

U.S. COURTS

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CAMERON S. BURKE,
CLERK. 03 IDAHO

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

IN RE)	GENERAL ORDER NO. <u>114</u>
)	
LOCAL RULES OF THE UNITED)	ORDER AMENDING AND
STATES BANKRUPTCY COURT FOR)	ADOPTING LOCAL
DISTRICT OF IDAHO,)	BANKRUPTCY RULES OF
)	PRACTICE
)	

The United States Bankruptcy Court for the District of Idaho having determined that because of changes made by Congress to the Bankruptcy Code in the Bankruptcy Reform Act of 1994 and for other reasons that certain additions and amendments are necessary to the Court's Local Bankruptcy Rules; and

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

114

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

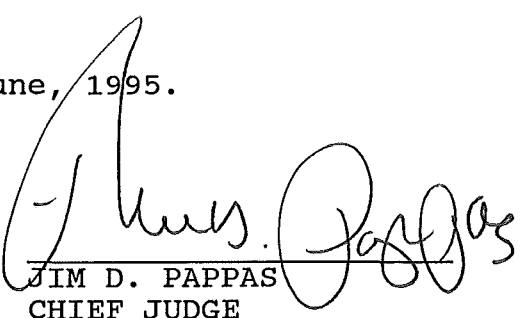
NOW, THEREFORE, IT IS HEREBY ORDERED That the Local Bankruptcy Rules as listed below are adopted or amended effective as of the date of this Order, and the same shall hereafter serve as Local Rules of Practice for the United States Bankruptcy Court for the District of Idaho from and after said date.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

- L.B.R. 2007.1 -- Election of Trustee in a Chapter 11 Reorganization Case (New Rule)
- L.B.R. 3002.1 -- Filing Proofs of Claim in Chapter 12 Cases (Amended Rule)
- L.B.R. 3002.2 -- Filing Proofs of Claim in Chapter 13 Cases (Amended Rule)
- L.B.R. 3003.1 -- Filing Proofs of Claim in Chapter 11 Cases (Amended Rule)
- L.B.R. 3017.1 -- Small Business Chapter 11 Reorganization Cases (New Rule)
- L.B.R. 4008.1 -- Reaffirmations (Amended Rule)
- L.B.R. 7038.1 -- Jury Trials (New Rule)
- L.B.R. 8001.1 -- Rules Applicable To Bankruptcy Appeals (Amended Rule)

A copy of these Rules are attached hereto.

DATED This 21st day of June, 1995.


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


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

LOCAL BANKRUPTCY RULE 2007.1

**ELECTION OF TRUSTEE IN A CHAPTER 11
REORGANIZATION CASE**

(a) Request for an Election.

A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Bankruptcy Rule 5005 within the time prescribed by § 1104(b) of the Bankruptcy Code. Pending court approval of the person elected, a person appointed trustee under § 1104(d) shall serve as trustee.

(b) Manner of Election and Notice.

An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Bankruptcy Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given in the manner and within the time provided for notices under Bankruptcy Rule 2002(a). A proxy for the purpose of voting in the election may be solicited by a committee appointed under § 1102 of the Code and by any other party entitled to solicit a proxy under Bankruptcy Rule 2006.

(c) Application for Approval of Appointment and Resolution of Disputes.

If it is not necessary to resolve a dispute regarding the election of the trustee or if all disputes have been resolved by the court, the United States trustee shall promptly appoint the person elected to be trustee and file an application for approval of the appointment of the elected person under Bankruptcy Rule 2007.1(b), except that the application does not have to contain names of parties in interest with whom the United States trustee has consulted. If it is necessary to resolve a dispute regarding the election, the United States trustee shall promptly file a report informing the court of the dispute. If no motion for the resolution of the dispute is filed within 10 days after the date of the creditors' meeting called under § 1104(b), a

person appointed by the United States trustee in accordance with § 1104(d) of the Code and approved in accordance with Bankruptcy Rule 2007.1(b) shall serve as trustee.

JUDICIAL CONFERENCE RULES COMMITTEE NOTE: This rule implements the amendments to § 1104 of the Bankruptcy Code applicable in cases commenced on or after October 22, 1994, regarding the election of a trustee in a chapter 11 case. The requirement that creditors receive at least 20 days notice of the meeting may be reduced to a shorter period under Bankruptcy Rule 9006(c)(1).

The procedures for reporting disputes to the court and the time limit for filing a motion to resolve any disputes derive from Bankruptcy Rule 2003(d). Because the person elected must be "disinterested," the United States trustee must file an application for court approval of the elected person in accordance with Bankruptcy Rule 2007.1(b).

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

(a) Filing.

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

(b) Governmental Units.

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

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

(a) Filing.

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

(b) Time to File.

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

(c) Governmental Units.

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

(d) Objections.

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

(e) Distributions.

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

LOCAL BANKRUPTCY RULE 3003.1
FILING OF PROOFS OF CLAIM IN CHAPTER 11 CASES

(a) Time to File.

Except as provided in subsection (c) of this Rule, the last day to file proofs of claim in a chapter 11 case shall be ninety (90) days from the first date set for a Section 341(a) meeting of creditors. The clerk shall notify all creditors and parties in interest of such bar date.

(b) Extension.

The court may, for cause shown, extend the deadline upon appropriate motion, notice, and hearing. If the Section 341(a) notice to creditors has already been mailed by the clerk's office, the notification to creditors of an extension of deadline to file claims will be the responsibility of the debtor in possession and its counsel.

(c) Governmental Units.

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

LOCAL BANKRUPTCY RULE 3017.1

**SMALL BUSINESS CHAPTER 11
REORGANIZATION CASES**

- (a) Election to be Considered a Small Business in a Chapter 11 Reorganization Case.**

In a chapter 11 reorganization case, a debtor that is a small business may elect to be considered a small business by filing a written statement of election no later than 60 days after the date of the order for relief or by a later date as the court, for cause, may fix.

- (b) Approval of Disclosure Statement.**

(1) Conditional Approval. If the debtor is a small business and has made a timely election to be considered a small business in a chapter 11 case, the court may, on application of the plan proponent, conditionally approve a disclosure statement filed in accordance with Bankruptcy Rule 3016. On or before conditional approval of the disclosure statement, the court shall

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a time for filing objections to the disclosure statement;

(c) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(d) fix a date for the hearing on confirmation.

(2) Application of Bankruptcy Rule 3017. If the disclosure statement is conditionally approved, Bankruptcy Rule 3017(a), (b), (c), and (e) do not apply. Conditional approval of the disclosure statement is considered approval of the disclosure statement for the purpose of applying Bankruptcy Rule 3017(d).

(3) Objections and Hearing on Final Approval.

Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Bankruptcy Rule 2002 and may be combined with notice of the hearing on confirmation of the plan. Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Bankruptcy Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix. If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

JUDICIAL CONFERENCE RULES COMMITTEE NOTE: This rule is designed to implement §§ 1121(e) and 1125(f) that were added to the Code by the Bankruptcy Reform Act of 1994. These amendments are applicable in cases commenced on or after October 22, 1994.

If the debtor is a small business and has elected under § 1121(e) to be considered a small business, § 1125(f) permits the court to conditionally approve a disclosure statement subject to final approval after notice and a hearing. If a disclosure statement is conditionally approved, and no timely objection to the disclosure statement is filed, it is not necessary for the court to hold a hearing on final approval.

**LOCAL BANKRUPTCY RULE 4008.1
REAFFIRMATIONS**

(a) Where Debtor Is Not Represented by Counsel.

Applications for approval of reaffirmation agreements in cases in which the debtor is not represented by counsel shall be accompanied by a copy of the reaffirmation agreement signed by both the creditor and the debtor(s), and by a proposed order approving the application. All such applications must be scheduled for a hearing before the Court, and the debtor must be present at such hearing.

(b) Where Debtor is Represented by Counsel.

Applications for approval of reaffirmation agreements in cases in which the debtor is represented by counsel shall be accompanied by a copy of the reaffirmation agreement signed by both the creditor and the debtor(s), and by an affidavit or declaration by debtor's attorney executed pursuant to Section 524(c)(3) of the Bankruptcy Code, together with a proposed order approving the application. Such applications shall either (1) be scheduled for hearing before the Court, at which hearing both the debtor and debtor's attorney must be present; or (2) be accompanied by a written waiver of hearing signed by the creditor and the debtor(s), provided, however, the Court may require a hearing on the application.

(c) Content of Reaffirmation Agreements and Counsel's Affidavit or Declaration.

In addition to any other appropriate provisions, all reaffirmation agreements and affidavits or declarations of counsel submitted in connection therewith must contain the information required by Section 524(c) of the Bankruptcy Code.

LOCAL BANKRUPTCY RULE 7038.1

JURY TRIALS

(a) Applicability of Certain Federal Rules of Civil Procedure.

Rules 38, 39, and 47-51 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F.R.Civ.P. shall be filed in accordance with Bankruptcy Rule 5005.

(b) Consent to Have Trial Conducted by Bankruptcy Judge.

If the right to a jury trial applies, a timely demand has been filed under Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than ten (10) days after service of the demand.

JUDICIAL CONFERENCE RULES COMMITTEE NOTE: This rule provides procedures relating to jury trials. This rule is not intended to expand or create any right to trial by jury where such right does not otherwise exist.

LOCAL BANKRUPTCY RULE 8001.1
RULES APPLICABLE TO BANKRUPTCY APPEALS

(a) Rules Applicable to Bankruptcy Appeals.

(1) All Appeals. In addition to rules in Part VIII of the Federal Rules of Bankruptcy Procedure and Third Amended District Court General Order No. 38, LBR 8001.1 applies to all appeals from a judgment, order, or decree of a judge.

(2) Bankruptcy Appellate Panel. For the purposes of these Local Bankruptcy Rules, BAP shall mean the United States Bankruptcy Appellate Panel of the Ninth Circuit.

(b) Filing of Notice of Appeal.

An appellant shall file the original notice of appeal and three (3) copies, together with the appropriate filing fee, with the clerk. In addition, an appellant must file with the clerk sufficient copies of the notice of appeal and addressed stamped envelopes for each party listed in the appeal.

(c) Form and Time of Consent.

(1) Consent. The consent of a party to allow an appeal to be heard and determined by the BAP shall be deemed to have been given unless written objection is filed with the Clerk of the Bankruptcy Court either:

(A) by appellant with the notice of appeal or motion for leave to appeal; or

(B) by any other party within thirty (30) days from the date of service of notice of the appeal.

When an appellant files both a notice of appeal and a motion for leave to appeal, consent will be deemed revoked if an objection to BAP determination is filed with respect to either pleading.

(2) Effect of Timely Objection. Upon timely receipt of a written objection to an appeal being heard and determined by the BAP, jurisdiction over the appeal shall be immediately transferred to the District Court and the bankruptcy court clerk shall not forward any appeal documents,

or any further documents, to the BAP. If the objection is timely, but filed after some of the appeal documents have been transferred to the BAP, the BAP clerk shall promptly return to the bankruptcy court clerk all appellate documents for administration.

(3) Objection Filed with Notice of Motion. If a written objection is filed with the notice of appeal or motion for leave to appeal, the bankruptcy court clerk shall not be required to forward any appeal documents to the BAP.

(d) Transmittal of Record.

When the record is complete for purposes of appeal to either the District Court or the BAP, a copy thereof will be transmitted, and the original bankruptcy court record shall remain the office of the bankruptcy court clerk.

CLERK'S CERTIFICATE OF MAILING

I certify that a copy of the attached document was mailed to the following named persons:

Chief Judge Lodge
Sr. Judge Callister

1

Chief Judge Pappas
Judge Hagan

Chief Magistrate Judge Williams
Magistrate Judge Boyle

Sue Beitia
Tom Murawski
Ladora Butler
Intake

Divisional offices: Pocatello, Moscow, Coeur d'Alene

The Library
U. S. Court of Appeals
For the Ninth Circuit
P. O. Box 193939
San Francisco, CA 94119-3939

DATED: June 22, 1995

CAMERON S. BURKE, CLERK

By: Glenda Longstreet

UNITED STATES DISTRICT AND BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

550 W. Fort St., Box 039
Boise, Idaho 83724

Cameron S. Burke
Clerk of Court

208 334-1373
FAX 208-334-9362

June 22, 1995

MEMORANDUM

TO: Jeannie Omel, Managing Editor, Advocate

FROM: Cameron Burke, Clerk of Court



SUBJECT: Local Bankruptcy Rules

I certainly would appreciate it if you could publish the enclosed General Order and Local Rule Amendments which became effective on June 21, 1995. If you could place this in your next edition it would be greatly appreciated.

Thanks for your consideration in this matter.

*to
Advocate*

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

550 W. Fort St., Box 039
Boise, Idaho 83724

Cameron S. Burke
Clerk of Court

208 334-1373
FAX 208-334-9362

June 22, 1995

MEMORANDUM

TO: Members of the Bar and Public
FROM: Cameron Burke, Clerk of Court
SUBJECT: Amended Local Bankruptcy Rules

As a result of changes made by Congress to the Bankruptcy Code in the Bankruptcy Reform Act of 1994 and as a result of recommendations from the Court's Advisory Committee on Local Bankruptcy Rules, the Local Bankruptcy Rules of Practice are amended, effective June 21, 1995.

The amended Local Bankruptcy Rules can be found on the Court's Electronic Bulletin Board (FEDNET) by calling 208-334-9476, or you may obtain these amendments from the Clerk's Offices in Boise, Moscow, Pocatello or Coeur d'Alene.

If you have any questions about these changes, please let me know. Thank you.