

# LIST OF POSSIBLE RULE IDEAS

Local Rules Revision Committee

November 12, 2004

## **PART I**

<b><u>Uniform Local Rule Number</u></b>	<b><u>Topic and Source</u></b> *	<b><u>Current Local Rule Number or GPO</u></b>
1007-1	DEBTOR'S CORPORATE OWNERSHIP STATEMENT  MIG: Make corporate ownership statements applicable to all entities (see 11 U.S.C. § 101(9))	LBR 107
1009-1	AMENDMENTS TO PETITIONS, SCHEDULES, STATEMENTS	LBR 109
1015-2	RELATED CASES  G11: There should be further definition in a rule with respect to related (but not consolidated) cases.	
1017-1	DISMISSAL OR CONVERSION OF CASE  G7: LBR 117 should incorporate the same or similar requirements of the proposed Chapter 13 rule revisions for what must be provided by the 341 meeting to the Chapter 13 Trustee (tax returns and pay stubs) and to the Chapter 7 trustee  Consider the effect of this concept in light of the new proposed uniform rule no. 4002 regarding Debtor's duties to provide information.	Proposed LBR 117

\* Includes reference to Local Rules Revision Committee Working Group that made the suggestion:

MIG	=	Miscellaneous Issue Group
G7	=	Chapter 7 Group
AMG	=	Adversary/Motions Practice Group
G11	=	Chapter 11 Group
CS	=	Court Staff

## **PART II**

### **Uniform Local Rule Number**

### **Topic and Source**

### **Current Local Rule Number or GPO**

2002-1

NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

LBR 202

MIG: Make clear that where a rule or the Code does not require the entry of an order after notice and no response, i.e. 362(e) and 4001, that the submission of an order is optional, and if no order is submitted, no order will enter.

None

MIG: Procedures to shorten notice

AMG: Guidelines for notice of application to employ professionals (see also Fed. R. Bankr. P. 2014)

AMG: Guidelines for parties and addresses for sending notice (i.e. taxing authorities, U.S. Attorney General)

AMG: Establish procedures for incorporation by reference of official service list in mailing certificates

G11: The Court should consider a LBR permitting the noticing of certain matters (such as cash collateral, financing) on a fixed docket date - like we do with relief from stay hearings. This would provide the Court and parties some certainty of docket days that would be available for preliminary hearings on items needing expedited treatment (could be in 9014 or somewhere else in 9000 series rules)

AMG: Expansion of information contained in certificates of contested matters to address hearing matters such as discovery needs and trial time

LBR 202(d)

AMG: Guidelines for service on the U.S. Trustee (see also Fed. R. Bankr. P. 7004(b)(5))

G7: Revise LBR202 to incorporate Rule 2002(h) (allowing the Court to direct notice) by directing that the later of 90 days following the 341 or after the deadline for general creditors to file proofs of claim, the notices required by 2002(a) shall be mailed only to the debtor, trustee, indenture trustees, creditors that have filed proofs of claim and creditors still permitted to file proofs of claim under 3002(c)(1) or (c)(2). See GPO 1996-3 regarding limitation of notice to claimants of record (instead of all creditors) after the claims bar date has passed.

2003-1

#### MEETING OF CREDITORS & EQUITY SECURITY HOLDERS

LBR 203

G7: Provide some type of expedient dismissal process for failure to appear at a 11 U.S.C. § 341 meeting and any continuance. At least one other jurisdiction has such a provision under a rule for dismissal for want of prosecution where the trustee can notify the court for debtor's failure to appear resulting in the dismissal of the case with a 180-day prohibition of filing another bankruptcy case (the same rule has a provision that if a case dismissed under that rule is reinstated, the court may impose such sanctions as it deems just and reasonable). Review the standing order on dismissal or denial for failure to prosecute, for grounds that might be included in the rules (not just for failure to attend 341) and consider whether to include in the 341 notice that goes out such that there would be notice of the potential dismissal or denial

2014-1

#### EMPLOYMENT OF PROFESSIONAL PERSONS

AMG: Guidelines for notice of application to employ professionals, i.e. retainers, potential conflicts (see also Fed. R. Bankr. P. 2002)

2016-1

## COMPENSATION OF PROFESSIONALS

LBR 216

G7: LBR 216 should address fee disclosure and supplemental disclosure. Consideration should be given to developing a new form for Fed. R. Bankr. P. 2016(b) on supplemental disclosures. This may be particularly useful for Chapter 7 counsel who have a "new agreement" for fees post-petition (allowing them to take a small fee up front for initial petition work and then enter into a new post-petition, non-dischargeable agreement for additional fees to handle 11 U.S.C. § 341 meeting, remainder of case preparation, etc.). LBR 216 should consider cross-referencing the reaffirmation rule for those attorneys who only have one fee agreement and are not paid all of those fees before Chapter 7 is filed.

G11: There should be a LBR on compensation of professionals that permits a foundation of what payment arrangements are permissible. For example, counsel may seek compensation every 120 days and may obtain 75% in fees with a 25% holdback and 100% expenses on an interim basis for ongoing services with final compensation and expenses fully reviewable on final application. A new rule would also set forth essential elements of what is required for approval of the retainer and noticing requirements thereof

MIG: In Chapter 13 cases, establish a presumptive fee amount for post-confirmation services with a streamlined application and approval process. The current \$1800 is paid at time of plan confirmation and so debtor representation on post-confirmation matters often requires an additional retainer before services are performed. Since chapter 13 debtors are supposed to be paying all of their disposable income to the Trustee to fund the plan, such a post-confirmation fee process would allow attorneys a source of payment from the plan and allow debtors to be represented.

None

2081-1

NEW

New LBR would incorporate provisions of GPO 2002-6 regarding expedited hearings in Chapter 11 cases, plus any new concepts/ideas developed in LBR revision process.

### **PART III**

<b><u>Uniform Local Rule Number</u></b>	<b><u>Topic and Source</u></b>	<b><u>Current Local Rule Number or GPO</u></b>
3007-1	CLAIMS – OBJECTIONS  MIG: LBR to foster uniformity regarding notice/service requirements for objections to claims	LBR 307
3016-2	DISCLOSURE STATEMENT - GENERAL  G11: There should be a LBR on what items should be contained in a Disclosure Statement. That is, a non-exclusive listing of items that are required in a Disclosure Statement so as to provide information of a kind, and in sufficient detail that would enable a hypothetical reasonable investor to make an informed judgment about the Plan. (could also be referenced in rule 3017-2 and/or 3017-2) (See also 11 U.S.C. § 1125)	
3017-2	DISCLOSURE STATEMENT – SMALL BUSINESS CASES  MIG: Establish small business election rules and forms (or draft disclosure statement language incorporated into rule)	None
3018-1	BALLOTS – VOTING ON PLANS  G11: There should be a LBR regarding the form of ballot report. Again, this would be a non-exclusive list of items needed on the ballot report	

## **PART IV**

### **Uniform Local Rule Number**

### **Topic and Source**

### **Current Local Rule Number or GPO**

4001-1

CASH COLLATERAL

G11: There should be a LBR on procedures and timing of interim and final hearings on cash collateral and financing (See ULRN 4001-2)

4001-2

OBTAINING CREDIT

G11: There should be a LBR on the procedures and timing of interim and final hearings on cash collateral and financing (See ULRN 4001-1)

4008-1

REAFFIRMATION

LBR 408

G7: Refine the reaffirmation agreement hearing rule. Hearings are being set on the agreements, not just "motions". Consider provision that if reaffirmation agreement involves attorneys' fees for bankruptcy counsel for the debtors that the debtors will be assumed to be proceeding pro se and a hearing will be set

## **PART V**

### **Uniform Local Rule Number**

### **Topic and Source**

### **Current Local Rule Number or GPO**

5009-1

FINAL REPORT/DECREE

None

G7: There is some concern about the undisclosed deadlines in the Memorandum of Understanding and that perhaps they should be disclosed somehow in the rules. For example, within 125 days after the entry of the order allowing compensations and expenses, the case trustee shall submit to the UST a Final Account etc., under Fed. R. Bankr. P. 5009; the UST shall review within 60 days of receipt all Final Reports and at or before the end of 60 days if the case trustee does not agree that it is deficient, the UST shall file it with the court, indicating the areas of objection to the Final Report; NDRs shall be filed within 60 days of the 11 U.S.C. § 341 meeting, UST has 30 days from filing of NDR to object; in Chapter 11, the UST has 30 days from the filing of the Final Report to object.

MIG: Incorporate into LBR the provisions of GPOs 2002-2 and 2002-4 regarding the automatic rejection by the Clerk of certain deficient petitions tendered for filing. Consider continued necessity of rule.

LBR 505



## **PART VI**

### **Uniform Local Rule Number**

### **Topic and Source**

### **Current Local Rule Number or GPO**

6004-1

SALE OF ESTATE PROPERTY

LBR 604

G7: LBR 604 may need to be modified or eliminated, it says that the notice will be incorporated into the Notice of Meeting of Creditors and it isn't there. The rest of the rule seems to restate the Fed. R. Bankr. P. 6004.

G11: There should be a LBR on sales outside the ordinary course under Section 363 and what type of notice is required to whom

6006-1

EXECUTORY CONTRACTS

G11: There should be a LBR on Executory Contracts and guidelines for noticing thereof

## **PART VII**

### **Uniform Local Rule Number**

### **Topic and Source**

### **Current Local Rule Number or GPO**

7001-1	SCOPE OF RULES  Add Rule for notice to UST and Case Trustee at the time a Plaintiff files an Adversary Complaint including 727 causes of action See Rule 7041 also.	
7004-1	PROCESS; SERVICE OF SUMMONS, COMPLAINT  AMG: Guidelines for service on the U.S. Trustee (see also Fed. R. Bankr. P. 2002(j))	
7005-1	SERVING AND FILING PAPERS  AMG: Procedures for when to file discovery with the Court (see Fed. R. Civ. P. 5(d))	
7012-1	DEFENSES AND OBJECTIONS  AMG: Motions to dismiss	None
7016-1	PRETRIAL PROCEDURES  AMG: Standard pretrial witness and exhibit list designations  AMG: Procedures for obtaining complex case orders (see also Fed. R. Civ. P. 26)  AMG: Simplify initial formation procedure of complex cases to require prompt answer, but suspend requirement of local counsel through initial phase of case management (see LBR 910(b))	None  None
7026-1	DISCOVERY  AMG: Set rules for use of discovery in contested matters (see Fed. R. Bankr. P. 9014 and LBR 914)  AMG: Establish procedures to meet and confer on discovery matters and Fed. R. Civ. P. 26(f) reports	

7041-1	DISMISSAL OF ADVERSARY PROCEEDINGS	
	AMG: Guidelines for approval of settlement agreements, including 11 U.S.C. § 727 claims under Fed. R. Bankr. P. 7041	None
7054-1	TAXATION OF COST	
7055-1	DEFAULT – FAILURE TO PROSECUTE	None
	MIG: LBR for uniform default judgment requirements (maybe forms); possibly track state rules	
7056-1	SUMMARY JUDGMENT	
	AMG/MIG: LBR for uniform summary judgment requirements. Encourage partial summary judgment; possibility of conducting brief status hearings after discovery is completed but before summary judgment motions are filed, so Court can determine whether such motions would be appropriate.	Standing Order 2004-1
	POST-JUDGMENT REMEDIES	
	AMG: Rules regarding post-judgment remedies that possibly track state procedures	None
	CS: include procedures and applicable forms on execution/enforcement of judgment including examination of judgment debtors, obtaining writs, etc.	

## **PART VIII**

**Uniform**  
**Local Rule**  
**Number**

**Topic**

**Current**  
**Local Rule**  
**Number or**  
**GPO**

8001-1

MIG/AMG: Since Colorado will join the 10<sup>th</sup> Circuit BAP effective January 3, 2005, review and incorporate as needed Rules for appeals to the BAP

## **PART IX**

<b><u>Uniform Local Rule Number</u></b>	<b><u>Topic and Source</u></b>	<b><u>Current Local Rule Number or GPO</u></b>
9010-1	REPRESENTATION AND APPEARANCES	LBR 910
	AMG: Procedures for admission of out of state counsel	LBR 910(b)
	MIG: Suspend requirement of local counsel through initial phase of complex case management	
	AMG/G7: Guidelines for attorney withdrawal. LBR 910(e) should have the timing of the notice track the state statute regarding attorney withdrawal, and that it be sent on notice with the objection deadline to the debtor, UST and case trustee	LBR 910(e)
	G7: Some jurisdictions have specific provisions to allow law students to represent parties with supervision similar to our state court rules. This might be something to consider for dealing with pro se party issues	
	G7: Rule on entries of appearance comparable to what our District Court requires, must be by the individual attorney, not the firm signing. Is it time to reconsider the rule that local counsel must meaningfully participate?	LBR 910
9011-1	PRO SE PARTIES	None
	MIG: Address pro se filers and petition preparer issues in the LBRs	None
9015-1	JURY TRIAL	
	G11: There should be a LBR on procedure for seeking a jury trial (i.e., time for filing withdrawal of reference, procedure for doing so, etc.) (could be in ULRN 1070-1)	

9019-1

COMPROMISE AND ARBITRATION

LBR 919

AMG: Procedures for coordination of settlement approval in the adversary proceeding and main case, now that same judge is assigned both (see Fed. R. Bankr. P. 9019)

MIG: Note modifications to LBR 915 made to conform language to GPO 2001-6 regarding the exception of certain discovery requirements in Fed. R. Bankr. P. in contested matters. See Rule 7026-1

LBR 914

## MISCELLANEOUS TOPICS

<u>Uniform Local Rule Number</u>	<u>Topic and Source</u>	<u>Current Local Rule Number or GPO</u>
	AMG: Procedures for moving all motions to hearing or order more quickly; use of standing motion hearing days for each Division	None
7006-1	AMG: Procedures for calculation of dates with electronic service (see Fed. R. Civ. P. 6(a))	None
	AMG: Procedures for use of facsimile/scan signatures	None
	AMG: Requirements for the U.S. Trustee to file written objections	None
	AMG: Fee application forms	
	MIG: Supersede all GPOs and Standing Orders	
	MIG: Minimize unnecessary redundancy between the Federal and Local Rules	
	MIG: Rules regarding the assignment of cases, including the blind draw; reassignment in case of conflict; when a judge is unavailable; for seeking reassignment because of judicial economy, etc. (apply to chief judge)	
	G11: GPO 2002-6 must be incorporated into the Local Rules (regarding chapter 11 first-day motions)	

AMG: Rules regarding post-judgment remedies that possibly track state procedures

MIG: Create a Standing Committee for the revision of the LBRs that will “institutionalize” the process by examining the need for updating or changing the rules, given working experience with the current versions, and recommending revisions on a bi-annual basis.

MIG: Develop A program to provide information to pro se filers by way of written materials and forms. Consider using combination of Clerk personnel, volunteer attorney mentors and law student interns to staff a part-time help desk at the Court.

CS: If the primary means of filing documents in the bankruptcy becomes mandatory use of ECF for “primary” practitioners, add language within the new rules to establish procedures for this as well as procedures for the non-primary exceptional practitioners.