F O R P U B L I C C O M M E N T

PROPOSED LOCAL BANKRUPTCY RULES FOR THE MIDDLE DISTRICT OF TENNESSEE WITH COMMENTARY

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2002-1. Notice to Creditors and Other Interested Parties

(a) Notice of Meeting of Creditors When Schedules and/or Creditor List Are Filed Subsequent to the Petition. If the list required by Fed. R. Bankr. P. 1007 is not filed, does not conform to Appendix A, or is amended to add creditors after the filing of the petition, the debtor shall mail a copy of the 11 U.S.C. § 341 meeting of creditors notice issued by the court to all entities on the List of Creditors or if amended, all entities not on the original List of Creditors within 7 days of the filing of the list or amendment. The debtor shall then file a certificate of mailing pursuant to LBR 9013-3.

(b) Notice to the State of Tennessee. Notice to the State of Tennessee, its agencies and departments, shall be accomplished by notice to the specific agency and to the Tennessee Attorney General's Office at the addresses posted on the court's website at <www.tnmb.uscourts.gov> Court Business/Rule 5003 Registry.

(c) Publication of Notices of Summaries of Trustees' Final Reports. In lieu of notice by mail, the Clerk may publish notices of summaries of trustees' final reports on the court's website (www.tnmb.uscourts.gov). In each case, the Clerk shall issue a one page Notice of Publication of the Summary of Trustee's Final Report to the debtor and all creditors containing the web address of the trustee's final report and the court's mailing address and telephone number which may be used to request free copies.

(d) Electronic Service of Filed Documents. Transmission of the Notice of Electronic Filing generated by CM/ECF shall constitute service of the electronically filed document on persons registered as Electronic Filers. *See* Administrative Procedures for Electronic Case Filing regarding the effect of registration as a Filer on the CM/ECF system.

(1) A certificate of service must be filed with respect to all electronically filed documents stating that service was made upon Filers through CM/ECF and further stating how service was accomplished on any entity not served through CM/ECF.

(2) Initial documents, such as a complaint and summons in an adversary proceeding or a motion commencing a contested matter under FED. R. BANKR. P. 9014, must be served in accordance with Rule 7004 of the Federal Rules of Bankruptcy Procedure and not through CM/ECF.

Comment:

Addition, paragraph (d). The rule is modeled after Local Civil Rule 5.03(b) for the U.S. District Court, Middle District of Tennessee, and mirrors ECF Procedures 4 and 7 regarding consent, waiver, notice and service upon CM/ECF registration for filers in this district.

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3015-1. Chapter 13 – Plan

(a) Form. All Chapter 13 plans filed in this district shall substantially conform to the Model Plan in Appendix D. Provisions not otherwise included in the Model Plan or deviating from it are effective only if they are included in a section of the Model Plan designated for nonstandard provisions and are also identified in accordance with any other requirements of the Model Plan form.

(b) Service of the Plan When Special Address or Method of Service is Required. When the Chapter 13 plan includes motions or other contested matters that require special notice or service under FED. R. BANKR. P. 9014 or 7004 – for example, notice to a corporation or service on an insured depository institution – the debtor shall: (1) provide the required special address on the list required by LBR 1007 and, (2) give notice or make service and file a certificate of service pursuant to LBR 9013-3 when a method of notice or service is required other than first class mail.

(c) Filing of a Chapter 13 Plan. If a Chapter 13 debtor elects to file a plan after the filing of the petition pursuant to FED. R. BANKR. P. 3015, the debtor must serve the proposed plan or a complete summary of the proposed plan on all creditors, all equity security holders, any party in interest who has requested notice, the Chapter 13 trustee and the United States Trustee and file a certificate of service pursuant to LBR 9013-3.

(d) Objection to Confirmation of Chapter 13 Plan. Any written objection to confirmation of a chapter 13 plan must be filed at least seven (7) calendar days before the meeting of creditors. An oral objection may be raised by stating the objection on the record at the meeting of creditors.

Comment:

Addition, paragraph (d) to the rule. Under the prior rules, the provision appeared in LBR 3015-2, a rule concerning amendments to plans. The provision addresses plans generally, so the revision moves it to LBR 3015-1, a rule governing chapter 13 plans.

The provision is also revised to clarify the deadline for objecting to confirmation of chapter 13 plans. First, the revised rule states clearly that the deadline for written objections to confirmation is 7 days before the meeting of creditors. The prior rule stated a deadline of 7 days before the

date set for the hearing on confirmation. Because 11 U.S.C. § 1324(b) permits the court to confirm a plan immediately after the meeting of creditors, the "hearing on confirmation" provided a confusing reference date—in effect, the confirmation hearing occurs as early as the date of the meeting of creditors when no party makes an objection. The revised rule states the original understanding of the deadline directly. Second, the revision clarifies that parties may raise objections to confirmation orally at the meeting of creditors.

The notice to creditors on the plan form (Appendix D) includes a revision to make it consistent.

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3015-2. Chapter 13 - Amendments to Plans

(a) In General. In addition to the requirements of LBR 9013-1, any motion filed by a debtor that modifies a confirmed Chapter 13 plan must include a verified comparative budget and statement of impact on creditors in the form of Appendix B. This provision includes but is not limited to motions and agreed orders to:

(1) suspend payments;

(2) incur credit; or

(3) change the amount or timing of any payment.

(b) Proposed Order. Any proposed order that modifies a confirmed Chapter 13 plan must state the terms of the modification as indicated in the motion to modify.

(c) Filing of a Chapter 13 Plan. If a Chapter 13 debtor elects to file a plan after the filing of the petition pursuant to FED. R. BANKR. P. 3015, the debtor must serve the proposed plan or a complete summary of the proposed plan on all creditors, all equity security holders, any party in interest who has requested notice, the Chapter 13 trustee and the United States Trustee and file a certificate of service pursuant to LBR 9013-3.

~~**(d) Objection to Confirmation of Chapter 13 Plan.** An objection to confirmation of a chapter 13 plan shall be filed at least 7 calendar days before the date set for the hearing on confirmation.~~

Comment:

Deletion, paragraph (d) to the rule. Under the prior rules, the provision appeared in LBR 3015-2, a rule concerning amendments to plans. The provision addresses plans generally, so the revision moves it to LBR 3015-1, a rule governing chapter 13 plans.

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4002-1. Debtor - Duties

(a) Persons to Act When Debtor Is Not Natural Person. The natural persons occupying the following positions shall perform all acts required to be performed by the debtor and shall attend on behalf of the debtor any examinations, meetings or hearings unless the court orders otherwise:

(1) If the debtor is a corporation or limited liability company, the person serving as its chief executive officer (the person occupying the position of president, chief manager or comparable position is presumed to be chief executive officer);

(2) If the debtor is a partnership, each of the general partners;

(3) If the debtor is a small business debtor, the senior management personnel (the person(s) occupying the position(s) of chief financial officer, chief operations officer, and chief management officer or comparable positions are presumed to be the senior management personnel);

(4) If any corporate, limited liability company or partnership debtor deems the persons designated above inappropriate, prompt motion shall be made consistent with LBR 9013-1 for relief from this rule and for the designation of some other or additional natural person or persons;

(5) The natural person or persons who will perform acts required to be performed by the debtor shall be identified by name, title and address at the time of the commencement of the case in a voluntary case. In an involuntary case, the identification shall be filed no later than 14 days after entry of the order for relief.

(b) Domestic Support Obligations. With respect to each domestic support obligation, the debtor shall include on Schedule E to Official Form 6:

(1) the name and address of each claim holder (the names of minor children shall not be revealed); and

(2) the name, address and telephone number of the child support enforcement agency for the state in which each claim holder resides.

(c) Deposits for Rent Under 11 U.S.C. § 362(*l*). If a debtor files a certificate under 11 U.S.C. § 362(*l*)(1) with the petition, the deposit required by 11 U.S.C. § 362(*l*)(1)(B) shall be considered filed with the petition if tendered to the Clerk by close of the next business day after the filing of the petition. The deposit may only be tendered in the form of a cashier's check, money order, <u>an Interest on Lawyers Trust Account check (IOLTA)</u> or certified check made payable to the lessor (not the Clerk of the Court). The name and mailing address of the lessor shall be provided to the Clerk with tender of the deposit.

(d) Certificate of Payment of Domestic Support Obligations. Not later than 28 days after completion of payments under a Chapter 12 or Chapter 13 plan, the debtor shall file the certificate required by 11 U.S.C. §§ 1228(a) or 1328(a).

Comment:

Addition of IOLTA checks, paragraph (c), to provide for lawyer trust fund account checks as a permissible tender to the Clerk for rent deposits.

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9013-1. Motion Practice

(a) "After Notice and a Hearing." Whenever Title 11 of the United States Code, any rule or any order authorizes an act "after notice and a hearing" or similar phrase:

(1) Movant shall file and serve a motion together with a notice in the form of Appendix G on the parties required to receive notice and file a certificate of service pursuant to LBR 9013-3. Every notice under this rule shall include, by attachment or exhibit, a copy of the proposed order or agreed order the movant will submit in the event no response to the motion is filed.

(2) The hearing date, time, location, specific courtroom (if applicable), and last day to file responses must be included in the notice. The hearing date shall be obtained from the court's website at <www.tnmb.uscourts.gov>. Hearings in Chapter 12 and Chapter 13 cases may only be scheduled for Chapter 13 hearing dates. Hearings in all other cases may not be scheduled for a Chapter 13 hearing date, except for the Cookeville and Columbia divisions. Unless Title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure or these local rules provide otherwise, the notice shall provide for a 21 day response period to run from the placing of the notice in the U.S. mail, postage prepaid. The hearing date shall be no sooner than 7 days after the last day to file responses. Departure from this rule requires compliance with LBR 9075-1.

(3) Any response to a motion shall state prominently the deadline for filing responses, the date, time, location, and specific courtroom (if applicable) of the scheduled hearing and a description of the motion or notice to which it relates.

(4) If a timely response is filed, the hearing will be held at the date and time in the Notice. No further notice of the hearing date is required. If a timely response is filed, LBR 9014-1 shall apply.

(5) If a timely response is filed and the contested matter is subsequently resolved by agreement of all parties, an agreed order will excuse attendance only if it is filed prior to the hearing. Otherwise, announcement of an agreement resolving a contested matter may be made by counsel at the first call of the docket on the hearing date.

(6) The failure to file and serve a timely response shall be deemed a statement of no opposition to the relief requested.

(7) If no timely response is filed, movant or the parties to an agreed order shall file the original of the order or agreed order exhibited in the notice no later than 7 days after the hearing date. If no timely response is filed, movant or the parties to an agreed order are excused from attendance at the hearing date. If no timely response is filed, LBR 9014-1 shall not apply.

(8) After the order or agreed order has been signed and received for entry, the party submitting the order or agreed order shall serve a copy of the signed order on the parties required to receive notice. This requirement of separate service of the signed order is waived if the notice mailed pursuant to subparagraph (1) of this rule included a copy of the order or agreed order and no timely response was filed.

(b) Exclusions and Modifications.

(1) Exclusions. LBR 9013-1(a) shall not apply to the following motions:

(a) Motions to Convert Chapter 12 or Chapter 13 Cases filed by the Trustee
(b) Motions and agreed orders under LBR 4001-1
(c) Motions in a case controlled by a separate case management order
(d) Motions in adversary proceedings, except motions for entry of default judgment whether issued by the Clerk or by the court under FED.R.CIV.P. 55(b) made applicable by FED.R.BANKR.P. 7055(b)
(e) Motions for withdrawal or substitution of attorneys pursuant to LBR 2091-1
(f) Motions to dismiss or convert a case to Chapter 7 under § 1112
(g) Motions for Voluntary Dismissal of a Chapter 13 Case
(h) Motions to approve reaffirmation agreements ~~under LBR 4008-1~~
(i) Motions under FED. R.BANKR.P. 9023 or 9024, except motions under LBR 9024-1

(2) Modifications. LBR 9013-1(a) is modified to include the additional requirements provided in the following rules:

(a) LBR 2014-1 Notice of Employment Application
(b) LBR 2016-1 Notice of Fee Application
(c) LBR 2082-1 Motions to Modify or Amend Chapter 12 Plans
(d) LBR 3007-1 Objections to Claims
(e) LBR 3011-1 Unclaimed Funds
(f) LBR 3015-2 Motions to Modify or Amend Chapter 13 Plans
(g) LBR 4003-2 Lien Avoidance
(h) LBR 6005-1 Auctioneers & Real Estate Agents
(i) LBR 6007-1 Notice of Abandonment

Comment:

Deletion of reference to LBR 4008-1, subparagraph (b)(1)(h). Local rule 4008-1 no longer exists.

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APPENDIX D ─ Chapter 13 Plan Form

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.
You should read this plan carefully and discuss it with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the meeting of creditors or raise an objection on the record at the meeting of creditors. ~~date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court.~~ The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is ~~filed~~ made. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

Comment:
The revision to the Model Chapter 13 Plan form modifies the language in the notice to creditors at the beginning of the form to make the form language consistent with the language in the revised LBR 3015-1(d) regarding the deadline for objecting to confirmation.