

## LOCAL RULES

Adopted November 15, 2014 and Amended December 1, 2017, April 1, 2019 and May 1, 2021

### **1001-1 Scope, Application, Waiver of Rules, and Construction.**

(a) **Citation; Abbreviations.** These rules shall be cited as NM LBR \_\_\_\_\_. “BR” or “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure. “Code” means the United States Bankruptcy Code. “FRCP” means the Federal Rules of Civil Procedure. “NM LBR” means these local rules. References to “trustee” mean the case trustee or the standing trustee.

(b) **Organization.** These rules are numbered consistent with the Judicial Conference Advisory Committee on Bankruptcy Rules’ Uniform Numbering System for Local Bankruptcy Rules (Revised May 2003 and January 2012).

(c) **Scope.** Pursuant to the Administrative Order of the United States District Court, Misc. No. 84-0324, dated March 19, 1992, and D.N.M.LR-Civ. 1.6, these rules govern procedure in all bankruptcy cases and proceedings in the United States Bankruptcy Court for the District of New Mexico.

(d) **Application; Waiver.** These rules govern all cases and adversary proceedings pending or filed on or after the effective date, unless the court orders otherwise. These rules may be waived by the court, prospectively or retroactively, to avoid injustice.

(e) **Construction.** These rules shall be construed consistently with the Code and Bankruptcy Rules, to secure the just, speedy, and efficient determination of cases and proceedings.

(f) **Effective Date.** The effective date of these rules is November 15, 2014, except amendments to the rules are effective as of the date the amendments become effective. These rules supersede all previous local rules and orders adopting or amending local rules.

### **PART I. PETITION; FILING FEES; SCHEDULES; CONSOLIDATION; MOTION TO DISMISS**

**1002-1 Disclosure of Marital Status and Non-filing Spouse.** When a voluntary case is commenced or an order for relief is entered in an involuntary case, an individual debtor shall file either 1) a certificate that he or she has no spouse; or 2) a statement disclosing the name, last known mailing address, and last four digits of the social security number (if known) of the non-filing spouse. In the latter case, the clerk shall send a notice of the case filing, the meeting of creditors, and certain deadlines to the non-filing spouse. *Note: Form NM LF 1002-1 was created by the clerk for compliance with this rule.*

**1005-1 Name of Non-Individual Debtor in Petition Caption.** If the debtor is a corporation, limited liability company, or other registered organization as defined in NMSA §55-9-102(A)(69), the petition and caption shall include the debtor’s current registered name, jurisdiction, and form of organization (e.g. “XYZ, Inc., a New Mexico corporation”). If the debtor is not an individual or a registered organization, the petition

and caption shall include the complete name of the debtor and, to the extent that the debtor exists under the laws of any jurisdiction, the jurisdiction and form of organization (e.g. “XYZ Partners, a New Mexico general partnership”).

**1006-1 Installment Payment or Waiver of Filing Fee.** An individual debtor seeking to pay the petition filing fee in installments shall file an application using the official form. An individual debtor seeking a waiver of the filing fee in a chapter 7 case shall file an application using the official form.

**1007-1 Payment Advices.** A debtor shall not file the payment advices described in BR 1007(b)(1)(E). Instead, a debtor shall give copies of the payment advices to the trustee at least seven days before the first date set for the meeting of creditors, and to the United States trustee not later than ten days after service of a written request therefor. In addition, if a creditor requests in writing copies of such payment advices at least 14 days before the first date set for the meeting of creditors, the debtor shall provide them to the requesting creditor at the same time they are provided to the trustee.

**1007-2 Statement of Social Security Number.** An individual debtor who does not submit with the petition a verified statement of social security number (required by BR 1007(f)) shall do so promptly after the petition is filed, and shall also mail a copy of the statement to the trustee and all creditors and other parties in interest. Within two days after such filing and mailing, the debtor shall file a certificate of compliance with this rule. Failure to file and serve the statement, or to file the certificate of compliance, may subject the debtor to sanctions, including dismissal of the case. *Note: Form NM LF 1007-2 was created by the clerk for compliance with this rule.*

#### **1009-1 Amendments to Schedules.**

**(a) Form of Amended Schedules.** Unless the court orders otherwise, if a debtor amends a schedule, the amendment shall be designated as such. The amended schedule shall restate the entire schedule as amended, not merely the new or changed items. If an amended schedule affects the information on the Summary of Assets and Liabilities (Official Form 106Sum or Official Form 206Sum) the debtor shall amend the summary and attach it to the amended schedule.

**(b) Notice of Amendment.** The debtor shall file a notice of amendment specifying the amended or new information. The notice of amendment shall conform substantially to the local form. If schedule C is amended, NM LBR 4003-1(e) applies. *Note: Form NM LF 1009-1(b) was created by the clerk for compliance with this rule. Form NM LF 4003-1(e) was created for compliance with this rule and with NM LBR 4003(e) when Schedule C is amended.*

**(c) Amendment to Mailing List.** If schedules D, E/F, G, or H were not filed with the petition and they contain creditors or other parties in interest not included in the original mailing list, the debtor shall file an amendment to mailing list that identifies the name and address of each additional creditor or other party in interest.

**(d) Notice to Added Entities.** If a debtor files an amended schedule or an amendment to mailing list to add a creditor or other party in interest, the debtor shall contemporaneously serve notice of the bankruptcy case on the entity added. The notice shall conform substantially to the local form, and shall be filed in the case. *Note: Form NM LF 1009-1(d) was created by the clerk for compliance with this rule.*

**1015-1 Consolidation and Joint Administration.** A motion to consolidate or jointly administer two or more cases shall be heard by the judge assigned to the lowest numbered case.

**1017-1 Motion to Convert or Dismiss a Chapter 11 Case.** Before filing a motion to convert or dismiss a case pursuant to Code § 1112(b), the movant shall contact the courtroom deputy for the assigned judge to request a hearing. The 30-day period under Code § 1112(b)(3) will not begin to run until the movant has served notice of the hearing. Ordinarily, the motion will be set for a scheduling conference and then a final hearing. The movant shall file with the motion, and serve within two days thereafter, a notice that includes the dates and times of any scheduling conference and the final hearing, and the deadline to object. The objection deadline shall be ten days from the date of service of the notice. The foregoing notwithstanding, if the movant waives the 30-day period under Code § 1112(b)(3), then unless the court orders otherwise the procedures in NM LBR 9013 shall apply instead.

**1074-1 Corporations and Other Entities - Representation by Attorney Required.** For all purposes except filing proofs of claim, reaffirmation agreements, requests for unclaimed funds, or participating in meetings of creditors, any entity other than an individual, including but not limited to a corporation, limited liability company, partnership, or trust, must be represented by an attorney authorized to practice before this court.

## **PART II. MEETINGS; EXAMINATIONS; TRUSTEE EXPENSE PAYMENTS; PROFESSIONAL COMPENSATION**

**2003-1 Requests to Change Meeting of Creditors.** Requests to reschedule the date, time or location of the first meeting of creditors due to the debtor's or attorney's unavailability shall be made in accordance with the procedures established by the clerk and the United States trustee. *Note: The procedures can be found in the Court's Electronic Filing Policies and Procedures (Online Manual). Click on the "Procedures" book, and then "Reschedule 341 Meeting of Creditors."*

### **2004-1 Examinations.**

**(a) Scheduling Examinations.** Counsel shall confer about scheduling BR 2004 examinations before filing a motion seeking an order for examination. If the parties agree, they may submit an agreed order without a motion. Unless otherwise ordered, service of an order for examination shall be made at least seven days before the scheduled examination. The time for responding to a motion or serving an order may be shortened by the court order or agreement of the parties.

**(b) Examination Fees; Non-Filing of Transcripts.** A court reporter must certify its fees in an examination transcript. Unless otherwise ordered, examination transcripts and certificates of completion of examinations shall not be filed.

**2015-1 Trustee Payment of Routine Expenses.** The trustee is authorized to pay routine, reasonable, and necessary administrative expenses, except for professional fees, of \$1,000 or less per expense, up to an aggregate of \$2,500. Neither notice to creditors nor a court order is required for such payments, provided the funds used are not a creditor's cash collateral or otherwise encumbered.

**2015-2 Trustee Deferral of Fees for Certain Estates.** If a trustee in a chapter 7 or 13 case does not have liquid funds available to pay the filing fee for an adversary proceeding, notice of removal, or a motion to convert or reopen a case, the fee may be deferred. The trustee shall pay the fee if and when estate funds become available. The trustee's signature on a motion to defer the fee shall constitute a sworn statement that there are insufficient funds in the estate to pay the fee. Upon filing the motion, the trustee shall submit an order permitting the fee to be deferred.

**2015-3 Disclosure of Compensation to Debtor's Principals and Insiders in Chapter 11 Cases.** On or before the date the schedules, statements and other documents required by BR 1007(b) must be filed, the debtor in possession shall file a notice of compensation. The notice of compensation shall disclose: 1) the post-petition compensation the debtor in possession intends to pay insiders as defined by Code § 101(31) from the petition date until confirmation; 2) the compensation the debtor in possession paid to each of those persons within the two-year period prior to the petition date; and 3) the source of such compensation. Unless the court orders otherwise, the debtor in possession shall serve the notice of compensation on all on all creditors, equity security holders, the United States trustee, and other parties in interest.

**2016-1 Compensation of Professionals.**

**(a) Applications for Compensation.** Applications for interim or final compensation of professionals shall be accompanied by detailed billing statements itemizing all services provided, the time spent on each service, the charge for the service, the identity and hourly rate of each service provider, all costs for which reimbursement is sought, and all taxes passed on to the debtor or estate. Applications shall list the total amounts of fees, costs, and taxes previously requested, awarded, or paid.

**(b) Electronic Reporting to the United States trustee.** Unless the court orders otherwise, any professional or other entity seeking fees, compensation, or reimbursement of expenses exceeding \$25,000 shall submit time and expense detail electronically to the United States trustee, in a format compatible with the United States trustee's software. The submissions shall comply with the United States trustee fee guidelines. This requirement is not applicable to final fee applications that exceed \$25,000 due only to previously approved interim fee applications.

**(c) Payment From the Estate.** Professional fees will be allowed and paid from the estate in all chapters only after court approval.

**PART III. CLAIMS OBJECTIONS; PLAN CONFIRMATION; DISTRIBUTION**

**3001-1 Electronic Filing of Proofs of Claim and Transfers of Claims.** The electronic filing of a proof of claim or a transfer of claim with the clerk in accordance with the clerk's electronic filing procedures: 1) shall constitute the filing claimant's approved signature by law; and 2) shall constitute entry of the proof of claim or transfer of claim in the claims register pursuant to BR 5003.

**3007-1 Claims Objections.** Unless extended or shortened by the court, the time for filing a response to a claim objection shall be 30 days from service of the objection and notice thereof. The notice of the objection shall include the deadline to respond and shall state that if no response is timely filed the court may disallow the claim as requested in the

objection without further notice or a hearing. If a response is timely filed, the party objecting to the claim shall contact the courtroom deputy for the assigned judge to request a hearing. If no response is timely filed, the party objecting to the claim may submit a proposed order, reciting the notice given and when the objection deadline expired.

**3015-1 Notice of Chapter 12 Confirmation Hearing.** A Chapter 12 debtor shall, within three business days of filing the plan, contact the courtroom deputy for the assigned judge to request a final confirmation hearing and prepare, serve, and timely file a notice of the hearing.

**3015-2 Chapter 13 Plan and Confirmation.**

(a) **Mandatory Form Chapter 13 Plan.** Chapter 13 debtors must use the form Chapter 13 Plan adopted in this District. *Note: The mandatory form Chapter 13 Plan is NM LF 3015-2*

(b) **Scheduling the Confirmation Hearing.** The chapter 13 plan confirmation hearing will be scheduled by the court.

(c) **Extension of Deadline to Object to the Plan – Trustees Only.** The chapter 13 trustee and the United States trustee shall have an automatic extension of time to object to confirmation of a plan until 14 days after conclusion of the meeting of creditors.

(d) **Motions and Service of Motions in Chapter 13 Plan.** Unless the Court for good cause orders otherwise, all preconfirmation motions must be included in the plan and all preconfirmation amended plans and not filed separately. The debtor must comply with the service requirements of BR 7004 and file a certificate of service specifying the method of service with respect to all motions in the plan and preconfirmation amended plans to which BR 9014 applies (*e.g.*, a motion to avoid a judicial lien or to value collateral).

(e) **Notice of Objection Deadline and Confirmation Hearing.** If both a plan and a confirmation hearing notice are filed with the petition in accordance with the clerk's case opening instructions, the clerk will include a copy of the plan and notice with the notice of the bankruptcy filing. In all other cases, the debtor shall serve on all creditors and other parties in interest a copy of the plan and the notice of objection deadline and confirmation hearing, and shall file a certificate of service within three days thereafter. *Note: NM LF 3015-2(e)A and 3015-2(e)B were created by the clerk for compliance with this rule.*

(f) **Requirements for Confirmation.** The debtor shall appear in person at any final hearing on plan confirmation, absent exigent circumstances or court approval. The debtor's failure to attend the final confirmation hearing may be grounds to dismiss the case.

**3015-3 Conduit Mortgage Payments in Chapter 13 Cases.**

(a) **Definitions.** "Conduit payments" are post-petition Mortgage payments made by the Debtor to the Trustee for payment to the Mortgagee under a confirmed Chapter 13 plan. "Debtor" includes both debtors in a joint case. "Gap payment" means the first two Mortgage payments that come due post-petition. "Mortgage" includes deeds

of trust. "Mortgagee" is the holder of a Mortgage, including but not limited to a Mortgage on Debtor's principal residence. "Trustee" is the Chapter 13 Trustee.

**(b) Required Conduit Payments; Gap Payment.** Conduit payments are required if Debtor (i) was more than two months delinquent on the petition date; (ii) becomes delinquent before plan confirmation; or (iii) becomes more than two months delinquent after plan confirmation. If Debtor is making Conduit payments and the monthly Mortgage payment increases, Debtor will increase the Conduit payment if and to the extent necessary to ensure plan feasibility. If Debtor's plan provides for Conduit payments, it must provide for treatment of the Gap payment.

**(c) Affidavit Regarding Mortgage Payments.** If the Debtor's plan proposes direct Mortgage payments instead of Conduit payments, Debtor must file with the plan an Affidavit Regarding Mortgage Payments demonstrating Debtor's eligibility. *Note: Form NM LF 3015-3(c) was created for compliance with this rule.*

**(d) Trustee Duties.** On plan confirmation, the Trustee will make Conduit payments based on the Mortgagee's allowed proof of claim and may make partial payments until the Trustee receives sufficient funds to make full payments. Any notice filed pursuant to BR 3002.1(b) or (c) shall be treated as an amendment to the Mortgagee's claim. The Trustee is authorized to disburse Conduit payments in the adjusted amount as soon as practicable after the time to object expires without objection, or after resolution of any objection. The plan will be deemed modified to reflect the new payment amount. Any notice pursuant to BR 3002.1(b) filed and served more than 21 before the effective date of the new Mortgage payment will be deemed allowed if no objection is filed within 21 days after service of the notice. Should any new Conduit payment render the plan infeasible, the Trustee may file a motion to amend or modify the plan or to dismiss/convert the case.

**(e) Mortgagee Duties.** At least 45 days before any name or address change, the Mortgagee shall send the Trustee a notification, using Official Form B2100A/B. Mortgagee shall apply all Mortgage payments received post-petition as provided under the plan. Even if such payments are placed in suspense, forbearance, or similar account, they will be deemed to have been applied to the Mortgage debt. If a confirmed plan is modified to require Conduit payments, Mortgagee must, within 21 days after court approval of the modification, file a supplemental proof of claim stating, as of the approval date, the amount of the post-petition Mortgage payment and the amount of any post-petition delinquency.

**(f) Plan Modification That Includes Conduit Payments.** If the Debtor seeks to modify a confirmed plan to include Conduit payments, the proposed plan modification must include the name and address of the Mortgagee, the street address of the mortgaged property, when the Trustee is to start making payments, and the amount and proposed treatment of any post-petition delinquency.

**3015-4 Arrearages in Chapter 13 Cases.** On plan confirmation, any prepetition Mortgage arrearage provided for in the plan shall be deemed current, precluding the Mortgagee from charging late payments or other default-related fees and services. Upon the entry of a discharge order, the prepetition Mortgage arrearage paid under a confirmed Chapter 13 plan shall be deemed cured unless the Court orders otherwise or the Mortgagee timely files a BR 3002.1(g) statement to the contrary.

**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

Case No.

Original Chapter 13 Plan

Amended Plan Number \_\_\_\_\_

Debtor(s).

(e.g., 1st, 2nd)

Court-ordered Limited Service of Plan Applicable

**CHAPTER 13 PLAN**

**Part 1: Important Notices and General Plan Provisions.**

**YOUR RIGHTS MAY BE AFFECTED BY THIS PLAN.** Your claim may be reduced, modified, or eliminated.

**THIS PLAN DOES NOT ALLOW CLAIMS.** Creditors must file timely proofs of claim to receive distributions under this plan. Even if the plan provides for payment, no payment will be made unless a proof of claim is timely filed and allowed. Otherwise, amounts received by the Trustee will be disbursed to other creditors. The amount of an allowed proof of claim controls, unless the court orders otherwise.

**THIS PLAN IS A "COMBO" PLAN.** All pre-confirmation motions to a) limit the amount of a secured claim based on valuation of collateral; b) strip a wholly unsecured mortgage; c) avoid a nonpossessory, nonpurchase money security interest or judicial lien; or d) assume an executory contract or unexpired lease must be included in the plan, unless the court for good cause orders otherwise. See NM LBR 3015-2(d).

**DEFINITIONS:** "Debtor" means either a single debtor or joint debtor, as applicable. "Trustee" means the Chapter 13 Trustee. Section "§" numbers refer to sections of the Bankruptcy Code. "Rule" refers to the Federal Rules of Bankruptcy Procedure. "Plan Payments" means payments the Plan requires the Debtor to pay to the Trustee.

**The Debtor must check one box on each line of the following table:**

**If an item is checked "Not included," both boxes are checked, or neither box is checked, the plan provision will be void.**

1.1	A limit on the amount of a secured claim, set out in Part 4.2, 4.3, and/or 4.4, which may result in a partial payment or no payment at all to the secured creditor.	<input type="checkbox"/> Included	<input type="checkbox"/> Not Included
1.2	Avoidance of a judicial lien or a nonpossessory, nonpurchase-money security interest, set out in Part 8.	<input type="checkbox"/> Included	<input type="checkbox"/> Not Included
1.3	Nonstandard provisions, set out in Part 14.	<input type="checkbox"/> Included	<input type="checkbox"/> Not Included

**Part 2: Monthly Plan Payment and Length.**

**2.1 Debtor Plan Payments.** Debtor will make regular, monthly payments to the Trustee within the time required by § 1326(a) as follows (e.g., month 1 to month 24 \$500; month 25 to month 60 \$650):

<u>Start Month#</u>	<u>End Month#</u>	<u>Plan Payment Amount</u>	<u>Total</u>
1			

**Total number of plan payments:** \_\_\_\_\_

If the payments in Part 2 are insufficient to pay all creditors as proposed by the plan, Debtor will pay the additional amount necessary.

**2.2 Additional Payments.**

Debtor will make additional payments to Trustee from the following sources (e.g. sale proceeds; or state "None"):

<u>Source of payment</u>	<u>Estimated amount</u>	<u>Estimated payment dates</u>

NM LF 3015-2 (Effective 5/1/2021)

**2.3 Method of Payment:** (Check one). Debtor will make Plan Payments required by Part 2.1 by the following method:

- Wage Withholding Order.** Debtor must make Plan Payments by other acceptable means until wage withholding begins.
- Money Order or Certified Funds.** Mail to *Chapter 13 Trustee, P.O. Box 454, Memphis, TN 38101-0454*; Include Debtor's name and case number.
- TFS**

**2.4 Income Tax Returns and Refunds.**

By **April 30<sup>th</sup>** of each year (or within 15 days after any extended tax filing deadline), Debtor will give Trustee copies of all federal and state income tax returns for the preceding year, with all schedules and attachments. If Debtor files for an extension or is not required to file a return, then by **April 30<sup>th</sup>** Debtor will give Trustee an executed copy of the extension, or an affidavit that no return is required. Debtor will pay directly all post-petition taxes or estimated taxes when due. Debtor may increase tax withholding as necessary to pay required taxes during the tax year.

*Check one:*



- ❑ Debtor will retain any income tax refunds received during the Plan term.
- ❑ Debtor will turn over to Trustee all income tax refunds for tax years \_\_\_\_\_ through \_\_\_\_\_ no later than April 30<sup>th</sup> of each following year unless the Court orders otherwise.
- ❑ Debtor will treat income tax refunds as follows:  
\_\_\_\_\_.

**Part 3: Attorney's Fees**

Debtor's counsel charges by the hour. Counsel received \$ \_\_\_\_\_ **pre-petition** for representing the Debtor in connection with the bankruptcy case, including attorneys' fees, applicable taxes, and costs ("fees and costs"). Post-petition, counsel estimates charging an additional \$ \_\_\_\_\_ in fees and costs through Plan confirmation. Within 14 days after Plan confirmation, counsel will file a fee application for all fees and costs charged through Plan confirmation. Upon Court approval, Trustee will pay the unpaid balance of approved fees and costs. If the approved amount is less than the amounts already paid, counsel will remit the difference to payor within 30 days. Trustee will pay any post-confirmation fees and costs upon Court approval.

**Part 4: Treatment of Secured Claims**

**4.1 Claims Secured by Real Property — Curing Defaults and Maintaining Payments.**

- A. Debtor will make the following post-petition mortgage payments directly to the creditor, including taxes and insurance:\*

<u>Creditor</u>	<u>Lien No.</u>	<u>Property Address</u>	<u>Estimated Monthly Payment</u>	<u>Payment Start Date</u>	<u>Payment End Date</u>

\*Direct post-petition mortgage payments under Part. 4.1.A may be proposed **only** if the Debtor is two months or less in arrears as of the petition date. If the Debtor proposes to make direct post-petition mortgage payments, the Debtor must file an affidavit (NM LF 3015-3(c)) certifying as to each mortgage addressed in Part 4.1.A the number of missed regular monthly mortgage payments and the alleged arrearage amount.

- B. Trustee will make the following post-petition mortgage payments:

<u>Creditor</u>	<u>Lien No.</u>	<u>Property Address</u>	<u>Estimated Monthly Payment</u>	<u>Payment Start Date</u>	<u>Payment End Date</u>

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If post-petition taxes and insurance are not included in the mortgage payment, the Debtor will pay those amounts directly. The estimated monthly payments in Parts 4.1A and B may change based on filed proofs of claim or notices of mortgage payment change. If the monthly mortgage payment increases, Debtor will increase the Plan payment if and to the extent necessary to ensure Plan feasibility.

- C. Trustee will pay (a) pre-petition arrearages and/or amounts due because of a pre-petition default, (b) the first post-petition payment ("gap" payment); and/or (c) post-petition arrearages arising from a default in mortgage payments paid directly by Debtor as follows:

<u>Creditor</u>	<u>Lien No.</u>	<u>Property Address</u>	<u>Estimated Arrearage Amount</u>	<u>Type of Payment (i.e. Gap, Pre or Post petition)</u>

- D. Trustee will pay the following secured real property claims in full with interest as provided below, unless a different interest rate is ordered by the court:

<u>Creditor</u>	<u>Lien No.</u>	<u>Property Address</u>	<u>Estimated Claim Amount</u>	<u>Interest Rate</u>

**4.2 Claims Secured by Real Property – Lien Stripping, Lien Avoidance, and Valuation.**

- A. "Stripping" wholly unsecured mortgage liens

Debtor moves the Court to value real property and, upon discharge under § 1328, avoid each mortgage wholly unsecured by the creditor's interest in the value of the property as set forth below.

<u>Creditor</u>	<u>Property Address</u>	<u>Estimated Claim Amount</u>	<u>Property Value</u>	<u>Estimated Amount of Senior Mortgages</u>	<u>Basis for Valuation</u>

The above property value will bind each creditor upon confirmation. Creditors will retain their mortgage liens until discharge under § 1328 or payment in full under nonbankruptcy law, at which time the liens will be avoided. If creditor timely objects, the confirmation hearing will include a valuation hearing under § 506 and Rule 3012. **Valuation and lien stripping require service in accordance with Rule 7004.** Upon confirmation, the Trustee will pay the claim as a nonpriority unsecured claim.

B. Bifurcating claims secured by real property

Debtor moves the Court to value real property that is **not the Debtor's primary residence** and determine the amount of the allowed secured claim under § 506 regarding the property and claims below. The claims will be allowed and paid by the Trustee as secured claims only to the extent of the value of the creditor's interest in the property, and at the interest rate, as set forth below, with the balance treated as a non-priority unsecured claim.

<u>Creditor</u>	<u>Property Address</u>	<u>Estimated Claim Amount</u>	<u>Property Value</u>	<u>Estimated Amount of Senior Mortgages</u>	<u>Interest Rate</u>

The above property value will bind each creditor upon confirmation. Creditors will retain their liens until discharge under § 1328 or payment in full under nonbankruptcy law, at which time the liens will be avoided. If a creditor timely objects, the confirmation hearing will include a valuation hearing under § 506 and Rule 3012. **Valuation and lien avoidance require service in accordance with Rule 7004.**

**4.3 Claims Secured by Personal Property.**

A. Claims secured by personal property (including "910 car claims") to be paid in full

The Trustee will pay the following claims in full with interest as provided below, unless a different interest rate is ordered by the Court:

<u>Creditor</u>	<u>Collateral/Property</u>	<u>Estimated Claim Amount</u>	<u>Interest Rate</u>	<u>Adequacy of Protection (Yes/No)</u>

B. Bifurcating claims secured by personal property

Debtor moves the Court to value personal property and determine the amount of the allowed secured claim under § 506 regarding the property and claims below. The claims will be allowed and paid by the Trustee as secured claims only to the extent of the value of the creditor's interest in the property, and at the interest rate, as set forth below, with the balance treated as a non-priority unsecured claim.

<u>Creditor</u>	<u>Collateral/Property</u>	<u>Estimated Claim Amount</u>	<u>Collateral Value</u>	<u>Interest Rate</u>

The above property value will bind each creditor upon confirmation. Creditors will retain their liens until discharge under § 1328 or payment in full under nonbankruptcy law, at

which time the liens will be avoided. If a creditor timely objects, the confirmation hearing will include a valuation hearing under § 506 and Rule 3012. **Valuation and lien avoidance require service in accordance with Rule 7004.**

**4.4 Secured Tax Claims.**

Debtor moves the Court to value property and determine the amount of the allowed secured claim under § 506 regarding the property and tax claims below. The tax claims will be allowed and paid by the Trustee as secured claims only to the extent of the value of the creditor's interest in the property, and at the interest rate, as set forth below, with the balance treated as a non-priority unsecured claim.

<u>Creditor</u>	<u>Collateral/Property</u>	<u>Estimated Claim Amount</u>	<u>Property Value</u>	<u>Interest Rate</u>

The above property value will bind each creditor on confirmation. Creditors will retain their liens until discharge under § 1328 or payment in full under nonbankruptcy law, at which time the liens will be avoided. If creditor timely objects, the confirmation hearing will include a valuation hearing under § 506 and Rule 3012. **Valuation and lien avoidance requires service in accordance with Rule 7004.**

**4.5 Surrender of Property and Collateral.**

Upon Plan confirmation, the Debtor will surrender all right, title and interest in the following collateral in full satisfaction of the secured claim:

<u>Creditor</u>	<u>Collateral Surrendered</u>

The automatic stay and the co-debtor stay will terminate as to the collateral upon confirmation, and the creditor may repossess, foreclose, or sell the collateral without the need to file a motion for relief from stay. If the creditor believes it will have a deficiency claim, it must amend its timely filed secured proof of claim within 90 days after the later of the claims bar date or confirmation, absent leave of Court. Deficiency claims filed outside of the 90-day period will be disallowed without further order of the Court.

**Part 5: Treatment of Priority Unsecured Claims**

**5.1 Domestic Support Obligation ("DSO") Priority Claims.**

Debtor will pay all post-petition DSO claims directly. Trustee will pay all allowed DSO priority claims with interest at the below rate.

- If box is checked, § 1322(a)(4) applies and Trustee may pay less than the full amount of a government DSO claim.

DSO Priority Creditor	Estimated Amount Of Claim	Interest Rate	Assigned or Owed to Governmental ("government DSO claim") See 507(a)(1)(B) (Yes/No)

**5.2 Priority Unsecured Claims other than DSO Claims, including tax claims.**

Non-DSO Priority Creditor/Tax Agency	Est. Amount of Claim	Basis for Priority Claim

**Part 6: Separately Classified Claims**

These are claims that are not treated elsewhere in the Plan.

**6.1 Separately Classified Claims Paid by the Trustee:**

<u>Creditor</u>	<u>Collateral</u>	<u>Secured or Unsecured</u>	<u>Estimated Claim Amount</u>	<u>Interest</u>

**6.2 Separately Classified Claims Paid Direct by Debtor or co-borrower (other than arrearage, which will be paid by the Trustee):**

<u>Creditor</u>	<u>Collateral</u>	<u>Co-Borrower (Yes/No)</u>	<u>Estimated Claim Amount</u>	<u>Estimated Arrearage</u>	<u>Interest Rate</u>	<u>Monthly Payment Amount</u>	<u>Next Month's Payment</u>

**Part 7: Executory Contracts and Unexpired Leases ("Contracts and Leases")**

Debtor will assume the following Contracts and Leases:

<u>Creditor</u>	<u>Description of Contract or Lease</u>	<u>Estimated Arrearage</u>	<u>Interest</u>

Debtor will make all post-petition payments on assumed Contracts and Leases directly. Trustee will pay the allowed pre-petition arrearage payments on assumed Contracts and Leases at the interest rate set forth above. All other Contracts and Leases are rejected.

**Part 8: Lien Avoidance — Other than Mortgages**

Debtor moves the Court to avoid upon confirmation the judicial liens or nonpossessory, nonpurchase money security interests ("Lien or Interest") set forth below to extent the Lien or Interest impairs an exemption to which the Debtor is entitled under § 522(b). The Trustee will pay in full the amount, if any, of the Lien or Interest that is not avoided as an allowed secured claim, with interest as set forth below, with the balance treated as a non-priority unsecured claim.

<u>Creditor</u>	<u>Description of Lien or Interest</u>	<u>Amount of Lien or Interest</u>	<u>Property</u>	<u>Value of property</u>	<u>Value of claimed exemptions</u>	<u>Total amount of all other liens or interests</u>	<u>Amount of Lien or Interest to be avoided</u>

The Lien or Interest will be avoided on confirmation as set forth above. If the creditor timely objects, the confirmation hearing will include a lien avoidance hearing under § 522(f). **Lien avoidance requires service in accordance with Rule 7004.**

**Part 9: Treatment of Non-priority, Unsecured Claims**

The minimum amount the Debtor must pay to all classes of allowed non-priority unsecured claims is \_\_\_\_\_ or  100% plus interest at the rate of \_\_\_\_\_ percent per annum. See **Exhibit 1** (Best Interest of Creditors Test Calculation) attached to this Plan.

**Part 10: Vesting of Estate Property**

Check one:

- Property of the estate, other than § 1306 property, will vest in the Debtor on Plan confirmation.
- Property of the estate will vest in Debtor upon the entry of discharge, or upon dismissal or closing of the case without discharge.

If the case is converted to another chapter, property of the estate will vest in accordance with applicable law.

**Part 11: Order of Distribution**

Upon confirmation, the Trustee will make distributions from Plan Payments to pay the Trustee's fees and allowed claims in the following order of priority:

- a. First, Trustee's fees at in the percentage fixed by the U.S. trustee;
- b. Second, post-petition monthly mortgage payments on claims secured by real property;
- c. Third, administrative expenses, including attorney's fees;

- d. Fourth, other secured claims, arrearages owing under mortgages and/or assumed contracts and leases;
- e. Fifth, priority unsecured claims, other than government DSO claims being paid less than 100%;
- f. Sixth, government DSO claims being paid less than 100%; and
- g. Seventh, non-priority unsecured claims.

Starting with category c., Trustee will pay claims in full before making any payment on claims in the next category. Distributions will be paid *pro rata* within each category and will be sent to the creditor's payment address of record. Trustee will make distributions only to the extent of available funds, may exercise reasonable discretion in determining the timing and amount of distributions, and is not required to make distributions to any creditor less than the minimum specified in Rule 3010(b).

**Part 12: Identification of Amendment(s) and Explanation for Amendment(s)**

If this is an amended Plan, the amended Plan provisions and the reason for the amendment(s) are as follows:

<b><u>Plan Provision</u></b>	<b><u>Amendment</u></b>	<b><u>Reason for Amendment</u></b>

**Part 13: Other Standard Provisions**

**13.1 Pre-petition Arrearage Claims.** Debtor must list all pre-petition arrearages for all claims paid pursuant to § 1322(b)(5). If the claim is not scheduled or treated in the Plan, whether the continuing payments are paid by the Debtor or the Trustee, the Trustee is authorized to pay the allowed, pre-petition claim in full. Interest will not be paid unless stated in the Plan or ordered by the Court.

**13.2 Post-petition Claims.** Trustee will pay administrative expenses for post-petition taxes per § 1305 upon the filing of the claim. Any additional fees, charges, and expenses noticed under Rule 3002.1(c) will be treated as a secured claim and paid by the Trustee upon the filing of the notice of additional fees, charges and expenses under Rule 3002.1(c). Trustee will pay other administrative expense claims only after Court approval. Debtor will increase Plan Payments as necessary to fund any required payments, plus Trustee's fees. Other post-petition claims will not be paid unless a Plan modification is filed and approved.

**13.3 Lien Retention.** Unless provided otherwise in the Plan, secured creditors will retain their liens until full payment of their claims secured by collateral as determined under applicable non-bankruptcy law.

**13.4 Adequate Protection Payments.** Trustee may make pre-confirmation adequate protection payments to secured creditors if the creditor or Debtor files a certification that, (1) the Plan provides for adequate protection payments; (2) the debt and collateral are

listed on Schedule D; and (3) the creditor has timely filed a secured proof of claim that includes all required documentation. Unless the Court orders otherwise, the payments will be 1% of the claims that will be paid in full, or 1% of the value of the collateral for bifurcated claims. Trustee will not be required to make adequate protection payments on claims of less than \$2,000. Trustee will calculate the adequate protection payments using reasonable discretion. Trustee will make monthly adequate protection payments until confirmation. Thereafter, Trustee will use reasonable discretion to disburse the remaining balance of the allowed claim in accordance with Part 11. If the Plan Payments are insufficient to pay adequate protection, Trustee will make the payments pro rata. Trustee will apply adequate protection payments to the principal amount of the creditor's allowed secured claim.

**13.5 Debtor Refunds.** Upon written request of the Debtor, the Trustee is authorized to refund to the Debtor, without Court approval, any erroneous overpayment of regular monthly payments received during the term of the Plan that have not been previously disbursed.

**13.6 Debt Secured by Principal Residence.** A creditor may mail Debtor all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any change to the monthly payment or interest rate without violating the automatic stay. Creditor must also comply with Rule 3002.1.

**13.7 Separate Lien Avoidance Orders.** If this Plan includes a motion to avoid a nonpossessory, nonpurchase money security interest or judicial lien, Debtor may submit separate orders avoiding such liens together with the confirmation order. If this Plan includes a motion to strip a wholly unsecured mortgage upon discharge or avoid a lien upon discharge, Debtor may submit a separate order after discharge.

**13.8 Claims Objections.** The deadline to object to a timely filed proof of claim is 60 days after the applicable claims bar date unless extended by further order of the court.

**Part 14: Nonstandard Provisions**

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The Plan includes the following nonstandard provision(s) \_\_\_\_\_ To the extent a nonstandard provision conflicts with any other Plan provision, the nonstandard provision controls. **The nonstandard provisions will be effective only if the "included" box is marked in Part 1.3. Any nonstandard provision placed elsewhere in the Plan is void.**

**By signing this Plan below, the attorney or self-represented Debtor certifies that this Plan contains no nonstandard provision other than those set out in this Part 14.**

**Part 15: Signatures**

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\_\_\_\_\_ Date



\_\_\_\_\_  
Signature of Debtor's Attorney

Name of Debtor's Attorney:

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_ Date

\_\_\_\_\_  
Signature of Debtor

**Exhibit 1**

**BEST INTEREST OF CREDITORS TEST ("BICT") CALCULATION**

	<b>Asset</b>	<b>Value</b>	<b>Costs of Sale (COS)</b>	<b>Exemption</b>	<b>Secured Debt</b>	<b>Net Non-Exempt Value of Asset (Value less COS less Exemption less Secured Debt)</b>
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
<b>Total Net Value of Non-Exempt Assets:</b>						
Less (25% of first \$5,000):						
§ 326(a) calculation } Less (10% of next \$45,000):						
Less (5% of next \$950,000):						
Less (3% of amount over \$1MM):						
Less Chapter 7 Administrative Expenses as explained below:						
<b>Amount to be paid to satisfy BICT:</b>						

Explanation of other Chapter 7 Administrative Expenses:

**3017-1 Notice of Confirmation Hearing in Chapter 11 Small Business Cases.** The debtor in a chapter 11 small business case shall, within three business days after filing the plan and disclosure statement, contact the courtroom deputy for the assigned judge to request a confirmation hearing. The debtor shall serve the notice and order prepared by the courtroom deputy within three business days of receipt.

**3020-1 Chapter 11 Confirmation Hearing.** Unless the court orders otherwise, in a chapter 11 case when the plan has been accepted by the requisite majorities and no objection to confirmation has been filed, the plan proponent may establish that the plan meets the applicable requirements of Code § 1129(a) by oral offer of proof, provided that any witness whose testimony is being proffered is present.

**3021-1 Pre-Confirmation Adequate Protection Payments in a Chapter 13 Case.**

**(a) Trustee to Function as Conduit.** Adequate protection payments pursuant to Code § 1326(a)(1)(C) are deemed a component of the plan payments to the trustee. The trustee will function as a conduit to a creditor for any adequate protection payments set forth in the plan.

**(b) Payments by the Trustee.** If provided in a proposed chapter 13 plan, the trustee may disburse pre-confirmation payments under Code § 1326(a)(1)(C) without a separate court order. The payments may be made monthly from available funds until entry of a confirmation order. Unless the court orders otherwise, the payment amounts will be calculated as set forth in the proposed chapter 13 plan. The trustee will be paid the applicable percentage fee established by the United States trustee for all such payments.

**PART IV. DEBTOR DUTIES AND BENEFITS**

**4001-1 Continuation or Imposition of Automatic Stay.**

**(a) Contents of Motion.** Motions filed pursuant to Code §§ 362(c)(3)(B), (c)(4)(B), (h)(2), or (n)(2) shall include: 1) the prior case number(s) and filing court(s); 2) the dates and circumstances under which each prior case was dismissed; 3) whether a stay relief motion had been granted or was pending in a prior case at the time of dismissal; 4) the identity and mailing address of any attorney or pro se creditor who had appeared or filed a stay motion in a prior case; 5) whether any presumption of lack of good faith arises in the current case pursuant to Code § 362(c)(3)(C) or (4)(D) and, if so, the facts movant relies on to rebut the presumption; and 6) whether the debtor seeks to stay one or all creditors.

**(b) Deadline to File Motion.** A motion to continue or impose the stay shall be filed within seven days of the petition date. Untimely motions may be denied after a hearing or *sua sponte*.

**(c) Requirement to Obtain Hearing and Objection Deadline.** Before filing a motion to continue or impose the stay, movant shall contact the courtroom deputy for the assigned judge to request a hearing and an objection deadline. Unless the court orders otherwise, the deadline to object shall be ten days from the date the motion and notice are served. The notice shall state that if no objections are timely filed, the court may grant the relief requested without further notice. Movant shall immediately serve the motion and notice.

**4001-2 Declaration of Existence or Termination of Automatic Stay.** Motions filed pursuant to Code §§ 362(c)(4)(A)(ii) or 362(j) shall set forth jurisdiction(s), case number(s), and dismissal date(s) of the prior case(s). If the prior case was in another district, the movant shall attach copies of the relevant court papers from the prior case.

The movant shall file and serve the motion and a notice of the objection deadline on the debtor and the trustee, if any. The objection deadline shall be ten days from the date of service of the notice. In a chapter 11 case, the motion and notice shall also be served on any creditors' committee or, if no committee has been appointed, on the creditors holding the 20 largest unsecured claims. If the movant seeks a declaration with respect to an act against property, the motion and notice shall also be served on all entities that claim an interest in the property, including all co-owners, lienholders, and taxing authorities.

**4001-3 Cash Collateral.** In addition to the requirements of BR 4001, unless the court orders otherwise, a motion to authorize use of cash collateral shall set forth 1) the existence and nature of any insider relationship between the debtor and the creditor(s) claiming an interest in cash collateral; 2) the nature and source of the cash collateral; 3) a cash flow projection for the period for which authorization is sought that includes projected revenue and a proposed line-item expense budget; 4) the estimated amounts the debtor owed the cash collateral claimant(s) on the petition date; and 5) a description of the collateral pledged to cash collateral claimant(s), the estimated value thereof, and the basis for the valuation.

**4002-1 Trustee Information Requests.** Within 14 days after service of a written request for information by a trustee pursuant to Code § 521(a)(3) or (a)(4), a debtor shall provide the requested information or file a written objection stating the grounds therefor, attaching a copy of the request. If the debtor objects, the debtor shall contact the courtroom deputy for the assigned judge to request a hearing, and then shall promptly give notice thereof to the trustee.

**4002-2 Documents to be Provided to the Chapter 12 or 13 Trustee.** In addition to documents required by BR 4002(b)(3), in a case under chapter 12 or 13 the debtor shall, at least seven days before the first date set for the meeting of creditors, provide the trustee with the following documents, or else provide a written statement that the documents do not exist or are not in the debtor's possession or control: 1) documentation of debtor's current income, including income from employment, the operation of a business, disability and/or social security benefits, and any other sources; 2) a copy of the debtor's state income tax return for the most recent tax year ending before the petition date, with all schedules, attachments, and forms 1099, W-2, and K1; 3) if the case is filed before the debtor files a tax return for the immediate past calendar year, copies of all forms 1099, W-2, and K1 received by the debtor for the past tax year; and 4) proof of any insurance coverage on the estate's interest in mobile homes, vehicles, and improvements to real property.

**4002-4 Address of Debtor.** When a debtor's mailing or street address changes during the pendency of a case under any chapter, the debtor shall file the statement required by BR 4002(a)(5) within 14 days of the date of the change.

#### **4003-1 Exemptions.**

**(a) Claim of Exemption; Schedules.** A debtor asserting a claim of exemption in personal property shall list the property in Schedule C, using the numbered categories and descriptions for that property set forth in Schedule A/B. If the individual and aggregate value of property included in items 6 through 13, and 50 in Schedule A/B does not exceed the value of such property claimed as exempt, then, unless the court

orders otherwise, it shall be sufficient to describe such property in Schedules A/B and C generically by such categories and to set forth in Schedule C by category the total value of the claimed exempt property.

**(b) Value of Property.** The value of a claimed exemption shall be stated in dollar amounts on Schedule C. If the value of a claimed exemption is unknown or uncertain, the amount of the claimed exemption shall be stated as no more than the dollar amount of the maximum allowable exemption.

**(c) Allowed Exemptions.** Other than for property that may be exempted in an unlimited amount, an allowed exemption shall be limited to the dollar amount set forth on Schedule C as the value of the claimed exemption, notwithstanding any determination that the property has a greater value than the amount or value claimed as exempt.

**(d) Future Proceeds.** A claim of exemption of future proceeds of an unliquidated claim or cause of action shall include a description of the claim or cause of action.

**(e) Amendment.** In addition to complying with the requirements of NM LBR 1009-1, the debtor shall give notice of any amendment to Schedule C to all creditors and other parties in interest on the day of filing the amended schedule. The notice shall include the deadline to object to the amendment provided for in BR 4003(b). *Note: Form NM LF 4003-1(e) was created by the clerk for compliance with this rule and with NM LBR 1009-1(b).*

**4004-1 Debtor Certification in Support of Chapter 13 Discharge.** As soon as practicable after completion of chapter 13 plan payments, the debtor shall file a certificate containing the information required by Code § 1302(d)(1)(C)(ii) and (iii) and Code §§ 1328(a) and (h). *Note: Form NM LF 4004-1 was created by the clerk for compliance with this rule.*

**4008-1 Reaffirmation - Form and Content of Agreement.** Reaffirmation agreements must follow Form 2400A/B ALT, Reaffirmation Documents, as revised from time to time. The Reaffirmation Agreement Cover Sheet, Official Form 427, is also required. All applicable parts of the reaffirmation agreement and cover sheet must be completed, and if the reaffirmation agreement concerns a secured debt, the security agreement must be attached. The court may disapprove any agreement that does not comply with this rule.

## **PART V. COURT; CLERK'S OFFICE**

### **5003-1 Clerk - Maintenance of Files; New Procedures and Forms; Official Record.**

**(a) Maintenance of Files.** The clerk of the bankruptcy court shall maintain the files of all bankruptcy cases and proceedings, whether assigned to a district judge or bankruptcy judge, except upon withdrawal of the reference.

**(b) Information from the Clerk.** The clerk may from time to time publish ministerial procedures, forms, and similar information, which will not be subject to the public notice and comment requirements for adoption of local rules.

(c) **Official Record.** The official document of record is the electronic document stored in the court's database.

**5005-1 Filer's Duty to Review Scanned Image.** The filer of a paper document shall review the scanned image of the document within 14 days after filing. If no corrections to the scanned image are requested by the filer within the 14-day period, the image will stand as stored in the court's database. Filed paper documents are not retained.

**5005-2 Electronic Filing.**

(a) **Electronic Filing Policies and Procedures.** The clerk shall prepare and publish policies and procedures for electronic filing, which the clerk may amend from time to time. These policies and procedures, which are exempt from the public notice and comment requirements for adoption of local rules, shall have the force of local rules. A link to the policies and procedures will be available on the court's web page.

(b) **After Hours Electronic Filing.** Unless otherwise ordered, any paper filed electronically must be filed before midnight local time to be considered timely filed that day.

(c) **Signatures.** Any paper physically signed and filed electronically, or filed in paper form and thereafter converted to an electronic document by the clerk, has the same force and effect as an original. Verified or certified papers filed electronically shall be treated for all purposes (both civil and criminal, including penalties for perjury) as if they had been physically signed and/or subscribed. An attorney shall not file a paper requiring a person's signature without obtaining the person's signature before filing.

(d) **Security of Electronic Filing Account.** Each attorney, law firm, trustee, or other person that obtains a password for electronic filing is responsible for the account security and use. No attorney, law firm, trustee, or other person may knowingly permit or cause to permit an electronic filer's password to be used by anyone other than an authorized member, employee, or agent of the electronic filer's firm.

**5005-3 Pro Se Filing.** Except for proofs of claim and petitions filed using court-approved electronic filing procedures, all papers filed by unrepresented parties must be submitted to the clerk in paper unless the court, for good cause, authorizes an unrepresented party to submit papers for filing by alternate means.

**5011-1 Withdrawal of Reference.** A motion to withdraw the reference shall be filed in this court. Once a district court judge has been assigned, any subsequent papers relating to the motion shall be filed in this court and the district court.

**5011-2 Abstention. A motion to abstain shall be deemed timely filed as follows:**

(a) **Bankruptcy Case.** In a bankruptcy case, if filed within 30 days after the conclusion of the meeting of creditors.

(b) **Adversary Proceeding.** In an adversary proceeding, if filed by the deadline to respond under BR 7012 or, if the proceeding was removed to the bankruptcy court, within 21 days after the notice of removal was filed. If the motion to abstain is denied, the deadline to file an answer or other responsive pleading shall be extended until 14 days after entry of the denial order.

(c) **Contested Matter.** In a contested matter, if filed by the objection deadline for the contested matter. If the motion to abstain is denied, the deadline to object shall be extended until 14 days after the entry of the denial order.

**5073-1 Cell Phones, Cameras, and Recording Devices.** D.N.M.R.-Civ. 83.1 applies to the United States Bankruptcy Court for the District of New Mexico.

**5077-1 Transcripts of Proceedings.** A transcript of a court proceeding shall include the name of the entity who ordered the transcript.

## **PART VI. COLLECTION AND LIQUIDATION OF THE ESTATE**

**6004-1 Notice of Proposed Use, Sale, or Lease of Property.** The moving party shall prepare and serve the notices required by BR 6004, unless the Court orders otherwise.

**6006-1 Motions to Assume or Reject Contracts and Leases.** In addition to the persons entitled to notice under the Bankruptcy Code and Rules, notice of all motions related to executory contracts or unexpired leases shall be served on entities entitled to notice under the terms of the subject contracts or leases, and on all parties to such contracts or leases.

**6007-1 Abandonment Coupled with Stay Relief.** In an individual Chapter 7 or 13 case, a creditor seeking relief from the automatic stay with respect to an debtor's principal residence or personal vehicle may simultaneously request abandonment of that asset from the estate.

## **PART VII. ADVERSARY PROCEEDINGS/CONTESTED MATTERS**

**7007-1 Motion Practice in Adversary Proceedings (Except Summary Judgment Motions).** All motions filed in adversary proceedings shall be served on opposing parties. Responses shall be due within 21 days after service. Optional replies shall be due within 14 days after service of the response. Briefs are optional unless otherwise ordered by the court. The court may grant the requested relief by default if no response is timely filed. The movant may obtain a hearing on a motion by contacting the courtroom deputy for the assigned judge. Hearings may either be preliminary or final, in the Court's discretion, but shall be so described in the notice of hearing. This rule does not apply to motions for summary judgment (See NM LBR 7056).

**7007-2 Sur-replies. Sur-replies require leave of the Court.** This rule applies to all motions governed by NM LBR 7007-1, NM LBR 7056-1, NM LBR 9013-1, and NM LBR 9013-2.

### **7016-1 Pretrial Matters.**

(a) **Implied Consent.** A party's failure to comply with BR 7008, BR 7012, or BR 9027 (requiring each party to state whether the party does or does not consent to the bankruptcy court entering final orders or judgment) constitutes implied consent.

(b) **Pretrial Orders in Adversary Proceedings.** Pretrial orders shall substantially conform to the form promulgated by the judge assigned to the adversary proceeding, unless the Court orders otherwise. Any party who does not cooperate in preparing the joint pretrial order in a timely manner may be subject to sanctions,

including preclusion from calling witnesses or submitting exhibits at trial. The opposing party may file a motion seeking entry of a pretrial order in the form prepared by that party, setting forth the details of the other party's lack of cooperation.

#### **7026-1 Discovery in Adversary Proceedings and Contested Matters.**

**(a) Application of FRCP 26.** Unless the court orders otherwise, FRCP 26(a), 26(d)(1), and 26(f) shall not apply in contested matters or adversary proceedings.

**(b) Format.** The proponent of written discovery shall give the recipient a copy of the discovery requests in Word or WordPerfect format. Responses shall include a restatement of each interrogatory or request. Each interrogatory or request shall be numbered sequentially across sets, e.g., first set, numbered 1-5; second set, numbered 6-10; etc.

**(c) Filing Discovery Documents.** Discovery requests and responses shall not be filed in the bankruptcy case or an adversary proceeding except in connection with a motion to compel, for a protective order, or for discovery sanctions. Certificates of service of discovery requests and responses, and of deposition notices, shall be filed within a reasonable time after service.

#### **7030-1 Depositions in Adversary Proceedings and Contested Matters.**

**(a) Notices of Deposition.** Counsel shall confer about the scheduling of depositions before serving deposition notices. Unless otherwise agreed by the parties or ordered by the court, notices of deposition shall be served at least ten days before the scheduled deposition.

**(b) Non-appearance.** Failure of a deponent to appear at the time and place designated may result in sanctions pursuant to BR 7037 or 9016, unless a motion for protective order and a notice of non-appearance are served at least three days before the scheduled deposition. Frivolous motions or motions filed for dilatory purposes may also result in sanctions.

**(c) Deposition Fees.** A court reporter must certify in a deposition transcript the reporter's fees for the deposition.

**(d) Depositions Not Filed.** Unless the court orders otherwise, deposition transcripts and certificates of completion of depositions shall not be filed.

#### **7054-1 Taxing Costs in Adversary Proceedings and Contested Matters.**

**(a) Motion to Tax Costs; Bill of Costs.** Within 14 days after entry of a final judgment or order, a party may file and serve upon all adverse parties a motion to tax costs. The motion shall include a bill of costs verified pursuant to 28 U.S.C. § 1924 that itemizes the costs claimed under 28 U.S.C. § 1920. Copies of receipts, billings, and payments shall be attached to the bill of costs.

**(b) Objections.** Notice of a motion to tax costs shall give adverse parties 14 days to file and serve objections.

**(c) Taxation by Clerk.** Unless otherwise ordered, the clerk will tax costs without a hearing if no objections are timely filed. A request for court review of the clerk's action must be filed within 14 days after entry of the clerk's order taxing costs.



**(d) Allowable Costs.**

**(1) Transcripts.** The cost of an original trial or hearing transcript is taxable when authorized by the court before transcription. The reporter's charge for the original or a copy of a deposition transcript is taxable when the transcript was reasonably necessary to the litigation, as determined by the court.

**(2) Fact and Expert Witness Costs.** Witness fees, mileage, and subsistence costs are taxable if the witness testified at trial, or at a deposition found reasonably necessary to the litigation. The request to tax witness costs shall separate fees, mileage, and subsistence costs. A testifying party may not receive witness fees, mileage, or subsistence costs, so no such expenses can be taxed. An expert witness fee is not taxable unless the court appointed the expert and approved the fee. Witness fees, mileage, and subsistence costs for an expert witness not appointed by the court are taxable the same as, and subject to the same restrictions as, lay witnesses fees, mileage, and subsistence costs.

**(3) Interpreter and Translator Fees.** An interpreter's fee is taxable if the interpreted witness's costs are taxable. A translator's fee is taxable if the translated documents were admitted into evidence.

**(4) Document Copies.** The cost of copying exhibits is taxable when the exhibits are requested by the court or admitted into evidence. The cost of copying 8" x 10" or smaller photographs is taxable if the photographs are admitted into evidence. The following costs are not taxable unless the court orders otherwise: the cost of copying photographs larger than 8" x 10"; the cost of charts or models; and the cost of compiling summaries, computations, or statistical comparisons.

**(5) Jury Costs.** All jury costs, mileage, and allowances for subsistence are taxed equally to all parties when a jury trial is settled or otherwise disposed of in advance of trial or during trial but prior to verdict. No assessment will be made if the clerk is notified of the settlement before noon on the business day before the action is set for trial or if good cause is shown.

**7056-1 Summary Judgment.**

**(a) Summary Judgment Motion.** A summary judgment motion and/or supporting memoranda shall contain a concise supporting legal argument, with citations to legal authority as necessary, together with a concise statement of all material facts movant contends are not in genuine dispute. The facts shall be numbered and shall refer with particularity to the portions of the record relied upon. The court may summarily deny any motion that does not comply with this rule.

**(b) Response.** A response to the motion shall contain a concise statement of the material facts the respondent contends are in genuine dispute. Each such fact shall be numbered, shall refer with particularity to the portions of the record relied upon, and shall state the number of the movant's alleged fact that is disputed. All facts in movant's statement of facts that are properly supported shall be deemed admitted unless respondent specifically controverts them.

**(c) Response and Reply Deadlines.** The deadline to respond to a summary judgment motion is 21 days after service. The deadline for an optional reply in support of a motion for summary judgment is 14 days after service of the response.

**7067-1 Disbursement of Court Registry Funds.**

**(a) General.** The clerk shall not disburse funds deposited with the court without an order setting forth the name and address of each payee and the amount of principal and interest (if any) to which each payee is entitled, or a means for ascertaining the same.

**(b) Payment by the Clerk.** Funds generally will be disbursed about 14 days after the date of the court order unless otherwise ordered by the court. The clerk shall not disburse funds to a payee until a tax identification or social security number for the payee has been received.

**(c) Fees.** All funds deposited with the court and invested as registry funds will be assessed a charge of 10% of the interest income earned. Fees may be deducted periodically without further order and will not be subject to any subsequent exceptions or adjustments by directive of the Administrative Office of the United States Courts.

**PART IX. GENERAL; ATTORNEYS; MOTION PRACTICE IN CONTESTED MATTERS**

**9003-1 Ex Parte Contact.** Unless the court orders otherwise, a party shall not transmit to a judge any communication regarding relief sought. This rule does not preclude *ex parte* submission of orders for entry. A communication regarding relief sought directed to a judge or the clerk may be filed in the case or proceeding. The court is not required to take any action on the communication unless it has been filed of record and a party requests a hearing, moves to strike, or otherwise properly brings the matter before the court.

**9004-1 Contents of Notices.** If relief may be granted “after notice and hearing” as defined in Code § 102, and unless otherwise specifically provided in these rules, a notice shall contain the title of the motion or application, the date the motion or application was filed, and, unless a copy of the motion or application is served with the notice, an adequate summary of the relief requested. The notice shall state that if no objections are timely filed, the court may grant the relief requested without further notice or a hearing. The notice must be on a separate paper from the motion.

**9004-2 Case Number.** Every paper filed after the petition shall include the chapter number of the case, the case number, the initial of the assigned judge, and the initial of the location of the section 341 meeting of creditors, e.g., 7-10-12345-JA or 10-12345-ja7. This rule does not apply to papers generated by the court’s electronic filing program.

**9006-1 Continuance.** A motion to continue a hearing based solely on the agreement of the parties will not automatically be granted.

**9009-1 Required Use of Certain Procedural Forms.** All national or local procedural forms designated by the clerk as “required” must be used. The clerk will publish a list of the required forms, together with the forms themselves, on the court’s website “Forms” pages.

## **9010-1 Attorneys - Admission to Practice.**

**(a) Admission to Practice.** Except as provided below, admission to practice before this court is governed by the local rules of the United States District Court for the District of New Mexico.

**(b) Membership in Bar of this Court.** An attorney admitted to practice before the United States District Court for the District of New Mexico is a member of the bar of this court.

**(c) Admission *Pro Hac Vice*.** An attorney who is not a member of the bar of this court may not appear in this court unless admitted *pro hac vice*, except for the purpose of filing proofs of claim or requests for unclaimed funds, preparing reaffirmation agreements, or for participating in meetings of creditors. An attorney who is not a member of the bar of this court but who is a member in good standing of the bar of any state, of any territory of the United States, of the District of Columbia or of any federal court may file a motion to be admitted *pro hac vice*, which shall contain the statement that the attorney has read and is familiar with these rules.

**(d) Association With Member of the Bar Not Required.** Except as provided in section (e), an attorney who is not a member of the bar of this court is not required to associate with a member of the bar of this court, provided, however, that in any case or proceeding in which the court deems it necessary for the purpose of appearance, ready availability, familiarity with local procedures, or otherwise in the interest of expediting disposition of the case or proceeding, the court may require an attorney admitted *pro hac vice* to associate with a resident member of the bar of this court.

**(e) Association by Debtor's Counsel With a Resident Member of the Bar.** Unless the court orders otherwise, an attorney who is not a member of the bar of this court and who is representing a debtor in a bankruptcy case pending before the court must associate with a member of the bar of this court who resides in New Mexico. This rule does not apply to adversary proceedings. A nonmember attorney may commence a case without associated resident counsel only if, on the petition date, the attorney files a motion for admission *pro hac vice* that includes a request to appear without resident counsel, and promptly submits an order to the court granting the motion. The motion shall be served on the United States Trustee and the trustee, if any. The court may grant or deny the motion without further notice or hearing. This rule does not apply to adversary proceedings.

## **9010-2 Attorneys - Withdrawal and Substitution.**

**(a) Withdrawal and Substitution.** Unless withdrawal of an attorney is accompanied by a substitution of counsel filed of record that recites the client's consent, with mailing address, telephone number, and e-mail address, if any, of the substituted attorney, an attorney must file a motion seeking an order to withdraw in any case or adversary proceeding.

**(b) Motion to Withdraw With Client's Consent.** If the attorney has obtained the written consent of the client, the consent must be filed with the motion, and the attorney must submit a proposed order to the court showing the mailing address,

telephone number, and e-mail address, if any, of the self-represented individual. The court may grant the motion without notice. If the motion is granted, the withdrawing attorney must give prompt notice of the entry of the order to the client and to all other parties or their attorneys. An attorney representing a governmental unit is not required to obtain a client's signature to withdraw under this provision.

**(c) Withdrawal Without Client's Consent.** If the attorney has not obtained the written consent of the client, the motion to withdraw must show reasons therefor. The notice thereof must specify a 14-day objection deadline, which shall run from the date of service of the motion and notice, and be served on the client, any trustee, and such other parties as the court may direct. The motion to withdraw must be accompanied by a certificate of the moving attorney that either the client has been notified in writing of the status of the case or proceeding, including the dates and times of any scheduled court proceedings, pending compliance with any existing court orders, and, if applicable, the need to comply with NM LBR 9010-1; or else that the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case or proceeding.

**(d) Order of Withdrawal.** If no objections are timely filed, the attorney may submit an order permitting the attorney's withdrawal. If an objection is timely filed, the attorney shall contact the courtroom deputy for the assigned judge to request a hearing and give notice to the objecting party. The order authorizing the withdrawal of the attorney shall show the mailing address, telephone number, and e-mail address, if any, of the self-represented individual.

**(e) Death or Removal of an Attorney.** When an attorney dies or ceases to act as an attorney under circumstances not otherwise provided herein, the clerk shall notify a party represented by the attorney of the need to appear in person in any further matters or, if applicable, to comply with NM LBR 9010-1. If another attorney does not enter an appearance within 21 days from the date of service of the notice, then, if the debtor is an individual, the action shall proceed with the individual appearing pro se; otherwise, the action shall proceed but the non-individual party may not appear on its own behalf and shall be deemed unrepresented until a new attorney enters an appearance.

#### **9011-1 Contact Information; Signing Papers.**

**(a) Contact Information.** All attorneys and pro se parties shall ensure that all filed papers include their name, address, telephone number, and e-mail address below their signature line, and shall promptly notify the clerk, in writing, of any changes to this information.

**(b) Reproduced Signatures.** The court will treat a reproduced signature on any document filed with the court as an original signature.

#### **9013-1 Motion Practice in Contested Matters-General.**

**(a) Form of Motions.** The title of a motion shall describe the relief sought.

**(b) Opposed Motions.** Unless applicable statutes or rules require notice to some or all creditors or the court orders otherwise, a movant shall determine whether a motion will be opposed by the party(ies) affected. If the motion is opposed, it shall so

state. If the movant has not obtained concurrence or opposition from the affected party(ies), the motion shall recite the attempts made to do so. Movant shall not assume that the nature of the motion obviates the need to seek concurrence.

**(c) Unopposed Motions.** Except as otherwise provided in LBR 9013-2(c)(vi), an agreed order approved by all parties who would otherwise be entitled to notice of the motion may be submitted to the court without filing the motion unless the motion requires payment of a fee.

**(d) Notice of Deadline to Object.** For opposed motions and motions requiring notice to some or all creditors, the movant shall file and serve a notice of the motion that complies with NM LBR 9004-1. Unless otherwise provided by the Bankruptcy Rules or these rules or unless extended or shortened by order of the court, the objection deadline shall be 21 days from the date of service.

**(e) Procedure If No Party Objects.** If no objection is timely filed, the movant shall promptly submit to the court a proposed form of order, reciting the notice given, specifying the method of service in compliance with BR 7004 if applicable (including to whose attention the motion and notice were mailed and whether service was made by certified mail, if BR 7004(b)(3) or (h) applies), and reciting the date of expiration of the time to object, in lieu of the default procedure set forth in BR 7055.

**(f) Procedure if a Party Objects.** If an objection is timely filed, the movant shall contact the courtroom deputy for the assigned judge to request a hearing. The movant thereafter shall promptly file and serve notice of the hearing.

**(g) Alternative Procedure.** As an alternative to the procedures outlined above, the movant may obtain a preliminary hearing date and time on an opposed motion by contacting the courtroom deputy for the assigned judge, and serve notice of the motion and hearing. Under this alternative, no objection deadline is set; a party in interest may either file an objection before the hearing or appear at the hearing and object. With court permission, the movant may also obtain from the courtroom deputy a final hearing date and time, and serve notice of both hearings as directed by the court.

**(h) Motions Generally Set for Preliminary Hearing.** Motions will generally be set for preliminary hearing unless otherwise directed by the court. Except for hearings held pursuant to BR 4001(b)(2) or 4001(c)(2), testimony and exhibits ordinarily will not be received at preliminary hearings. Counsel shall confer prior to the preliminary hearing and be prepared to advise the court of the likelihood of settlement, the disputed and undisputed facts, their legal theories, anticipated discovery, witnesses, exhibits, and the estimated duration of a final hearing.

**(i) Briefs.** Unless the court orders otherwise, or as required for motions for summary judgment pursuant to NM LBR 7056-1, briefs or supporting points with citations or authorities need not be submitted with a motion.

**(j) Certificate of Service.** A certificate of service shall be filed for all motions and notices within a reasonable time after service. The certificate of service may be part of the motion or notice or a separate document.

#### **9013-2 Motion Practice in Contested Matters-Automatic Stay.**

**(a) Contents of Stay Relief Motion.** A motion for relief from the automatic stay shall be designated as such. A motion shall include: 1) a description of any collateral (including for real property both a street address and a legal description); 2) any interest claimed therein and the means of perfection; 3) if relevant, the estimated value and the basis therefor; 4) the amount of any claim, including principal, interest, attorney's fees, the *per diem* interest accrual, and any other amounts; 5) the amount of any other interests secured by such collateral, if known, and movant's belief as to lien priority; and 6) alleged grounds for stay relief.

**(b) Insurance.** If the movant alleges that its collateral is not properly insured, the motion shall describe the specific deficiencies so the debtor or trustee can remedy the problem. If the debtor or trustee does not obtain sufficient insurance or refute the allegation by the preliminary hearing, the court may modify the stay without further notice or hearing.

**(c) Stay Relief Motions in Chapter 7 and 13.**

(i) Opposed Motions. The movant shall attempt to ascertain before filing a stay relief motion whether it is opposed by either the debtor or the trustee. If the motion is opposed or the movant is unable to determine opposition, the motion shall so state.

(ii) Notice of Objection Deadline. The movant shall file and serve a notice that complies with NM LBR 9004-1. Unless altered by court order, the objection deadline shall be 21 days from service of the notice.

(iii) Procedure If No Objection. If no objections are timely filed, the movant shall promptly submit to the court a proposed form of order. Ordinarily, the form of order found on the court's General Chambers' Procedures web page should be used.

(iv) Procedure if an Objection if Filed. If an objection is timely filed, the movant shall contact the courtroom deputy for the assigned judge to request a hearing. The movant thereafter shall promptly file and serve notice of the hearing.

(v) Alternative Procedure. If the motion is opposed, as an alternative procedure the movant may obtain a preliminary hearing on the motion by contacting the courtroom deputy for the assigned judge, and may serve notice of the motion and the hearing. No objection deadline would be set, so a party could either file an objection before the hearing or appear at the hearing and object.

(vi) Stipulated Stay Relief. If the debtor, trustee, and movant agree, the court may enter a stipulated order granting relief from the stay, submitted without a motion.

(vii) Automatic Termination Period. The termination provisions of Code § 362(e) shall not commence until notice of the preliminary hearing has been served, or notice of the final hearing has been served (if the final hearing is not preceded by a preliminary hearing), so long as the movant is given the opportunity for a preliminary or final hearing to be held within thirty days after service of the notice or within such other time fixed by the court in accordance with Code § 362(e).

(viii) Stopping Chapter 13 Plan Payments to Secured Creditors after Stay Relief. Unless the court orders otherwise, once a stay relief order becomes final and unconditionally permits a creditor to proceed with foreclosure or repossess its collateral, the chapter 13 trustee shall stop making payments on the creditor's secured claim. If the chapter 13 trustee receives notice of the order fewer than seven days before a monthly plan distribution, the chapter 13 trustee may make that scheduled payment to the secured creditor and thereafter cease payment.

**(d) Stay Relief Motions in Chapter 11.** The procedures in Chapter 11 cases shall be the same as set forth above, except as follows:

(i) Opposed Motions. Before filing a stay relief motion, the movant shall contact the courtroom deputy for the assigned judge to request a preliminary hearing or, with court permission, a final hearing in lieu of, or in addition to, the preliminary hearing. The movant shall file and serve notice of the motion, the deadline to object (normally 21 days, unless the court orders otherwise), and the hearing(s).

(ii) Agreed Stay Relief or Adequate Protection. Unless the court directs otherwise, the movant shall file and serve notice of a motion to approve an agreement under BR 4001(d) on any party holding or claiming an interest in the subject property; the United States trustee; counsel who have entered an appearance in the case; and the parties listed in BR 4001(d)(1)(C).

**9015-1 Jury Trial.** If a party demands a jury the court shall, pursuant to BR 9015(b), set a deadline to consent to the court conducting a jury trial. If all parties do not timely consent, the court will preside over pretrial matters only. When the proceeding is ready for trial the court will so certify to the district court, and will submit a proposed order withdrawing the reference.

**9019-1 Settlements and Agreed Orders.** Unless the court determines otherwise, a hearing will not be vacated due to settlement unless an order resolving the matter or vacating the hearing is submitted before the hearing and the judge's office is notified by telephone. Otherwise, counsel shall appear at the hearing to apprise the court of the settlement.

**9021-1 Judgments and Orders.** A judgment or order shall identify the motion or application upon which it is based and shall set out the relief granted. A party directed to prepare a judgment or order shall submit a proposed form promptly and shall sign it to certify the facts recited therein. Unless otherwise ordered, the form of a judgment or order shall be approved by all parties appearing in the matter, and shall list the names, addresses, telephone numbers, and e-mail addresses, if known, of all attorneys and others entitled to notice of entry thereof.

**9036-1 Service and Notice by Electronic Transmission.** Notice of entry of orders and judgments and service of certain papers by the clerk shall be by electronic transmission in accordance with guidelines established by the court. Pursuant to FRCP 5(b)(3), the court authorizes registered electronic filers to use its case management and electronic filing system to make service under FRCP 5(b)(2)(E).

**9070-1 Exhibits.** Unless the court orders otherwise, the court will retain an official set of exhibits submitted at a trial or final hearing for 30 days after the final disposition of each matter for which exhibits have been submitted. The parties have 30 days after the final disposition of each matter to retrieve the exhibits submitted on that matter. Exhibits not retrieved within that period may be destroyed.