local Rule 9013-1(C)(16) and (17) are renumbered as subsections (b) and (d) of L.R. 9013-1(C)(15), and each of subsections (18) through (25) will be renumbered from (16) to (23).)*

(C) **Motions That May Be Considered Without a Hearing (Ex Parte Motions).**

(15) Motions for Orders Confirming Termination of Automatic Stay ~~Under 11 U.S.C. § 362(c)(3)(A)~~.

(a) Motions for Orders Confirming Termination of Automatic Stay Under 11 U.S.C. §362(c)(3)(A). Such motions ~~shall~~ will be considered upon expiration of the 30-day period after the case was filed if accompanied by a certificate which (a) recites the facts which establish that the status of the debtor is that as described in §362(c)(3), and (b) includes (1) a statement that no order continuing the stay has been entered under §362(c)(3)(B), and (2) a proposed order confirming termination of the stay and which sets forth the statement attested to by the creditor in the required certificate.

~~(16)~~(b) Motions for Orders Confirming That Automatic Stay is Not in Effect Under 11 U.S.C. §362(c)(4)(A)(i). Such motions will be accompanied by a certificate which (a) recites the facts which establish that the status of the debtor is that as described in §362(c)(4)(A)(i), and (b) includes (1) a statement that no order imposing the stay has been entered under §362(c)(4)(B), and (2) a proposed order confirming that no stay is in effect and which sets forth the statements attested to by the creditor in the required certificate.

(c) Motions for Orders Confirming Termination of Automatic Stay in confirmed Chapter 13 cases in which the debtor's confirmed plan provides for treatment of a creditor's claim outside of the chapter 13 plan; provides for the surrender of creditor's collateral; or fails to provide for creditor's claim. Such motions (1) will be considered at any time after entry of the order confirming chapter 13 plan, (2) must be accompanied by a certificate which recites the facts which establish that (A) the debtor's chapter 13 plan has been confirmed, (B) such plan provides for treatment of creditor's claim outside of the chapter 13 plan, or for surrender of creditor's collateral, or failed to provide for creditor's claim, and (3) must include a proposed order confirming that no stay is in effect with respect to the exercise of creditor's *in rem* remedies and which sets forth the statements attested to by the creditor in the required certificate.

~~(17)~~(d) Motions for Order Confirming That Automatic Stay is Not in Effect Under 11 U.S.C. §362(b)(23). Such motions will be considered without hearing if the debtor has not filed an objection under 11 U.S.C. §362(m)(2), within the 14-day period after the lessor files and serves the certification described in 11 U.S.C. §362(b)(23), and upon the movant's submittal of a proposed order including in the order's preamble the following: "and the movant by submitting this form of order having

represented that the motion was served on the debtor and counsel for the debtor, that the 14-day response time has expired, that the debtor has not filed, or served on the movant, a response to the motion, and that the relief to be granted in this order is the identical relief requested in the motion."

[Comment: New subsection (c) of Local Rule 9013-1(C)(15) is contingent upon approval of the 2020 Amendment to Local Rule 4001-1.]

Proposed Amendments to Local Rule 9013-1(D)(1)(a). Motions Considered on Negative Notice.

(☞2020 (proposed) Amendment: *The 2020 Amendment to Local Rule 9013-1(D)(1)(a) makes it clear that the negative notice procedure described in this local rule is inapplicable to motions, objections or notices governed by other negative notice procedures in these local rules, such as Local Rules 3007-1(D) (objections to claims), 4001-1(c) (motions for stay relief), 6004-1(D) (certain notices of sale), and 6007-1(B)(1) (certain notices of abandonment). The Amendment also corrects the reference to Local Rule 6004-1(D) for "certain notices of sale").*

(D) Motions Considered on Negative Notice.

(1) Introduction. Certain motions may be considered by the court without a hearing if appropriate notice and an opportunity to object to the relief requested is provided to interested parties ("negative notice"). The option provided in this rule is not intended to limit the court's discretion to grant or deny relief sooner than 21 days after service of the motion.

(a) In addition to those motions listed under subdivision (D)(4), the negative notice procedure described in this rule may not be used for any motion that includes a request for relief against a pro se debtor; and for those motions, objections or notices governed by other negative notice procedures included in these local rules, as described in: Local Rules 3007-1(C) (objections to claims), 4001-1(C) (motions for stay relief), 6004-1~~(B)~~(D) (certain notices of sale), and 6007-1(B)(1) (certain notices of abandonment).

Proposed New Section to Local Rule 9013-1(D)(4). Negative Notice – Motions Not Within Scope of Rule.

(☞ 2020 (proposed) Local Rule: *The 2020 Amendment to Local Rule 9013-1(D) creates new subsection (m) that clarifies that negative notice motions are not permitted in Chapter 13 cases except for certain stay relief motions provided for under Local Rules 4001-1(C)(2) and 9013-1(C)(15)(c) (as proposed in the 2020 Revision Report), and certain motions provided for in this District's Mortgage Modification Mediation Program).*

(D)(4). Motions Not Within Scope of Rule.

[. . .]

(m) motions in a Chapter 13 case, except motions for relief from the automatic stay provided for under Local Rule 4001-1(C)(2) and Local Rule 9013-1(C)(15)(c), and for certain motions provided for in the Southern District's Mortgage Modification Mediation Program.

[Comment: The portion of new Subsection (e) that provides for negative notice for motions for relief from stay is contingent upon approval of the 2020 Amendment to Local Rule 4001-1 and Local Rule 9013-1(C).]

Proposed Amendments to Local Rule 9013-1(E). Motions to Rehear, Reconsider or Reinstate Dismissed Chapter 13 Cases.

***(☞2020 (proposed) Amendment**: The 2020 amendment to Local Rule 9013-1(E) clarifies that a dismissed Chapter 13 debtor must be current under the most recently confirmed plan in order for a Chapter 13 case to be reinstated. If the case was not confirmed prior to dismissal, the debtor must be current under the last filed plan prior to the case's dismissal).*

(E) Motions to Rehear, Reconsider **or Reinstate Dismissed Chapter 13 Cases.** A motion to rehear, reconsider or vacate an order dismissing a chapter 13 case must ~~be~~:

(1) If filed by an attorney, be accompanied by a certificate which states that the debtor has tendered to the attorney all funds required to be paid under the debtor's plan to bring the plan current as of the date of the motion and that said funds are in the attorney's trust account, unless the motion includes a request that the case be immediately converted to another chapter; or

(2) If the debtor is pro se, be accompanied by a photocopy of the cashier's check(s) or money order(s), made payable to the chapter 13 trustee, which will be tendered to the chapter 13 trustee by the debtor to bring the plan current if the case is reinstated, unless the motion includes a request that the case be immediately converted to another chapter.

Motions in chapter 13 cases complying with this provision will be scheduled for hearing before the respective judge at the monthly chapter 13 calendar or, at the judge's discretion, set for hearing on an emergency basis. Motions not in compliance with these provisions will be denied without further notice or hearing.

~~In addition,~~ Unless otherwise ordered by the court, a dismissed Chapter 13 case will not be ~~reopened~~ reinstated unless, ~~the debtor is current under the previously confirmed plan as of the hearing on the debtor's motion to rehear, reconsider or reinstate a dismissed case~~ as of the hearing date on the motion to rehear, reconsider or reinstate a dismissed case, the debtor is current under the most recently confirmed plan, or the last plan filed prior to dismissal if the case was dismissed prior to confirmation.

[Comment: See Bankruptcy Rule 1017 and Local Rules 1017-2 (dismissal), 5005-1 (filing and transmittal of papers), and Local Rule 5010-1(D) (reopening chapter 13 cases), and 11 U.S.C. §350 (closing case).]

Proposed Amendments to Local Rule 9013-1(L). Utility Service – Adequate Assurance Motion.

*(☞**2020 (proposed) Amendment**: The 2020 Amendment of Local Rule 9013-1(L) supplements the required content of a motion– when required under this rule – to a utility provider to include whether or not the debtor is current with a utility, the amount owed as of the petition date, and an estimated average monthly bill. The amendment also now requires debtor or debtor's counsel to insert a bulletin in bold -faced type at the beginning of the motion relating to adequate assurance of future payment to a utility service, that provides the deadline by which the utility must file and serve a written objection to the relief sought in the motion in order for the utility to contest the proposed adequate assurance.)*

(1) When a Motion is Required. No motion is required where the trustee or the debtor have reached an agreement with the utility company on the adequate assurance of future payment pursuant to 11 U.S.C. §§366(b) or (c). Where there is no agreement, the trustee or the debtor must file a motion that complies with the requirements stated in subdivision (2) below seeking a determination by the court that the assurance of payment furnished by the trustee or the debtor constitutes adequate assurance of payment necessary under 11 U.S.C. §§366(b) or (c).

(2) Content of Motion. A motion to determine adequate assurance of payment for debtor's utility services must be filed and served timely so that it may be heard prior to expiration of the applicable time period set forth in sections 366(b) or (c)(2) and include:

(a) a schedule of the names and addresses of the utilities;

(b) a certification that movant's attorney has contacted the utility service provider(s) and made a good faith effort to comply with the requirements under §366, prior to the filing of the motion;

(c) the amount of the assurance payment required or paid and the form of adequate assurance the debtor has offered to furnish;

(d) whether debtor is current in payments due to each such utility, the amount owed to each utility as of the petition date, and an estimate of the average monthly utility bill owed to each utility;

(e) ~~(d)~~ any request for an order scheduling a hearing to resolve disputes regarding assurance; and

(f) the following bulletin above the preamble and below the title of the motion in bold print:

> **Any utility who fails to file with the Court and serve debtor's counsel a written response to this motion at least two business days prior to the scheduled hearing on this motion, pursuant to Local Rule 9013-1(L), will be deemed to have consented to the entry of an order in the form attached to this motion (unless the hearing is set on less than five days' notice). Any scheduled hearing may then be canceled.**

(3) Objection. The utility company must serve a written objection no later than 4:30 p.m. on the second business day prior to the scheduled hearing, or the papers submitted may not be considered at the hearing (except when the hearing is set on less than five days' notice). The objection must set forth the location and account number for the utility service and specify the form and amount of assurance of payment that the utility demands.

(4) Notice. The trustee or debtor must serve notice in compliance with the Bankruptcy Rules and Local Rule 2002-1, and specifically provide notice to any and all employee or representative of the utility company who negotiated the terms and conditions of the adequate assurance of payment.

(5) Request for Evidentiary Hearing. Unless otherwise requested, a motion filed in compliance with subdivision (2) above will be scheduled as an evidentiary hearing.

(6) **Content of Order If No Objection Filed and Hearing is Canceled**. If no objection is filed or served to a motion filed in compliance with subdivision (2) and the court cancels the scheduled hearing on such motion, then the debtor must submit a proposed order including the following language in the order's preamble:

> "and the movant by submitting this form of order having represented that the motion was served on all interested parties required by Local Rule 9013-1(L), that the response time provided by that rule has expired, that no one has filed, or served on the movant, a response to the motion, and that the form of order was attached as an exhibit to the motion;"

New Local Rule 9037-1. Procedure for Requiring the Filing of Redacted Documents.

(☞2020 (proposed) Amendment: *The 2020 Amendment clarifies the procedure for restricting filings that contain personal information, and moves the amended rule to Local Rule 9037-1 to be consistent with the Federal Rules of Bankruptcy Procedure which provides for privacy protection for filings made with the court in Rule 9037. The moving party must now file – as a separate docket entry – the redacted document in substantially identical form (with the appropriate redaction of PII) to the document previously filed, within 5 business days of the entry of the order granting the motion. New Local Rule 9037-1 make clear that the order on the motion to redact must also be served on the debtor's attorney and the filer of the unredacted document.)*

Rule 9037-1. Procedure for Requiring the Filing of Redacted Documents.

A party seeking to redact personal information as set forth in Local Rule 5005-1(A)(2) may file an ex parte motion, with the proposed redacted document attached as an exhibit, accompanied by the required filing fee, requesting an order directing the clerk to restrict the unredacted document from public view. If the motion is being filed in a closed case, a motion to reopen case is not required if the sole purpose of the reopening is to file a motion to redact personal information. Simultaneously with the filing of the ex parte motion, the movant must upload a proposed order granting the ex parte motion. Within five business days of entry of an order granting the ex parte motion, the movant must file, as a separate document, the redacted document. Except for redaction of personal identifiers, the redacted document must be identical to the one previously filed. The clerk ~~may~~ will restrict public access to the unredacted document containing personal identifiers pending entry of an order granting the ex parte motion. If the document requiring redaction is a proof of claim, the filer of the original proof of claim must file a redacted proof of claim. Unless the motion is being filed under seal, the motion should not repeat the actual personal information for which redaction is sought. A copy of the motion and entered order must be served by the movant on the debtor, debtor's attorney, filer of the unredacted document, any individual whose personal identifiers have been exposed, the case trustee (if any), and the U.S. trustee. The original filed document will remain restricted to preserve the full record.

Proposed Amendment to Local Rule 9070-1. Exhibits.

***(☞ 2020 (proposed) Amendment**: The 2020 Amendment of Local Rule 9070-1 revises the procedure for submission of exhibits by requiring all exhibits to be submitted electronically, by registered CM/ECF users via the CM/ECF Electronically Stored Exhibit Upload, and by pro se parties via email.)*

(A) General Provisions for Electronic Submission and Exchange of Exhibits.

(1) Submission and Exchange of Exhibits When All Parties Are Represented by Counsel. If all parties in an adversary proceeding or contested matter are represented by counsel, unless the Court orders otherwise, exhibits must be exchanged and submitted via CM/ECF by no later than **4:00 p.m. four business days** before the scheduled trial or evidentiary hearing. The filing of exhibits via CM/ECF will constitute the parties' delivery of exhibits to opposing parties as required by the Order Setting Filing and Disclosure Requirements for Pretrial and Trial (the "Pretrial Order") entered in an adversary proceeding, or any similar scheduling order entered in connection with any contested matter. Instructions on the CM/ECF Electronically Stored Exhibit Upload are located on the Court's website at www.flsb.uscourts.gov.

(2) Submission of and Exchange of Exhibits When a Party Is Not Represented by Counsel. If any party in an adversary proceeding or contested matter is not represented by counsel (a "pro se" party), then:

(a) Submission of Exhibits by a Pro Se Party. Each pro se party must submit her or his exhibits by sending them as Portable Document Format (PDF) files to the Clerk of the Court by electronic mail to the following email address: Proseexhibits@flsb.uscourts.gov, no later than **4:00 p.m. four business days** before the scheduled trial or evidentiary hearing. The Clerk will upload exhibits of pro se parties via CM/ECF. This procedure will also constitute the pro se party's exchange of exhibits with any represented parties. Exchange of exhibits with any other pro se party, however, must be done in accordance with subsection (A)(2)(c).

(b) Submission of Exhibits by a Represented Party. Represented parties must, no later than **4:00 p.m. four business days** before the scheduled trial or evidentiary hearing, submit their exhibits via CM/ECF. This procedure will also constitute the represented party's exchange of exhibits with any other represented parties. Exchange of exhibits with any pro se party, however, must be done in accordance with subsection (A)(2)(c).

(c) Exchange of Exhibits with a Pro Se Party. Exhibits to be exchanged with a pro se party must be provided by email or via a cloud-based file-sharing service (with receipt confirmed by the pro se party). In the event a pro se party is unable to receive copies of exhibits by email or via a cloud-based file-sharing service, the party submitting the exhibits must make alternative arrangements (including providing copies on a USB flash drive or, as a last resort, paper copies via express overnight delivery service) to provide copies of its exhibits.

(3) Compliance with Federal Judiciary Privacy Policy and Local Rule 5005-1(A)(2)(a). All exhibits submitted for filing must comply strictly with the federal judiciary privacy policy and Local Rule 5005-1(A)(2)(a). Any party submitting an exhibit containing (i)

unredacted personal identifiers (including, without limitation, full social security numbers, names of minor children, dates of birth, and financial account numbers), (ii) trade secrets or other confidential research, development, or commercial information, (iii) scandalous or defamatory matter, or (iv) matters that are made confidential by statute or regulation (collectively, "Confidential Information"), may be sanctioned. Sanctions may include striking pleadings, motions, or other papers; limiting or prohibiting the use of any or all exhibits (not just the improperly submitted exhibits); and other sanctions in the Court's discretion. If a party determines that any Confidential Information should be considered by the Court at the trial or evidentiary hearing, that party must nevertheless submit redacted copies of its exhibits in accordance with subsections (A)(1) and (A)(2) of this Local Rule and seek authority to file the unredacted exhibits under seal as provided for in Local Rule 5005-1(A)(4).

(4) **Exhibit Registers and Numbering of Exhibits.** Each party must prepare a separate exhibit register based upon the Local Form Exhibit Register (LF-49). All exhibits must include the party's role in the matter or adversary proceeding (i.e., 'movant" or "respondent", "plaintiff" or "defendant") and be sequentially numbered. After the conclusion of the trial or evidentiary hearing, the courtroom deputy will file a completed Exhibit Register in the case or adversary proceeding docket.

(5) **Format of Exhibits**. Each exhibit must be electronically stored in an individual PDF file, limited to a file size no greater than 50MB. Each PDF file must have a unique identification name and number (e.g., "Plaintiff's Exhibit 1"). To facilitate the filing of exhibits via CM/ECF, the individual PDF files should be contained in a single folder.

(6) **Oversized Exhibits and Exhibits Other than Paper Documents**. If a party wishes to introduce into evidence an oversized exhibit or an exhibit that is not a paper document, the party must scan or photograph the evidence, convert the file to a PDF or JPEG file (as applicable), and list the item on the Exhibit Register. The submitting party must, if physically possible, then bring the actual oversized exhibit or physical object to court for the trial or evidentiary hearing. Unless the Court orders otherwise, at the conclusion of the trial or evidentiary hearing at which an actual oversized exhibit or physical object is offered into evidence, the Clerk will return the original exhibit to counsel. If an appeal is taken, only the PDF or JPEG file with the scan or photographic image of the exhibit will be included in the record on appeal.

(B) **Procedure for Use of Electronically Stored Exhibits.**

(1) **Use of Electronically Stored Exhibits in Court.** The electronically stored exhibits filed via CM/ECF Electronically Stored Exhibit Upload are the official exhibits for purposes of the trial or evidentiary hearing.

(2) **Additional Exhibits.** If any additional exhibits that were not uploaded via the CM/ECF Electronically Stored Exhibit Upload are offered or introduced into evidence during the course of the trial or evidentiary hearing, a complete set of such additional exhibits must be filed via the CM/ECF Electronically Stored Exhibit Upload with the title "[Party's Name]'s Additional Exhibits" within three days after the conclusion of the trial or evidentiary hearing.

(A) Submission and Service of Exhibits. Unless directed by the court, exhibits shall not be filed with the clerk of court. Exhibits shall be accompanied by the Local Form "Exhibit Register", and copies of the register and all exhibits should be submitted for each party and the judge. Unless ordered otherwise and except where the party receiving the exhibits is appearing pro se in a case or proceeding, parties may serve exhibits in electronic format. At the conclusion of the hearing or trial, the completed Exhibit Register will be filed by the courtroom deputy on the case or adversary docket.

(B) Format for Exhibits.

(1) Exhibits must be pre-marked prior to the commencement of any hearing or trial. Plaintiff/movant and defendant/respondent exhibits shall be identified by corresponding exhibit tags. Plaintiff(s)' exhibits shall be marked numerically and defendant(s)' exhibits shall be marked alphabetically.

(2) Electronic Exhibits. Unless otherwise directed by the court, ALL exhibits shall be submitted in electronic Portable Document Format (PDF) and stored on a USB flash drive or compact disc. Each individual PDF file shall be limited to a single exhibit of a file size no greater than 10MB and shall contain a unique identification name (e.g., Plaintiff's Exhibit 1 or Defendant's Exhibit A).

(3) Oversized Exhibits. Any physically large exhibit that cannot be submitted electronically may be submitted to the court in paper format. An exhibit that is unsuitable for storage at the court shall be returned to the party introducing it for retention until the matter is no longer subject to appellate review. Parties receiving such exhibits shall be responsible for producing them if required for an appellate record or for review by interested parties.

(C) Temporary Release of Exhibits. No exhibit received in evidence will be released from the court during the evidentiary proceedings without an order of court, except as provided in subdivision (B) of this Rule. Upon the entry of an order, the party to whom the exhibit is to be released shall prepare a receipt, precisely describing the exhibit and its corresponding number, for temporary release. The receipt must be signed by the attorney or other court-approved agent receiving the exhibit.

(D) Withdrawal or Disposal Upon Finality. After a matter is no longer subject to appellate review an exhibit may be returned to the party offering it without court order upon a written request stating that no appeal is pending and the case or proceeding is final. The requesting party shall furnish the clerk with an adequately sized, self-addressed, stamped envelope or shall make other appropriate arrangements for return of the exhibit. Any exhibit not returned within 30 days after a matter is no longer subject to appellate review may be destroyed or otherwise disposed of by the clerk without further notice.

Proposed Amendments to Local Rule 9073-1(B). Hearings. Filing of Certificate of Service of Notice of Hearing.

***(☞2020 (proposed) Amendment**: The 2020 Amendment of Local Rule 9073-1(B) removes the requirement of filing a certificate of service for a notice of hearing when all interested parties are receiving service via the Court's CM/ECF. If this rule is amended, the movant would only be obligated to serve the notice of hearing (and file a certificate of service of the same) for parties who are not receiving service via CM/ECF).*

(B) Filing of Certificate of Service of Notice of Hearing. No certificate of service is required when all parties entitled to service of a notice of hearing have received service by CM/ECF. In such instances, the clerk's docketed notice of hearing constitutes sufficient service of the notice of hearing for the requested relief. If, however, a notice of hearing is required to be served on one or more parties who do not receive CM/ECF service, then the movant ~~shall~~ must serve that notice of hearing and file a certificate of service ~~for that notice of hearing~~ as required under Local Rule 2002-1(F). The certificate of service must list solely the interested parties to whom the movant served that notice of hearing and describe the manner of and date on which service of the notice of hearing occurred. If a certificate of service is not filed by the movant, it will be treated as a representation by the movant that all interested parties have been served through CM/ECF. A request for relief as to which a notice of hearing is not timely served or a certificate of service timely filed may be denied sua sponte by the court without further notice or hearing.

Proposed New Section to Local Rule 9073-1(E). Hearings.

***(☛2020 (proposed) Local Rule**: The 2020 Amendment creates an additional provision to Local Rule 9073-1 (Section "E" – Notice of Pending Matters). This rule is adapted from the district court's rule 7.1(b)(4) and, like the district court's rule, requires that the notice be filed by the movant or applicant when 90 days have elapsed after a matter is fully briefed if there is no hearing or, if there is a hearing, after the hearing. The draft adds language recognizing the possibility of a subsequent hearing. New Section 1(E) retains the district court's language that makes the notice a requirement rather than an option, and also retains the 90 day time period).*

(E) **Notice of Pending Matters.** With respect to any motion, application, or other matter:

(1) as to which the Court has conducted a hearing, but has neither set a subsequent hearing nor entered an order or otherwise determined the motion, application, or other matter within ninety (90) days of the last hearing directed to such motion, application, or other matter, or

(2) that is pending and fully briefed with no hearing set thereon for a period of ninety (90) days, the movant or applicant must serve on all parties and other interested persons within fourteen (14) days thereafter a "Notification of Ninety Days Expiring" which must contain (a) the title, docket entry number, and filing date of the subject motion or other application, (b) the title, docket entry number, and filing date of any and all responses, opposing or supporting memoranda, replies, or other substantive papers directed to the motion or application, or if no such papers have been filed, the date on which such papers were due, and (c) the date(s) of any hearing(s) held on the motion, application, or other matter.

Note: Joe Falzone to set up mechanism for this filing to be flagged by the presiding judge's chambers.

Proposed Amendments to Local Rule 9074-1. Appearance by Telephone.

*(☞ **2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 9074-1 removes the explicit geographic restriction, and revises the language generally for attorneys intending on appearing telephonically to comply with each Judge's guidelines for telephonic appearances, found on the District's official court website)*

(A) General Eligibility Requirements. Unless the presiding judge otherwise specifically directs, there is no geographic limitation regarding who may appear by the telephonic procedure in this rule. ~~is available only to parties who are not residents of the county in which the hearing is scheduled~~. ~~For attorneys, residence shall mean the county in which the appearing attorney's law office is located~~. When appearing pursuant to this rule, parties must be familiar with the presiding judge's guidelines on telephonic appearances found on the judge's homepage on the Court's website maintained at www.flsb.uscourts.gov.

(B) Restrictions. Unless the presiding judge otherwise specifically directs, telephonic appearances are permitted in most routine, non-evidentiary matters, other than matters scheduled on a regular Chapter 13 calendar. ~~telephone hearings will not be permitted for (1) evidentiary hearing; and (2) matters scheduled on a regular Chapter 13 calendar. When a land line is available, parties will not be permitted to appear by cellular telephone except with specific permission from the court.~~ Counsel appearing telephonically may not use a speakerphone; a handset must be used.

(C) Procedure. Parties wishing to appear telephonically must follow the presiding judge's scheduling procedures for telephonic appearances described on such judge's homepage on the Court's website maintained at www.flsb.uscourts.gov. ~~for requesting to participate in hearings by telephone must contact the judge's calendar clerk at least two business days prior to the date of the hearing. Telephone hearings may be deferred by the judge to the end of the hearing calendar, so the party must remain available for the court's call from the scheduled hearing time until the end of the day's hearing calendar. The court generally will not postpone the hearing because of the party's unavailability or telephonic transmission problems~~. If there is an equipment failure for any reason, the judge will continue with the hearing without participation of counsel or the party appearing telephonically. Persons appearing by phone assume the risk of the prejudice that may result from not being present in person and possibly being unable to therefore advance the party's points in favor of, or in opposition to, the relief requested.

Proposed Amendments to Local Rule 9075-1. Emergency Motions.

*(☞**2020 (proposed) Amendment**: The 2020 Amendment to Local Rule 9075-1 supplements the procedure for a filing party of an emergency motion or other paper to provide notice to the courtroom deputy or law clerk of the hearing judge that the emergency motion or other paper has been filed, and specifies the means by which notice should be provided to interested parties of the filing of the emergency motion or other paper.)*

If a motion or other paper requests an emergency hearing, the title of the motion or paper must include the words "Emergency Hearing Requested". Any motion or paper requesting an emergency hearing must set forth with particularity, under a separate heading in the text:

(A) the reason for the exigency and the date by which movant reasonably believes such hearing must be held; and

(B) a certification that the proponent has made a bona fide effort to resolve the matter without hearing.

Emergency hearings will be held only where direct, immediate and substantial harm will occur to the interest of an entity in property, to the bankruptcy estate, or to the debtor's ability to reorganize if the parties are not able to obtain an immediate resolution of any dispute. The filing party must promptly notify the courtroom deputy or law clerk of the hearing judge, in the manner specified on the hearing judge's homepage on the Court's website maintained at www.flsb.uscourts.gov, that such motion or paper has been filed and the ECF number assigned to such filing. The filing party must send such motion or other paper by email (in addition to any notice of electronic filing generated by the CM/ECF system) promptly after filing to all interested parties for whom an email address is reasonably ascertainable and, for all other parties, by telecopier or other means reasonably calculated to ensure prompt receipt. The requirements of this rule are in addition to the service requirements set forth in the Bankruptcy Rules and these local rules.

Proposed Amendments to Order Confirming Chapter 13 Plan. Co-Debtor relief upon confirmation

*(☛**2020 (proposed) Form Order Amendment**: The 2020 Amendment to the Chapter 13 form order now matches the Chapter 13 form plan, and clarifies in rem relief from co-debtor stay upon confirmation for claims not provided for in a Chapter 13 plan)*

Order Confirming Chapter 13 Plan

(4) If the Plan does not provide for payments to a secured creditor, the Plan provides for surrender of the property secured by the secured creditor's claim, or the Plan provides for direct payment of the secured creditor's claim outside of the Plan, such creditor is granted in rem stay relief as to the debtor and in rem stay relief from the co-debtor stay to pursue available state court remedies against any property of the debtor that secures the creditor's claim. The filing of a Motion to Modify a Plan does not operate as a stay of any action against property of the debtor which is not subject to the automatic stay absent further order of the court.

Proposed Amendments to Mortgage Modification Mediation ("MMM") Order. Motion for Approval of Permanent Modification

*(☞ **2020 (proposed) Form Order Amendment**: The 2020 Amendment to the Mortgage Modification Mediation Order requires the debtor (or debtor's counsel) to file a motion to approve permanent loan modification within 15 days of the debtor signing the loan modification. The Amendment also provides that a debtor may file a motion to compel permanent loan modification within 30 days.)*

XIII. COMPENSATION OF DEBTOR'S COUNSEL: (page 15 of 16 of form order)

- 1c – Filing of other required pleadings and preparation of proposed orders, and settlement papers, as applicable. This specifically includes Debtor's counsel filing a Motion for Approval of Permanent Loan Modification and obtaining an order granting same within 15 days of the Debtor signing the modification agreement.
- 1g- In the event that a modification is not provided after timely completion of the agreed trial modification payments, Debtor's Counsel must file a Motion to Compel Permanent Loan Modification within 30 days of a denial.

IX. POST MORTGAGE MODIFICATION MEDIATION: (page 11 of 16 of form Order)

Debtor's attorney must file a Motion for Approval of Permanent Loan Modification and obtain an order granting same within 15 days after the Debtor signs the modification agreement. In the event that a modification is not provided after timely completion of the agreed trial modification payments, Debtor's Counsel must file a Motion to Compel Permanent Loan Modification within 30 days of completion of the agreed trial modification payments. The parties must formalize any required legal documents in a timely fashion thereafter.