

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

ADOPTION OF INTERIM BANKRUPTCY : BANKRUPTCY GENERAL ORDER
RULES AND INTERIM LOCAL RULES
TO IMPLEMENT BAPCPA OF 2005 : No. 05-004

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Whereas, on April 20, 2005 the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) was enacted into law; and

Whereas, most provisions of the Act are effective on October 17, 2005; and

Whereas, the Advisory Committee on Bankruptcy Rules has prepared Interim Federal Rules designed to implement the substantive and procedural changes mandated by the Act; and

Whereas, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has also approved these Interim Federal Rules and recommends the adoption of the Interim Federal Rules to provide uniform procedures for implementing the Act; and

Whereas, the general effective date of the Act has not provided sufficient time to promulgate rules after appropriate public notice and an opportunity for comment;

NOW THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, Rule 9029 of the Federal Rules of Bankruptcy Procedure and the November 11, 1990 Order of the US District Court Authorizing Promulgation of Local Bankruptcy

Rules, the attached Interim Federal Rules are adopted in their entirety to be effective October 17, 2005. For cases and proceedings not governed by the Act, the Federal Rules of Bankruptcy Procedure, other than the Interim Federal Rules, shall continue to apply.

In addition, the attached Interim Local Rules are also adopted, effective October 17, 2005, to conform with the new requirements under the Act. These Interim Local Rules shall supercede the corresponding local rule currently in effect, but shall be applied to cases consistent with the law in effect at filing.

The Interim Federal Rules and Interim Local Rules shall remain in effect until further order of the Court.

This order is effective October 17, 2005.

ORDER:

/s/ Susan M. Thurston
Clerk of Court

ENTER:

/s/ Arthur N. Votolato
Arthur N. Votolato
U.S. Bankruptcy Judge
Date:

OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

The Federal Center
380 Westminster Mall, 6th Floor
Providence, Rhode Island 02903
Website: www.rib.uscourts.gov

Susan M. Thurston
Clerk of Court

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October 6, 2005

**LIST OF INTERIM LOCAL RULES TO IMPLEMENT BAPCPA OF
2005 PURSUANT TO G.O. 05-004**

Amended Interim Local Rules Effective October 17, 2005

1006-1, 1007-1, 1017-1, 2002-1, 3015-3, 4008-1,

New Interim Local Rules Effective October 17, 2005

2002-2, 4001-4, 4002-3, 4004-1

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

AMENDED AND NEW INTERIM LOCAL RULES

Effective October 17, 2005

INTERIM RULE 1006-1

(amended)

FILING FEE

(a) Manner of Payment. The filing fee commencing a case shall be paid in cash or by cashiers check or money order, made payable to “Clerk, U.S. Bankruptcy Court.” Payment by personal check or credit card will be accepted only if the check or credit card is in the name of the attorney for the debtor, or the law firm of which the attorney for the debtor is a member, partner or associate. The applicable miscellaneous fee shall be assessed and shall be payable to the “Clerk, U.S. Bankruptcy Court” for any dishonored check. The Clerk of the Court shall maintain a list of attorneys and law firms whose checks have been dishonored, may refuse to accept the checks of such attorneys or firms, and, if circumstances warrant, may report the attorney(s) or firm(s) to the appropriate authorities.

(b) Multiple/Erroneous Payments of Same Fee or Charge. It is the filer’s responsibility to ensure any clerk’s office fee or charge is paid only once, and creditors are responsible for ascertaining that the status of the case is such that the action they seek requires a fee. Except where the payment of a fee is the error of the clerk’s office, the clerk is not authorized to refund fees paid by mistake. The clerk shall deposit excess or erroneous payments into the appropriate government account.

(c) Payment of Filing Fee in Installments. The clerk may approve a debtor’s Application to Pay the Filing Fee in Installments, if the application contains a payment schedule that provides for at least 25% of the fee at the time of the filing, or within five (5) business days thereafter, and continued payments of 25% commencing within thirty (30) days of the petition date and every twenty-five (25) days thereafter. The application to pay in installments must comply with Official Form 3A.

(d) Nonconforming Application to Pay in Installments. An Application to Pay the Filing Fee in Installments that does not comply with LBR 1006-1©) shall be presented to the Court for consideration. If denied, the debtor shall have five (5) business days from the date of the order to either resubmit the application in compliance with R.I. Interim LBR 1006-1©) or remit the full filing fee. Failure to timely do either will result in the automatic issuance of an Order to Show Cause why the case should not be dismissed.

(e) Procedure to Waive Filing Fee (Proceed in forma pauperis). An individual who files a voluntary Chapter 7 petition may request to have all filing fees waived by filing a completed and signed Application for Waiver of the Chapter 7 Filing Fee using Official Form B3B, and R.I. Interim Bankr. Form D if Schedule J has not been filed with the petition. The granting of the application approves the waiver of all future fees which may arise in the case.

(f) Nonconforming and Denied Applications For Waiver of Filing Fee. An Application to Waive the Filing Fee that does not conform with the requirements listed in

section (e) above, or is defective in any way, will be automatically denied. If an Application to Waive the Filing Fee is denied for any reason the Court may treat the application as one to pay the filing fee in installments and the first installment will be due within ten (10) days of the entry of the order denying the waiver of the fees, and the remaining fees will be payable in accordance with R.I. Interim LBR 1006-1 ©) .

(g) Revocation or Vacating of Waiver. The Court may revoke or vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver was unwarranted.

(h) Effect of Conversion. If the filing fee of an individual Chapter 7 case is waived, and the debtor's case is later converted to one under Chapter 13, the debtor must pay the full Chapter 13 filing fee within fifteen (15) days of conversion, or file an Application to Pay the Filing Fee in Installments.

INTERIM RULE 1007-1
(amended)

LISTS, SCHEDULES AND STATEMENTS;
TIME LIMITS; NOTICE OF INTENT TO
DISMISS; NOTICE IN CHAPTER 11

(a) Certification of Pro Se Debtor Required. All pro se debtors are required to complete at the time of the filing of the petition, a certification listing the names, addresses and amounts paid to persons who assisted with the bankruptcy filing.

(b) Filings Subject to Two (2) Business Day Filing Deadline: The following, as applicable to the case and chapter, are required to be filed with the clerk within two (2) business days of the bankruptcy filing or will subject the case to the procedures set forth in subparagraph (d) below and R.I. Interim LBR 1017-2:

- (A) Creditor Mailing List (names and addresses)
- (B) Form 21 - Statement of Social Security Number
- (c) Debtor's Mailing Address
- (D) Certificate of Credit Counseling
- (E) Application to Pay in Installments, if applicable
- (F) Application for Waiver of Chapter 7 Filing Fee, if applicable

(c) Filings Subject to Fifteen (15) Day Filing Deadline: The following, as applicable to the case and chapter, are required to be filed with the clerk within fifteen (15) days of the bankruptcy filing or will subject the case to the procedures set forth in subparagraph (d) below and R.I. Interim LBR 1017-2:

- (A) Schedules A through J;
- (B) Statement of Financial Affairs;
- (C) Summary of Schedules;
- (D) Statement of Executory Contracts;
- (E) Attorney fee disclosure statement;
- (F) All required declarations having been properly executed;
- (G) The Chapter 13 plan; and/or
- (H) The Chapter 13 agreement (R.I. Interim Bankr. Form V)
- (I) Chapter 11 Exhibit A;
- (J) Chapter 11 twenty (20) largest unsecured creditors
- (K) Statement of Current Monthly Income and Means Test

Calculation (Form 22A)(Chp 7) or
Statement of Current Monthly Income (Form 22B) (Chp 11) or
Statement of Current Monthly Income and Disposable Income Calculation
(Form 22C) (Chp 13)

(L) In Chapter 7, Completed Checkbox re: Presumption of Abuse

(M) Copies of payment advices for 60 days before the filing of the petition

(N) Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer (Form 19B)

(O) Certification of Pro Se Debtor

(d) Notice of Dismissal if Documents Not Timely Filed (Lack of Prosecution)

(1) Procedure for Issuance of Notice of Intended Dismissal. In all voluntary cases filed in this District where the petition is not accompanied by the required schedules, statements, and other documents pursuant to Fed. R. Bankr. P. 1007, 1008, 2016, and 3015(b), R.I. LBR 1002-1, 1007-1 and 5005-4, the debtor shall file such missing documents according to the time limits imposed by federal or local rule, or if cause exists, move within that time for an order extending the time to make the required filings. Upon filing the petition, the debtor will receive a Notice of Missing Documents and Notice of Dismissal If Documents Are Not Timely Filed indicating which documents are missing and giving the debtor either two (2) business days or fifteen (15) days to file the required documents, as applicable. If, after the expiration of the stated time period, or any court authorized extension thereof, the debtor fails to timely file the required documents, the case will be automatically dismissed without further notice. In the absence of a showing to the contrary, any such dismissal shall be presumed to be a willful failure within the meaning of 11 U.S.C. §§ 109(g), with a 180-day bar to refile a petition.

See also, R.I. Interim LBR 1017-2.

(e) Notice to Disputed, Contingent or Unliquidated Creditors in Chapter 11

Cases. The debtor in each Chapter 11 case shall serve R.I. Bankr. Form B on each creditor whose claim is listed on the schedules as disputed, contingent or unliquidated within fifteen (15) days after filing the schedules of liabilities, or within fifteen (15) days of adding such creditors to previously filed schedules. The notice must advise such creditors of the right to file proofs of claim and that failure to do so shall prevent them from voting upon the plan or participating in any distribution thereunder.

Within ten days of service, a certificate evidencing compliance with this LBR shall be filed with the Clerk.

INTERIM RULE 1017-2
(amended)

DISMISSAL FOR LACK OF PROSECUTION

- (a) **Want of Prosecution Defined.** For purposes of Fed. R. Bankr. P. 1017, the term “want of prosecution” shall include, but is not limited to:
- (1) failure to file lists, schedules, statements, and all required documents within the time allowed by Interim Fed. R. Bankr. P. 1007;
 - (2) failure of a debtor that is a corporation to be represented by counsel within the time set by order of the Court;
 - (3) failure to pay timely any required filing fee;
 - (4) failure to timely file a plan, disclosure statement or other document or pleading, as required by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, these LBRs or orders of the Court;
 - (5) failure of a party or counsel to appear, upon notice or order, at a hearing before the Court;
 - (6) failure of the debtor(s) to appear at the initial Section 341 meeting, or any continued meeting; and
 - (7) failure to abide by any Court order requiring the filing of papers or payment of fees, costs or sanctions.
- (b) ***Sua Sponte* Action by Court.** The Court may, on its own motion, and after notice to the debtor, the debtor’s attorney, if any, and to all creditors, dismiss a case for lack of prosecution unless the debtor cures the deficiency timely, and/or the debtor or any party in interest requests a hearing within five days of service of such notice of intent to dismiss or order to show cause.

INTERIM RULE 2002-1
(amended)

**NOTICE TO CREDITORS, EQUITY
SECURITY HOLDERS, UNITED STATES,
AND UNITED STATES TRUSTEE**

- (a) **Twenty-five Day Notice to Parties in Interest.** The notices required by Fed. R. Bankr. P. 2002(b) of the time fixed for filing objections and the hearing to consider approval of a disclosure statement, and the time fixed for filing objections and the hearing to consider confirmation of a Chapter 9 or Chapter 11 plan, shall be given by the proponent of the disclosure statement or plan to be considered at the hearing. Notice of the time fixed for filing objections and of the confirmation hearing for Chapter 13 plans shall be given by the Clerk, in the first instance.
- (b) **Notice of Filing of Application for Compensation** [This subsection was abolished on December 1, 2003].
- (c) **Service of Application for Compensation.** In all cases, the applicant must serve a *complete copy of the application for compensation* with:
- (1) the local office of the U.S. trustee;
 - (2) any Chapter 7, 11, or 13 trustee;
 - (3) the debtor and debtor’s counsel;
 - (4) the chairperson of the creditors’ committee and its counsel, if any; and
 - (5) the chairperson and counsel of any other official committee approved by the Court.
- (d) **Notice to Equity Security Holders.** The notices required in Chapter 11 cases by Fed. R. Bankr. P. 2002(d)(1), (2) and (3) shall be given by the debtor or the trustee, if applicable. The notices required by Fed. R. Bankr. P. 2002(d)(4), (5), (6), and (7) shall be given by the movant or proponent of the plan or disclosure

statement.

- (e) **Notice to Creditors in Chapter 7 Asset Cases and Chapter 13 Cases.** After ninety (90) days following the first date set for the Section 341 meeting of creditors in a Chapter 13 case, or within the time allowed by the Court for the filing of claims in a Chapter 7 asset case, the Clerk will mail notices only to creditors whose claims have been filed or who have been granted extensions of time within which to file claims.

INTERIM RULE 2002-2
(new)

NOTICE OF PREFERRED ADDRESSES
UNDER 11 U.S.C. § 342(e)-(f) AND NATIONAL
CREDITOR REGISTER SERVICE

- (a) In accordance with Fed. R. Bankr. P. 2002(g)(1)-(3), an entity and a notice provider may agree that when the notice provider is directed by the Court to give a notice to that entity, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses provided by the entity to the notice provider. That address is conclusively presumed to be a proper address for notice purposes. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.
- (b) The filing of a notice of preferred address pursuant to 11 U.S.C. § 342(f) by a creditor directly with the entity that provides noticing services for the Bankruptcy Courts will constitute the filing of such a notice with the Court.
- (c) Registration with the National Creditor Registration Service must be accomplished through the entity that provides noticing services for the Bankruptcy Courts. Forms and registration information is available at www.ncrsuscourts.com
- (d) Any notice sent by the Court to a creditor's preferred address, in accordance with a notice of preferred address filed by a creditor or an interested party pursuant to 11 U.S.C. § 342(e) or § 342(f) or contained in a proof of claim filed with the Court, specifying a mailing address and designating a recipient, will be conclusively presumed to have been received by the creditor or interested party upon the mailing of any notice by the Court or its noticing agent(s) to the address specified in the notice of preferred address, notwithstanding 11 U.S.C. § 342(g)(1).

INTERIM RULE 3015-3
(amended)

CHAPTER 13 - CONFIRMATION

- (a) **Pre-Confirmation Conference with Chapter 13 Trustee.** At least forty-eight (48) hours prior to the hearing on confirmation, the debtor's attorney, the debtor, if pro se, and any objector to the Chapter 13 plan are required to confer with the Chapter 13 trustee regarding the proposed plan, its feasibility and permissibility, and any objections to the proposed plan.
- (b) **Objections to Confirmation.**

- (1) **Deadline for filing.** Any objections to confirmation of a Chapter 13 plan shall be filed no later than seven (7) days before the hearing date on confirmation.
 - (2) **Service of objections.** An objection to confirmation shall be filed with the Court and served on the Chapter 13 trustee, the debtor, the debtor's attorney, and any other party or attorney who has filed an appearance and requested service of pleadings. The objection shall be accompanied by a certificate of service evidencing compliance with this requirement.
- (c) **Scope of the Confirmation Hearing.** At the hearing on confirmation of a Chapter 13 plan, the Court may consider objections to claims, motions filed pursuant to Fed. R. Bankr. P. 4003, motions for valuation of secured claims, motions to modify secured claims, reasonableness of attorney's fees, and any timely filed objections to confirmation of the debtor's plan.

(1) The Chapter 13 Trustee's recommendation that the plan under consideration be confirmed shall satisfy all requirements for confirmation under 11 U.S.C. § 1325.

- (d) **Order Confirming Chapter 13 Plan.** R.I. Interim Bankr. Form X shall serve as the form of order for all Chapter 13 confirmations, with such modifications thereof as appropriate. The Chapter 13 trustee is responsible for preparation of the proposed order confirming the plan. Service and submission of the proposed order shall be in accordance with R.I. LBR 9072-1(b).
- (e) **Confirmation of Plan Denied.** If confirmation is denied, the Court may enter an order dismissing the Chapter 13 case, unless, within eleven (11) days after entry of the order denying confirmation:

- (1) the debtor files a modified plan;
- (2) the debtor moves to convert the case to one under another chapter of the Code;
- (3) the debtor files a motion for reconsideration;
- (4) the debtor appeals the order denying confirmation; or
- (5) the Court otherwise orders.

- (f) **Completion of Plan.** Upon completion of the debtor(s)' confirmed plan and in compliance with 11 U.S.C. § 1328(a), the Chapter 13 Trustee's Final Report shall clearly state either:
- (1) that there were no domestic support obligations due to be paid by the debtor, or;
 - (2) that there were domestic support obligations due to be paid by the debtor and those obligations are current, OR;
 - (3) that there were domestic support obligations owed by the debtor, that the trustee is unable to determine if they are current and the debtor has not applied for a waiver under

this statute.

- (A) If the trustee is unable to determine if these obligations are current, the Court shall issue a Notice of Intent to Close the Case Without a Discharge unless, within 10 days, the debtor files documentation with the Chapter 13 Trustee that all domestic obligations are current and the Chapter 13 Trustee so notifies the Court.

INTERIM RULE 4001-4

(new)

**AUTOMATIC STAY OF EVICTION
PROCEEDINGS IN WHICH LESSOR
HAS OBTAINED JUDGMENT FOR
POSSESSION PRIOR TO DATE OF
FILING**

Certificate of Intent to Cure Default & Rent Deposit. Certificates of Intent to Cure Default & Rent Deposit shall include a copy of the Judgment for possession resulting from the eviction action, as well as the landlord's name, address and telephone number, unless this information is contained in the Judgment.

INTERIM RULE 4002-3

(new)

FEDERAL TAX RETURNS

- (a) **Request for Copy of Debtor's Post Tax Information.** Parties in Interest who require the Debtor to file tax information with the Court must file a Request for Copy of Debtor's Tax Information using either R.I. Interim Bankr. Forms G.1 or G.2 as applicable.

The request must include a statement qualifying the movant as a party in interest, and must be served on the Debtor, Debtor's Attorney, Trustee and US Trustee.

- (b) **Motion for Access to Tax Information.** Pursuant to 11 U.S.C. § 521(g)(2), Parties in Interest who wish to inspect and copy Debtor's tax returns must file a Motion for Access to Tax Information using either R.I. Interim Bankr. Forms H.1 or H.2 as applicable.

The motion must include a statement qualifying the movant as a party in interest, the reason the information cannot be obtained from any other source, and the method by which the movant will access the information electronically. The motion must be served on the debtor, debtor's attorney, trustee and U.S. Trustee.

- (c) **Personal Data Identifiers.** Pursuant to LBR 9004-1, the debtor is solely responsible for redacting personal identifiers from tax information filed with the Court. Tax information filed with the Court will be subject to restricted access unless the Court orders otherwise.

- (d) **Confidentiality Regarding Tax Information.** The movant is advised that the tax information obtained is confidential and secondary dissemination of the information to parties other than the movant's attorney is prohibited. The movant's attorney is identically restricted. Any improper use, disclosure or dissemination of the tax information may result in the imposition of sanctions.
- (e) **Pre-Petition Tax Information.** Pre-petition tax information should not be filed with the Court, but should be forwarded directly to the Trustee pursuant to 11 U.S.C. § 521(e)(2)(A).

INTERIM RULE 4004-1

GRANT OR DENIAL OF DISCHARGE

(new)

- (a) **Requirement for Granting of Discharge.** The Court shall not grant the debtor a discharge unless, prior to the expiration of the objection to discharge deadline, the debtor files a certificate evidencing the completion of an approved financial management course (Official Form 23), or in a Chapter 13 case, no later than the last payment made by the debtor as required by the plan, and

(1) If the Chapter 13 debtor owes domestic support obligations pursuant to 11 U.S.C. § 1328(a),

(A) The Debtor shall certify to the Chapter 13 Trustee that any and all domestic support obligations are current, and

(B) The Chapter 13 Trustee shall certify to the Court that the Debtor has satisfied all domestic support obligations.

- (b) **Failure to File Financial Management Certificate (Official Form 23).** If, after expiration of the objection to discharge deadline, or after the last payment required by the plan in a Chapter 13 case, or any Court authorized extension thereof, the certificate is not filed, the case shall be automatically closed without the issuance of the discharge order, and a notice informing interested parties shall be issued in accordance with Fed. R. Bankr. P. 4006.

- (c) **Procedure for Obtaining a Discharge in a Closed Case.** If an individual bankruptcy case is closed without entry of a discharge due to failure of the Debtor to file the Certification of Financial Management Course Completion (Official Form 23), to later obtain a discharge, the Debtor must:

(1) File a Motion to Reopen the case;

- (2) Pay the applicable re-opening fee;
- (3) File a certificate evidencing completion of the financial management course from an approved agency, or a Motion for Exemption, if applicable..

The US Trustee shall file its position within ten (10) days of the Debtor's Motion to Reopen pursuant to this Local Rule.

- (d) **Exception.** The provision regarding completion of a financial management course shall not apply with respect to a debtor who is a person described in 11 U.S.C. § 109(h)(4).

INTERIM RULE 4008-1

REAFFIRMATION

(amended)

- (a) **Mandatory Reaffirmation Agreement Form.** In cases filed with the Court on or after October 17, 2005, Reaffirmation Agreement Form B240 (rev.10/05) shall be used.
- (b) **Pro se Reaffirmation Agreements.**
 - (1) Pro se debtors must complete Part E of the reaffirmation agreement, entitled “Motion For Court Approval of Reaffirmation Agreement”, unless the agreement concerns real estate, or is with a credit union. Failure to complete Part E, “Motion For Court Approval” will result in the reaffirmation agreement being treated as defective, and if not cured within the deficiency period, will result in the agreement being stricken.
 - (2) All Reaffirmation Agreements filed with the Court in which the debtor’s attorney fails to sign the required certification will be treated as having been filed pro se.
- (c) **Defective Reaffirmation Agreements.** If a reaffirmation agreement is filed with the Court that is not in compliance with 11 U.S.C. § 524©), Fed. R. Bankr. P. 4008, or these LBRs, the agreement will be considered defective, the reaffirmation agreement will be stricken, and no further action will be taken on the agreement.