

RULE 2014-2**ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE**

- (a) **Attorney Admission.** An attorney who is admitted to practice before the District Court of the Northern District of New York, unless otherwise restricted, is also admitted to practice before this Court. See [N.D.N.Y. Local Rule 83.1](#) for information on admission to the District Court of the Northern District of New York.
- (b) **Pro Hac Vice Admission.** A member in good standing of the bar of any state or of any United States District Court may be permitted to practice on motion in this Court in an adversary proceeding, contested matter, or for a limited purpose only in a particular case. Counsel for a debtor must be fully admitted to practice before this Court pursuant to LBR 2014-1(a).
- (1) **Motion.** Admission pro hac vice shall be sought by a Motion for Limited Admission – Pro Hac Vice accompanied by a proposed order, both of which must include the case and/or adversary proceeding caption for the particular matter for which admission is sought. The Motion may be filed by the applicant attorney in paper format or by a sponsor attorney admitted to practice before this Court electronically via CM/ECF. If filed by a sponsor attorney, the Motion must include a Declaration of Sponsor. In all cases, the Motion shall be supported by the following:
- (A) **Sworn Statement of Applicant Attorney.** The sworn statement shall include:
- (i) applicant's place of residence and office address;
 - (ii) the date(s) when and court(s) where previously admitted;
 - (iii) whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith;
 - (iv) whether the applicant has ever been convicted of a crime, either a felony or misdemeanor, and, if so, the facts and circumstances connected therewith; and
 - (v) that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States Bankruptcy Courts; the Bankruptcy Code (title 11 U.S.C.); the Federal Rules of Bankruptcy Procedure; the Local Rules of the Bankruptcy Court for the Northern District of New York; and the New York Rules of Professional Conduct. The applicant shall further affirm faithful adherence to these rules and responsibilities.
- (B) **Declaration of Sponsor Attorney.** A Sponsor Attorney must have personal knowledge of the background and character of the Applicant Attorney.
- (C) **Certificate of Good Standing.** An original Certificate of Good Standing, as evidence of admission to the bar of the highest court of any state or from

a United States District Court, dated within six (6) months of the date of the motion.

- (D) **Required Fee.** The filing fee for the Motion for Limited Admission – Pro Hac Vice is \$100 and must be paid to the **District Court Clerk** electronically via Pay.Gov. A link for electronic payment will be emailed to the applicant upon the Bankruptcy Clerk’s Office receipt of the motion in compliance with paragraph (b)(1) above.
- (E) **Waiver of Fee.** The admission fee shall be waived for all attorneys in the full-time employ of the United States Government pursuant to the [N.D.N.Y. Local Rule 83.1\(a\)\(5\)](#).
- (2) **Electronic Filing Privileges.** Upon entry of an order granting the Motion for Limited Admission – Pro Hac Vice, the attorney admitted pro hac vice must immediately submit a request to PACER for filing access to the NYNB at <https://pacer.uscourts.gov/>.
- (3) **Notice of Appearance.** Upon entry of an order granting the Motion for Limited Admission – Pro Hac Vice, the attorney admitted pro hac vice must immediately file a notice of appearance in the matter for which the attorney was admitted.
- (c) **Limited Admission as Student Practitioner.** A law student approved as a “Student Practitioner” may, under the supervision of an attorney and with prior Court approval, appear on behalf of a debtor who has completed and signed the [Student Practice Authorization Form](#). The completed [Student Practice Authorization Form](#) shall be filed in the case pending before the Court.
 - (1) **Attorney Supervision.** The attorney who supervises a student shall:
 - (A) Be a member in good standing of the bar of the United States District Court for the Northern District of New York;
 - (B) Assume personal professional responsibility for the student’s work;
 - (C) Assist the student to the extent necessary;
 - (D) Appear with the student in all proceedings before the Court unless his or her presence is waived by the Court; and
 - (E) Consent to supervise the student on the [Student Practice Authorization Form](#).
 - (2) **Student Eligibility.** In order to appear, the student shall:
 - (A) Be enrolled in a law school approved by the American Bar Association;
 - (B) Have completed legal studies amounting to at least two (2) semesters, or the equivalent;

- (C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;
- (D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to [§§ 362 and 524](#) and for the defense of an [§ 523\(a\)\(2\)](#) nondischargeability action;
- (E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and
- (F) Complete and file a [Student Practice Authorization Form](#) with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.

(3) Permitted Student Services. The Student Practitioner may:

- (A) Appear as counsel in Court or at other proceedings when consent of the client and the supervising attorney has been filed and when the Court has approved the student's request to appear in the particular case;
- (B) Prepare and sign affidavits, motions, petition, answers, objections, replies, memoranda and legal briefs, and other documents (collectively, "Documents") in connection with any matter in which the student has met the conditions of subparagraph (A) above. The Documents must also be signed by the supervising attorney with the original maintained in the case file.

(4) Term of Student Admission. A Student Practitioner whose application has been approved may continue to appear in a particular case as a Student Practitioner until the student has graduated from law school and is formally admitted to the bar or until termination by the Court. The Court sua sponte may terminate a Student Practitioner's right to appear at any time without notice of hearing and without showing of cause.

- (d) **Designation for Service.** A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

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ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE

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- (b) **Pro Hac Vice Admission.** A member in good standing of the bar of any state or of any United States District Court may be permitted to practice on motion in this Court ~~for a limited purpose only in a particular case, in an~~ adversary proceeding, contested matter, or ~~for a limited purpose only in a particular case-action.~~ Counsel for a debtor must be fully admitted to practice before this Court pursuant to LBR 2014-1(a).
- (1) **Motion.** ~~An attorney seeking a~~ Admission pro hac vice shall be sought by file, in the Clerk's Office in paper format, a Motion for Limited Admission – Pro Hac Vice along with ~~accompanied by~~ a proposed order, both of which must include the case and/or adversary proceeding caption for the particular matter for which admission is sought. The Motion may be filed by the applicant attorney in paper format or by a sponsor attorney admitted to practice before this Court electronically via CM/ECF. If filed by a sponsor attorney, the Motion must include a Declaration of Sponsor. In all cases, ~~t~~The Motion shall be supported by the following:
- (A) **Sworn Statement of Applicant Attorney.** The sworn statement shall include:
- (i) applicant's place of residence and office address;
 - (ii) the date(s) when and court(s) where previously admitted;
 - (iii) whether the applicant has ever been held in contempt of court, censured, suspended or disbarred by any court and, if so, the facts and circumstances connected therewith;
 - (iv) whether the applicant has ever been convicted of a crime, either a felony or misdemeanor, and, if so, the facts and circumstances connected therewith; and
 - (v) that the applicant is familiar with the provisions of the Judicial Code (Title 28 U.S.C.), which pertain to the jurisdiction of, and practice in, the United States Bankruptcy Courts; the Bankruptcy Code (title 11 U.S.C.); the Federal Rules of Bankruptcy Procedure; the Local Rules of the Bankruptcy Court for the Northern District of New York; and the New York Rules of Professional Conduct. The applicant shall further affirm faithful adherence to these rules and responsibilities.
- (B) Declaration of Sponsor Attorney. A Sponsor Attorney must have personal knowledge of the background and character of the Applicant Attorney.
- ~~(B)~~(C) Certificate of Good Standing. An original Certificate of Good Standing, as evidence of admission to the bar of the highest court of any state or from

a United States District Court, dated within six (6) months of the date of the motion.

~~(C)~~**(D) Required Fee.** The filing fee for the Motion for Limited Admission – Pro Hac Vice is \$100 and must be paid to the **District Court Clerk** electronically via Pay.Gov. A link for electronic payment will be emailed to the applicant upon the Bankruptcy Clerk’s Office receipt of the motion in compliance with paragraph (b)(1) above.

~~(D)~~**(E) Waiver of Fee.** The admission fee shall be waived for all attorneys in the full-time employ of the United States Government pursuant to the [N.D.N.Y. Local Rule 83.1\(a\)\(5\)](#).

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 - (C) Assist the student to the extent necessary;
 - (D) Appear with the student in all proceedings before the Court unless his or her presence is waived by the Court; and
 - (E) Consent to supervise the student on the [Student Practice Authorization Form](#).
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- (C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;
- (D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to [§§ 362 and 524](#) and for the defense of an [§ 523\(a\)\(2\)](#) nondischargeability action;
- (E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and
- (F) Complete and file a [Student Practice Authorization Form](#) with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.

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(d) Designation for Service. A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

RULE 3015-1**CHAPTER 13 – PLAN**

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan, a copy of which is annexed at [Appendix VI](#).
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) upon all parties in interest not later than twenty-eight (28) days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite twenty-eight (28) days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by [Fed. R. Bankr. P. 7001](#) or [Fed. R. Bankr. P. 9014](#), such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence,
- (B) Set the interest rate for a secured claim,
- (C) Assume and/or reject an unexpired lease or executory contract, or
- (D) Avoid a judicial lien or non-possessory purchase money security interest, each of which shall be deemed an "Allowed Contested Matter."
- (2) **Notice Required If Plan Includes Allowed Contested Matter.** If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) must be served on all affected creditors by the debtor pursuant to [Fed. R. Bankr. P. 7004](#). The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.
- (A) **Affidavits in Support of Allowed Contested Matters.**

- (i) If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.
 - (ii) If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.
- (d) **Certification of Compliance with this Rule.** The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a [Certification Pursuant to Local Bankruptcy Rule 3015-1](#).
- (e) **Tax Returns and Refunds.**
 - (1) **Tax Returns.** The debtor shall:
 - (A) timely, including with any extension period allowed by such taxing authorities, file federal and state tax returns with such taxing authorities; and
 - (B) within 14 days of filing, provide copies of the returns to the trustee.
 - (2) **Application to Retain Refund in Excess of \$3,000.** If the debtor asserts that more than \$3,000 of an annual tax refund is needed for reasonable and necessary expenses of the debtor and/or debtor's dependents, the debtor shall make written application to the trustee for approval to retain the excess amount and itemize the anticipated expenses for which the excess refund money is needed. The debtor shall not file the application with the Court.
 - (A) **Trustee Approval.** The trustee may allow the debtor to retain tax refunds in excess of \$3,000 based upon demonstrated reasonable and necessary expenses of the debtor or the debtor's dependents on an annual basis, without notice beyond that included in the debtor's chapter 13 plan or further hearing. If a request is approved by the trustee, the trustee shall file the debtor's application and notice of approval.
 - (B) **Trustee Denial.** If the application is denied by the trustee, the debtor may file a motion to retain the refund. The motion shall be on notice to the trustee, the United States trustee, and all creditors.
- (f) **Section 1326 Plan Payments by Debtor and Disbursements by Trustee.**
 - (1) The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said

payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under [§ 1326\(a\)\(1\)\(C\)](#) as a result of these adequate protection payments, without an order of the Court.

- (2) A creditor may file a motion requesting a change in the amount of [§ 1326\(a\)\(1\)](#) pre-confirmation payments pursuant to [§ 1326\(a\)\(3\)](#). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.
- (3) The trustee is authorized to disburse pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to [§ 1326\(a\)\(1\)](#) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation adequate protection payments will commence within thirty (30) days after the filing of the proof of claim provided the trustee has sufficient funds.
- (4) The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.
- (5) If the case is dismissed prior to confirmation, secured creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any [§ 1326](#) pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under [11 U.S.C. § 362](#) (see [LBR 3007-1\(e\)](#)) or as otherwise ordered by the Court.

Comment

The debtor is responsible for ensuring that notice of the plan, the time fixed for filing objections, and the hearing to consider confirmation of the plan be given in accordance with [§ 342\(c\)\(2\)](#), as applicable, regardless of whether the plan is filed with or after the petition.

Paragraph (c) recognizes that it is inappropriate and may be considered bad faith to include as a plan provision relief that should be the subject of a separate adversary proceeding or motion. See [United Student Aid Funds, Inc. v. Espinosa](#), 130 S. Ct. 1367, 1382 (2010) (referring to a plan provision that discharged a student loan).

RULE 3015-1**CHAPTER 13 – PLAN**

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan, a copy of which is annexed at [Appendix VI](#).
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) upon all parties in interest not later than twenty-eight (28) days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite twenty-eight (28) days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by [Fed. R. Bankr. P. 7001](#) or [Fed. R. Bankr. P. 9014](#), such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence,
- (B) Set the interest rate for a secured claim,
- (C) Assume and/or reject an unexpired lease or executory contract, or
- (D) Avoid a judicial lien or non-possessory purchase money security interest, each of which shall be deemed an "Allowed Contested Matter."
- (2) **Notice Required If Plan Includes Allowed Contested Matter.** If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) must be served on all affected creditors by the debtor pursuant to [Fed. R. Bankr. P. 7004](#). The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.
- (A) **Affidavits in Support of Allowed Contested Matters.**

- (i) If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.
 - (ii) If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.
- (d) **Certification of Compliance with this Rule.** The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a [Certification Pursuant to Local Bankruptcy Rule 3015-1](#).
- (e) **Tax Returns and Refunds.**
 - (1) **Tax Returns.** The debtor shall:
 - (A) timely, including with any extension period allowed by such taxing authorities, file federal and state tax returns with such taxing authorities; and
 - (B) within 14 days of filing, provide copies of the returns to the trustee.
 - (2) **Application to Retain Refund in Excess of \$1,5003,000.** If the debtor asserts that more than \$1,5003,000 of an annual tax refund is needed for reasonable and necessary expenses of the debtor and/or debtor's dependents, the debtor shall make written application to the trustee for approval to retain the excess amount and itemize the anticipated expenses for which the excess refund money is needed. The debtor shall not file the application with the Court.
 - (A) **Trustee Approval.** The trustee may allow the debtor to retain tax refunds in excess of \$1,5003,000 based upon demonstrated reasonable and necessary expenses of the debtor or the debtor's dependents on an annual basis, without notice beyond that included in the debtor's chapter 13 plan or further hearing. If a request is approved by the trustee, the trustee shall file the debtor's application and notice of approval.
 - (B) **Trustee Denial.** If the application is denied by the trustee, the debtor may file a motion to retain the refund. The motion shall be on notice to the trustee, the United States trustee, and all creditors.
- (f) **Section 1326 Plan Payments by Debtor and Disbursements by Trustee.**
 - (1) The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said

payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under [§ 1326\(a\)\(1\)\(C\)](#) as a result of these adequate protection payments, without an order of the Court.

- (2) A creditor may file a motion requesting a change in the amount of [§ 1326\(a\)\(1\)](#) pre-confirmation payments pursuant to [§ 1326\(a\)\(3\)](#). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.
- (3) The trustee is authorized to disburse pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to [§ 1326\(a\)\(1\)](#) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation adequate protection payments will commence within thirty (30) days after the filing of the proof of claim provided the trustee has sufficient funds.
- (4) The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.
- (5) If the case is dismissed prior to confirmation, secured creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any [§ 1326](#) pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under [11 U.S.C. § 362](#) (see [LBR 3007-1\(e\)](#)) or as otherwise ordered by the Court.

Comment

The debtor is responsible for ensuring that notice of the plan, the time fixed for filing objections, and the hearing to consider confirmation of the plan be given in accordance with [§ 342\(c\)\(2\)](#), as applicable, regardless of whether the plan is filed with or after the petition.

Paragraph (c) recognizes that it is inappropriate and may be considered bad faith to include as a plan provision relief that should be the subject of a separate adversary proceeding or motion. See [United Student Aid Funds, Inc. v. Espinosa](#), 130 S. Ct. 1367, 1382 (2010) (referring to a plan provision that discharged a student loan).

RULE 3015-2**CHAPTERS 12 AND 13 – OBJECTIONS TO CONFIRMATION**

- (a) **Service of Objection.** An objection to confirmation must be filed and served on the debtor, debtor's attorney, and the trustee not later than seven (7) days before the scheduled hearing on confirmation.
- (b) **Appearance Required Upon Objection.** If an objection is filed, all parties or their counsel shall be present at the confirmation hearing. If the objecting creditor or creditor's counsel fails to appear at the confirmation hearing, the Court may treat the objecting party's absence as a waiver of the objection. If debtor's counsel fails to appear, the Court may deny confirmation.
- (c) **Resolution of Secured Creditor's Outstanding Objection to Plan When Plan is Amended.** If a secured creditor's objection to a plan is rendered moot, settled or withdrawn by the filing of an amended plan, the objecting party must advise the court in writing by filing the Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings form available on the court's website or on the record at the Confirmation Hearing.
- (d) **Required Contents.** An objection to confirmation shall:

 - (1) Specify the number and letter section(s) of the Bankruptcy Code upon which the objection is grounded;
 - (2) Allege the specific facts that support the objections;
 - (3) Summarize the creditor's claim(s) against the debtor, including the alleged classification(s) (secured, unsecured, priority or administrative) and the amount of the claim(s); and
 - (4) Include within the case caption a reference to the document number of the plan or amended plan that is the subject of the objection.
- (e) **Separate Pleading Required.** Objections to confirmation may not be combined with any motion seeking affirmative relief. Nothing within this Rule shall be deemed to limit or constrain the Court's authority to issue orders it deems appropriate at the time of a confirmation hearing.

Comment

This Rule should be read in conjunction with 11 U.S.C. § 1323.

(a) **Service of Objection.** An objection to confirmation must be filed and served on the debtor, debtor's attorney, and the trustee not later than seven (7) days before the scheduled hearing on confirmation.

(b) Appearance Required Upon Objection. If an objection is filed, all parties or their counsel shall be present at the confirmation hearing. If the objecting creditor or creditor's counsel fails to appear at the confirmation hearing, the Court may treat the objecting party's absence as a waiver of the objection. If debtor's counsel fails to appear, the Court may deny confirmation.

(b)(c) Resolution of Secured Creditor's Outstanding Objection to Plan When Plan is Amended. If a secured creditor's objection to a plan is rendered moot, settled or withdrawn, by the filing of an amended plan, the objecting party must advise the court in writing by filing the Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings form available on the court's website or on the record at the Confirmation Hearing.

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- (2) Allege the specific facts that support the objections;
- (3) Summarize the creditor's claim(s) against the debtor, including the alleged classification(s) (secured, unsecured, priority or administrative) and the amount of the claim(s); and
- (4) Include within the case caption a reference to the document number of the plan or amended plan that is the subject of the objection.

(e) Separate Pleading Required. Objections to confirmation may not be combined with any motion seeking affirmative relief. Nothing within this Rule shall be deemed to limit or constrain the Court's authority to issue orders it deems appropriate at the time of a confirmation hearing.

Comment

This Rule should be read in conjunction with 11 U.S.C. § 1323.

RULE 5007-2 RECORD OF PROCEEDINGS

- (a) Audio Record of Court Hearings.** Digital audio recordings for most hearings and trials are available to the public through PACER. The audio recording appears on the docket as a PDF with an embedded MP3 file. It generally is available within 48 hours after the conclusion of the hearing or trial.
- (b) Transcripts.** The official record of any Court hearing remains the written transcript.

RULE 5007-2**RECORD OF PROCEEDINGS**

- (c) **Audio Record of Court Hearings.** Digital audio recordings ~~will be for most hearings and trials are~~ available to the public through on PACER for select hearings and trials conducted on or after March 16, 2015. The audio recording ~~will~~ appear_s on the docket as a PDF with an embedded MP3 file. It generally ~~is will be~~ available within 48 hours after the conclusion of the ~~subject~~ hearing or trial.
- (d) **Transcripts.** The official record of any Court hearing remains the written transcript.

Comment

~~Currently, the audio record of a proceeding is available in the Syracuse and Albany Divisions.~~

Rule 7040-1 Exhibits – Retention and Return

(a) **Retention by Attorney.** In an adversary proceeding or contested matter, the attorney or unrepresented party who produced an exhibit in court shall retain in their custody the physical original of the exhibit until the expiration of the time for taking an appeal, or if an appeal is filed, after the appeal is decided.

(b) **Retrieval of Exhibits from the Clerk and Abandoned Exhibits.** If the Court orders that exhibits produced at trial be retained in the custody of the Clerk, the party that introduced an exhibit will be responsible for retrieving it from the Clerk no later than thirty (30) days the expiration of the time for taking an appeal, or if an appeal is filed, after the appeal is decided. If the party fails to timely retrieve an exhibit, the Clerk may destroy or dispose of the exhibit without further notice.

Rule 7040-1 ~~Trial Exhibits~~ – Retention and Return

~~(a) **Exhibits to be Offered.** Except as otherwise ordered by the Court, three (3) sets of all exhibits (original and two copies) to be offered into evidence must be delivered to the Court in hard copy. Exhibits should not be electronically filed.~~

~~(ba) **Retention by Attorney.** In an adversary proceeding or contested matter, the attorney or unrepresented party who produced an exhibit in court shall retain in their custody the physical original of the exhibit Unless otherwise ordered by the Court, the original exhibits from a trial or evidentiary hearing shall be retained by the Clerk until such time as a decision or verdict has been rendered and the expiration of the time allowed for taking an appeal, or if an appeal is filed, after the appeal is adjudicated~~decided~~. ~~The Court will contact the party who introduced the exhibits for their instruction.~~~~

~~(b) **Retrieval of Exhibits from the Clerk and Abandoned Exhibits.** If the Court orders that exhibits produced at trial be retained in the custody of the Clerk, the party that introduced an exhibit will be responsible for retrieving it from the Clerk no later than thirty (30) days the expiration of the time for taking an appeal, or if an appeal is filed, after the appeal is decided. If the party fails to timely retrieve an exhibit, the Clerk may destroy or dispose of the exhibit without further notice.~~

RULE 9013-3**DEFAULT MOTION PRACTICE**

- (a) **Default Notice.** Any motion listed in paragraph (c) of this Rule, if pursued on a default basis, shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

IF YOU INTEND TO OPPOSE THIS MOTION, WRITTEN OPPOSITION MUST BE FILED WITH THE CLERK OF THE COURT AND SERVED ON MOVANT'S COUNSEL AT LEAST SEVEN (7) DAYS PRIOR TO THE RETURN DATE. IF YOU DO NOT FILE AND SERVE WRITTEN OPPOSITION, NO HEARING WILL BE HELD ON THE RETURN DATE AND THE COURT MAY GRANT THE MOTION AS UNOPPOSED.

- (b) **Timely Opposition Not Filed.** If no opposition is timely filed and served upon movant's counsel as outlined in the above notice, the motion will not appear on the Court's motion calendar on the return date, and the motion will be considered by the Court without the necessity of any appearance by movant's counsel.

(1) **Timely Opposition Filed.** If written opposition to the motion is timely filed and served upon movant's counsel, the motion will appear on the Court's motion calendar on the return date and the parties are required to appear.

(2) **Proposed Order.** A proposed order should not be submitted for signature until after the return date of the motion.

- (c) **Default Motions.** The default motion practice outlined in this Rule applies to the following types of motions:

- (1) Abandon Property ([§ 554\(b\)](#));
- (2) Allow Administrative Expenses Other Than Professional Fees ([§ 503\(b\)](#));
- (3) Allow Administrative Expenses for Professional Fees: (A) in a chapter 13 case which are not in excess of \$1,000.00 provided, however, that said fees are requested for services rendered in connection with a motion brought by default under this Rule and (B) which are in excess of \$1,000.00 provided, however, that said fees are requested solely for services rendered in connection with a loss mitigation;
- (4) Approve Settlement of Adversary Proceeding or Contested Matter ([Fed. R. Bankr. P. 9019](#));
- (5) Assume or Reject Executory Contract or Unexpired Lease ([§ 365](#));
- (6) Change Venue ([28 U.S.C. § 1412](#));
- (7) Compel Turnover of Property from the Debtor by the Trustee or Pursuant to [§ 542\(e\)](#);
- (8) Convert ([§§ 706, 1112\(a\)](#)) or Dismiss Case ([§§ 707, 1112\(b\), 1208, and 1307](#));
- (9) Disallow or Modify Claim ([§ 502](#));

- (10) Dismiss for Failure to Pay Filing Fee ([Fed. R. Bankr. P. 1006\(a\)](#));
- (11) Extend Time to Assume or Reject an Unexpired Nonresidential Lease ([§ 365\(d\)\(4\)](#));
- (12) Extend Time to File Complaint ([Fed. R. Bankr. P. 4004\(b\)](#), [4007\(c\)](#));
- (13) Extend Time to File Plan and Disclosure Statement – Chapter 11 ([§ 1121\(d\)](#));
- (14) Extend Time to File Plan - Chapter 12 and 13 ([§§ 1221](#) and [1321](#));
- (15) Extend Time to Pay Filing Fee ([Fed. R. Bankr. P. 1006\(b\)](#));
- (16) Conduct [Fed. R. Bankr. P. 2004](#) Exam;
- (17) Object to Claimed Exemption ([Fed. R. Bankr. P. 4003\(b\)](#));
- (18) Obtain Credit ([§ 364\(b\), \(c\), and \(d\)](#));
- (19) Modify Chapter 12 or 13 Plan Post-Confirmation ([§§ 1229](#) and [1329](#));
- (20) Reopen Case ([Fed. R. Bankr. P. 5010](#) and [Local Bankruptcy Rule 5010](#))
- (21) Terminate or Modify the Automatic Stay and/or Co-Debtor Stay, provided, however, that movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee's interest, if any, in any surplus proceeds. ([§ 362\(d\)](#));
- (22) Use Cash Collateral ([§ 363\(e\)](#));
- (23) Revoke/Reconsider Order of Dismissal ([Fed. R. Bankr. P. 9024](#));
- (24) Waive Debtor's Appearance at Section 341 Meeting of Creditors;
- (25) Application to Employ a Professional under [§ 327\(e\)](#) in a Chapter 7 Case When the Trustee Seeks to Employ an Attorney to Pursue a Claim of the Estate Previously Held by the Debtor ([§ 327\(e\)](#));
- (26) Confirm Automatic Stay Has Been Terminated ([§ 362\(j\)](#));
- (27) Extend the Automatic Stay ([§ 362\(c\)\(3\)\(B\)](#));
- (28) Seal a Document ([Fed. R. Bankr. P. 9018](#));
- (29) Avoid Judicial Lien and Non-Possessory, Non-Purchase Money Security Interest ([§ 522\(f\)](#));
- (30) Compel Turnover of Tangible Personal Property from a Third Party by an Individual Debtor ([§ 542\(a\)](#)); and

- (31) Compel Filing of Tax Return and Turnover of Tax Refund from the Debtor by the Trustee.
- (d) Rules [9013-1](#) and [9013-2](#) also apply to default motion practice.
- (e) The default motion practice only applies to motions listed in paragraph (c) of this Rule. Any other motion shall require the appearance of movant's counsel, regardless of whether written opposition is filed.

Comment

Essential to the Court granting a default motion is proper service of the default motion evidenced by a timely filed certificate of service. In this regard, particular reference is made to [Fed. R. Bankr. P. 3007](#) and [6007](#) and to the provisions of [Fed. R. Bankr. P. 7004\(b\)\(1\)-\(10\)](#), which are applicable to contested matters pursuant to [Fed. R. Bankr. P. 9014](#).

Certain applications to employ a professional in a chapter 7 case are required to be on notice so that the debtor and debtor's counsel are cognizant that any professional retained by the chapter 7 trustee is retained to represent the bankruptcy estate's interest and not the debtor's interest, despite the fact the professional may have represented the debtor prior to the bankruptcy filing.

See [LBR 2014-1\(e\)](#).

See also [LBR 4001-1](#) with respect to a motion to lift the automatic stay.

RULE 9013-3**DEFAULT MOTION PRACTICE**

- (a) **Default Notice.** Any motion listed in paragraph (c) of this Rule, if pursued on a default basis, shall clearly and conspicuously contain the following paragraph (which may be single-spaced):

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- (b) **Timely Opposition Not Filed.** If no opposition is timely filed and served upon movant's counsel as outlined in the above notice, the motion will not appear on the Court's motion calendar on the return date, and the motion will be considered by the Court without the necessity of any appearance by movant's counsel.

(1) **Timely Opposition Filed.** If written opposition to the motion is timely filed and served upon movant's counsel, the motion will appear on the Court's motion calendar on the return date and the parties are required to appear.

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- (4) Approve Settlement of Adversary Proceeding or Contested Matter ([Fed. R. Bankr. P. 9019](#));
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- (20) Reopen Case ([Fed. R. Bankr. P. 5010](#) and [Local Bankruptcy Rule 5010](#))
- (21) Terminate or Modify the Automatic Stay and/or Co-Debtor Stay, provided, however, that movant shall include in the proposed order granting a motion for relief from the stay a directive that (i) the case trustee be added as a necessary party to receive notice of the report of sale and surplus money proceedings; and (ii) closure of the case shall not constitute an abandonment of the trustee's interest, if any, in any surplus proceeds. ([§ 362\(d\)](#));
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~~(H)~~**(31)** Compel Filing of Tax Return and Turnover of Tax Refund from the Debtor by the Trustee.

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Comment

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