

RULE 2002-1 NOTICE TO CREDITORS AND OTHER INTERESTED PARTIES

- (a) **Notice to All Creditors.** Except as provided in Fed. R. Bankr. P. 2002(h)(1) and (2), Notice of the following actions shall be given by the proponent thereof, other than the United States trustee, to all creditors and parties in interest:
- (1) A proposed use, sale, or lease of property other than in the ordinary course of business;
 - (2) The hearing on approval of a compromise or settlement of a controversy;
 - (3) In chapter 7, 11, and 12 cases, the hearing on the dismissal or conversion of the case to another chapter;
 - (4) The time fixed to accept or reject a proposed modification of a plan;
 - (5) Except as limited by paragraph (b), a hearing on all applications for compensation or reimbursement of expenses from the estate totaling in excess of \$1,000.00;
 - (6) The time fixed for filing objections and the hearing to consider approval of a disclosure statement or, under [§ 1125\(f\)](#), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary;
 - (7) The time fixed for filing objections and the hearing to consider confirmation of a plan under chapter 9, 11 or 12;
 - (8) The notice of entry of an order confirming a plan under chapter 9, 11 or 12; and
 - (9) In a chapter 7 case, the notice of the trustee's final report.
- (b) **Limited Notice.** Where an official creditors' committee has been appointed and as permitted by [Fed. R. Bankr. P. 2002\(i\)](#), required notice of hearings on the actions described below may be limited to such a committee or its authorized agent, the United States trustee, and to any creditor and equity security holder who files with the Court a request that all notices be mailed to them:
- (1) Approval of a compromise or settlement; and
 - (2) Application for compensation or reimbursement of expenses from the estate totaling less than \$25,000.00.
- (c) **Certificate of Service.** A certificate of service conforming to [LBR 9013-1\(c\)](#) shall be filed within seven (7) days of effecting service and not later than seven (7) days prior to the return date of the hearing. For the purpose of preparing address labels, a copy of the updated matrix can be obtained from PACER or upon request from the Clerk.
- (d) **Notice to Committees.** Except as the Court may otherwise designate, pursuant to [Fed. R. Bankr. P. 9007](#), service of notice upon a committee may be made by serving the committee chairperson, the appointed attorney for the committee, if any and other authorized agent.

Upon application by a party in interest, the Court may designate additional entities to which notice shall be given.

- (e) **Return Address on Court Generated Notices.** The Clerk shall place the name and address of the debtor's attorney of record, or that of the pro se debtor, as the case may be, as the return address on all notices sent out by the Court to all creditors and other parties in interest.
- (f) **Returned Mail, Duty to Re-Notice, and File Certificate of Service.** If a notice referred to in paragraph (e) is returned as undeliverable, debtor's counsel or the pro se debtor shall promptly send out the notice to any corrected address noted thereon. A certificate of service conforming to [LBR 9013-1\(c\)](#) shall be filed within seven (7) days of effecting service and not later than seven (7) days prior to the return date of a hearing.

Comment

This Rule is intended to facilitate the service of papers. The proponent of a notice under subparagraphs (a)(1), (2), (3), or (5) should consult [LBR 9013-1\(d\)](#) for the content of the notice.

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 - (2) The hearing on approval of a compromise or settlement of a controversy;
 - (3) In chapter 7, 11, and 12 cases, the hearing on the dismissal or conversion of the case to another chapter;
 - (4) The time fixed to accept or reject a proposed modification of a plan;
 - (5) Except as limited by paragraph (b), a hearing on all applications for compensation or reimbursement of expenses from the estate totaling in excess of \$1,000.00;
 - (6) The time fixed for filing objections and the hearing to consider approval of a disclosure statement or, under [§ 1125\(f\)](#), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary;
 - (7) The time fixed for filing objections and the hearing to consider confirmation of a plan under chapter 9, 11 or 12;
 - (8) The notice of entry of an order confirming a plan under chapter 9, 11 or 12; and
 - (9) In a chapter 7 case, the notice of the trustee's final report.
- (b) **Limited Notice.** Where an official creditors' committee has been appointed and as permitted by [Fed. R. Bankr. P. 2002\(i\)](#), required notice of hearings on the actions described below may be limited to such a committee or its authorized agent, the United States trustee, and to any creditor and equity security holder who files with the Court a request that all notices be mailed to them:
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 - (2) Application for compensation or reimbursement of expenses from the estate totaling less than \$25,000.00.
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Comment

This Rule is intended to facilitate the service of papers. The proponent of a notice under subparagraphs (a)(1), (2), (3), or (5) should consult [LBR 9013-1\(d\)](#) for the content of the notice.

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.
- (b) **Pro Hac Vice Admission.**
- (1) **Application.** A member in good standing of the bar of any state or of any United States District Court not otherwise admitted to practice before the Court, may be permitted to practice on motion in this Court for a limited purpose only in a particular case, adversary proceeding, contested matter, or action. An attorney seeking admission pro hac vice shall provide an original certificate of good standing, as evidence of admission to the bar of the highest court of any state or of any United States District Court and shall pay the required admission fee. The application, original certificate of good standing, proposed order and a check made payable to the District Court Clerk shall be delivered in paper format to the Bankruptcy Court Clerk.
- (A) **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 [District Court Local Rule 83.1\(a\)\(5\)](#).
- (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;

Exhibit A

- (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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(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.

(b) **Pro Hac Vice Admission.**

(1) **Application.** A member in good standing of the bar of any state or of any United States District Court not otherwise admitted to practice before the Court, may be permitted to practice on motion in this Court for a limited purpose only in a particular case, adversary proceeding, contested matter, or action. An attorney seeking admission pro hac vice shall provide an original certificate of good standing, as evidence of admission to the bar of the highest court of any state or of any United States District Court and shall pay the required admission fee. The application, original certificate of good standing, proposed order and a check made payable to the District Court Clerk shall be delivered in paper format to the Bankruptcy Court Clerk.

(A) **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 [District Court Local Rule 83.1\(a\)\(5\)](#).

(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) ~~Indicate in writing his e~~Consent to supervise the student on the ~~prescribed application form for appearance as a~~ [Student Practitioner 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 ~~three~~ two (32) 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.

RULE 2016-2 COMPENSATION OF PROFESSIONALS IN CHAPTER 13 CASE

- (a) **Compensation.** In a chapter 13 case, the plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case including any amount paid pre-petition as a retainer and the amount to be paid through the plan. The trustee shall review the attorney's fee charged in each case and object to confirmation if the fee sought is unreasonable. Confirmation of the chapter 13 plan shall constitute Court approval of the attorney's fee. The Court may set a hearing sua sponte to review the attorney's fee requested, which may be scheduled at the same time as the confirmation hearing. By Administrative Order, the Court in each division may set a standard fee chargeable for standard legal services rendered in a chapter 13 case.
- (b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this Rule, if the compensation for debtor's counsel is an amount greater than one-half of the amount to be funded through the chapter 13 plan, the compensation is subject to further review and approval after notice and a hearing as provided for under [Fed. R. Bankr. P. 2002\(a\)\(6\)](#).
- (c) **Fed. R. Bankr. P. 2016(b) Statement.** In addition to the disclosure requirements of [Fed. R. Bankr. P. 2016\(b\)](#), if counsel has represented the debtor in a prior bankruptcy case commenced within eight (8) years of the current case, the original 2016(b) statement shall disclose the date of the prior filing(s) and the attorney's fees paid in connection with such prior filing(s).
- (d) **Application for Fees in Excess of Those Approved Under the Plan.** Any additional attorney's fees and expenses sought to be charged beyond those disclosed in the initial statement filed pursuant to [Fed. R. Bankr. P. 2016\(b\)](#) and/or approved by the confirmation order may be charged to the debtor only upon Court order, based upon prior application after notice and a hearing. The application shall detail the specific services for which additional compensation is sought and include:
- fees disclosed by applicant in the 2016(b) Statement and/or approved by confirmation order;
 - fees paid to applicant in connection with any prior representation of debtor;
 - allowed fees paid applicant through date of the application; and
 - fees allowed to any prior counsel representing debtor.

Additional compensation for postpetition services approved by the Court shall be paid through the plan, except as otherwise ordered.

RULE 2016-2 COMPENSATION OF PROFESSIONALS IN CHAPTER 13 CASE

- (a) **Compensation.** In a chapter 13 case, the plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case including any amount paid pre-petition as a retainer and the amount to be paid through the plan. The trustee shall review the attorney's fee charged in each case and object to confirmation if the fee sought is unreasonable. Confirmation of the chapter 13 plan shall constitute Court approval of the attorney's fee. The Court may set a hearing sua sponte to review the attorney's fee requested, which may be scheduled at the same time as the confirmation hearing. By Administrative Order, the Court in each division may set a standard fee chargeable for standard legal services rendered in a chapter 13 case.
- (b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this Rule, if the compensation for debtor's counsel is an amount greater than one-half of the amount to be funded through the chapter 13 plan, the compensation is subject to further review and approval after notice and a hearing as provided for under [Fed. R. Bankr. P. 2002\(a\)\(6\)](#).
- (c) **Fed. R. Bankr. P. 2016(b) Statement.** In addition to the disclosure requirements of [Fed. R. Bankr. P. 2016\(b\)](#), if counsel has represented the debtor in a prior bankruptcy case commenced within eight (8) years of the current case, ~~any application submitted pursuant to paragraph (d) of this Rule, as well as~~ the original 2016(b) statement, shall disclose the date of the prior filing(s) and the attorney's fees paid in connection with such prior filing(s). ~~Unless otherwise ordered, when additional compensation for postpetition services is approved by the Court, said compensation shall be paid through the plan.~~
- (d) **Application for Fees in Excess of Those Approved Under the Plan.** Any additional attorney's fees and expenses sought to be charged beyond those disclosed in the initial statement filed pursuant to [Fed. R. Bankr. P. 2016\(b\)](#) and/or approved by the confirmation order may be charged to the debtor only upon Court order, based upon prior application after notice and a hearing. The application shall ~~detail~~ disclose the specific services for which additional compensation is sought and include: fee allowed in the case to date, including amounts allowed to any prior counsel representing the debtor, the amount of allowed fees actually paid through the date of the application, and detail the specific services for which additional compensation is sought.
- fees disclosed by applicant in the 2016(b) Statement and/or approved by confirmation order;
 - fees paid to applicant in connection with any prior representation of debtor;
 - allowed fees paid applicant through date of the application; and
 - fees allowed to any prior counsel representing debtor.

Additional compensation for postpetition services approved by the Court shall be paid through the plan, except as otherwise ordered by the Court.

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 \$1,500. If the debtor asserts that more than \$1,500 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 \$1,500 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 (3) 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 \$1,500. If the debtor asserts that more than \$1,500 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 \$1,500 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 approval and the application.
- (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.

(e)(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 (3) 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 5007-2 RECORD OF PROCEEDINGS

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

Comment

~~This is a pilot program; e~~Currently, the audio record of a proceeding is ~~only~~ available in the Albany and Syracuse Divisions. ~~This technology is provided as a courtesy to document the record of the hearing and should not be treated as a substitute for a required appearance.~~

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- (b) Transcripts.** The official record of any Court hearing remains the written transcript.

Comment

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

RULE 9004-1 DOCUMENTS – REQUIREMENTS OF FORM AND CAPTION

- (a) **Form Generally.** Any pleading, motion, and other document presented for filing shall be formatted as follows:
 - (1) Text, whether in the body of a document or in a footnote, must be:
 - (A) A minimum of 12-point font;
 - (B) Double-spaced, except that text in a block quotation or footnote may be single-spaced;
 - (C) Plainly and legibly written, typewritten, printed or reproduced without defacing erasures or interlineations;
 - (D) Printed on only a single-side of a page; and
 - (E) Printed in black ink.
 - (2) A page must be:
 - (A) Formatted with a one-inch margin on all four sides;
 - (B) Consecutively numbered; and
 - (C) Letter-size, 8 ½ x 11 inch layout.
- (b) **Footnotes.** Extensive footnotes must not be used to circumvent page limitations.
- (c) **Caption.** The caption on a document presented for filing shall contain the name of the Court, the title of the case, case number and chapter number assigned thereto, only the last four digits of the debtor's social security number and/or taxpayer identification number and, if pertinent to an adversary proceeding, the adversary proceeding name and assigned number. The caption shall also contain a short title that identifies the document and the name of the party on whose behalf it is filed. A sample caption is as follows:

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF NEW YORK	
In re:	
Alex B. Casper and Alice B. Casper, (SSN: H: xxx-xx-1234; W: xxx-xx-4321) Debtors.	Hearing Date: April 1, 2011 Hearing Time: 10:00 a.m. Hearing Location: Syracuse
Case No. XX-XXXXX Chapter 13	
Objection by the Chapter 13 Trustee to Debtors' Motion to Modify Chapter 13 Plan	

Commented [DS1]: Will be deleted

(d) Noncompliance. The Court reserves the right to not consider a document that fails to comply with this Rule.

Comment

Paragraph (c) of this Rule should be read in conjunction with [LBR 9022-1](#). The caption for a proposed judgment affecting the title or lien on real property or for the recovery of money or property has additional requirements.

RULE 9004-1 DOCUMENTS – REQUIREMENTS OF FORM AND CAPTION

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UNITED STATES BANKRUPTCY COURT <u>NORTHERN DISTRICT OF NEW YORK</u>	
In re:	
	Case No. XX-XXXXX Chapter 13
_____ Objection by the Chapter 13 Trustee to Debtors' Motion to Modify Chapter 13 Plan	

(d) **Noncompliance.** The Court reserves the right to not consider a document that fails to comply with this Rule.

Comment

Paragraph (c) of this Rule should be read in conjunction with [LBR 9022-1](#). The caption for a proposed judgment affecting the title or lien on real property or for the recovery of money or property has additional requirements.

RULE 9013-1 MOTION PRACTICE

- (a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the [Federal Rules of Bankruptcy Procedure](#), Local Bankruptcy Rules, and the [Administrative Procedures](#).
- ~~(1) **Identification of Hearing Date, Time, and Location.** The date, time, and location of the hearing shall be included in the body of the notice of motion and above the case number in the caption.~~
- (1) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.
- (b) **Notice and Service Generally.** When a notice, motion or other paper is electronically filed, the CM/ECF system generates a “Notice of Electronic Filing” that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.
- (1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, constitutes service of the notice, motion or other paper.
- (2) **Service Upon a Non-Registered User or a Registered User Who Has Not Appeared in the Case.** A party who is not a registered user of the CM/ECF system must be served with the filed notice, motion or other paper in compliance with the [Federal Rules of Bankruptcy Procedure](#) and these rules.
- (c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the [Administrative Procedures](#).
- (d) **Supporting Affidavit, Application, and Exhibits.**
- (1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of [LBR 2002-1](#) and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application, or exhibit is available, without charge, from the movant upon request. The movant

must provide a contact name and telephone number and/or email address to which such a request may be made.

- (2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.
- (3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see [LBR 9013-2](#).
- (e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly [Rules 2002](#), [3007](#), and [4007](#)), these rules, the [Administrative Procedures](#), or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.
- (f) **Filing Deadlines.** An electronic filing is considered timely if received by the Court before midnight on the date set as a deadline, unless the Court or these rules specifically require an earlier filing.
- (g) **Answering Papers.**

 - (1) **Timeliness of Filing and Service.** Answering papers shall be served and filed so as to be received not later than seven (7) days prior to the return date of the motion. The date, time, and location of the hearing shall be included above the case number in the caption.
 - ~~(2) **Form.** Answering papers shall identify the date, time and location of the hearing above the case number in the caption.~~
 - 3(2) **Oral Opposition.** If the Court permits oral opposition to a motion without an answer or response being filed and adjourns the hearing, the answer or response substantiating the oral opposition shall be filed and served within seven (7) days of the original hearing date.
- (h) **Chambers Copy.** A paper chambers copy is required for the matters listed below. The chambers copy is to be submitted to the Clerk contemporaneously with the electronic filing of the pleading or other document. The copy must be clearly marked as “ECF CASE – CHAMBERS COPY.” The chambers copy need not contain a copy of the original signature. Unless otherwise directed by the Court, copies should be sent via regular mail or hand delivery, not by facsimile. Parties who fail to provide a chambers copy may be billed for copies.

 - (1) **Albany Chambers:**

 - (A) Notice of motion, motion, application, and certificate of service, except for chapter 13 trustee’s motion to dismiss and to determine/expunge claim;

- (B) Opposition, response, or any pleading relating to a hearing;
 - (C) Opposition to disclosure statement in a chapter 11 case;
 - (D) Objection to confirmation of a chapter 11 plan;
 - (E) Pretrial statement;
 - (F) Memoranda of law and any pleading and other document filed in regard to a submitted matter; and
 - (G) All pleadings related to loss mitigation.
- (2) **Syracuse and Utica Chambers:**
- (A) Notice of motion, motion, application and certificate of service;
 - (B) Any pleading filed in an adversary proceeding;
 - (C) Pretrial statement;
 - (D) Memoranda of law and any pleading or other document filed in regard to a submitted matter;
 - (E) Any document regarding an appeal;
 - (F) Withdrawal of reference;
 - (G) Any objection pursuant to [Fed. R. Bankr. P. 9033](#); and
 - (H) All pleadings related to loss mitigation.
- (i) **Adjournment Generally.** The Court requires a written request for an adjournment that affirmatively indicates the consent of opposing counsel, states the reasons for the request, and states whether any previous request for an adjournment has been made. Chambers will notify the requesting party only if the request is denied.
- (j) **Procedure for Requesting Adjournment.** An adjournment request shall be made by electronically filing not later than 2:00 p.m. the day prior to the hearing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form or an [Adjournment Request/Withdrawal/Settlement Notification for Confirmation Hearings](#) form.
- (l) **Inability to Obtain Opposing Counsel’s Consent.** The inability to affirmatively indicate opposing counsel’s consent to an adjournment will require an appearance for the purpose of requesting the adjournment, unless the Court directs otherwise.
- (k) **Withdrawal of Pleading or Other Document Generally.** Any party who seeks to withdraw a motion, pleading or other document shall provide written notification to the Court and all parties who have filed and served related papers.

- (l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (m) **Notification of Settlement – Generally.** Where movant and opposing counsel have agreed to the terms of an order, movant shall provide written notification to the Court and all parties who have filed and served responding papers.
- (n) **Procedure for Notification of Settlement.** Notice of the settlement of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
- (o) **Appearance by Local Counsel.** If a party is to be represented by local counsel at a hearing in place of counsel of record, local counsel must be admitted to practice before the District Court of the Northern District of New York and should be fully versed in the matter before the Court.

Comment

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RULE 9013-1 MOTION PRACTICE

- (a) **Notice.** Unless otherwise ordered by the Court, notice of a motion shall be provided in the time and manner prescribed by the [Federal Rules of Bankruptcy Procedure](#), Local Bankruptcy Rules, and the [Administrative Procedures](#).
- (1) **Identification of Relief Sought and Statutory Basis.** The notice of motion shall set forth, in concise, plain terms, the specific relief sought, the party or parties against whom such relief is sought, and the rule or statute upon which the motion or application is predicated. Failure to provide the basis for relief sought is cause for the Court to deny the relief requested.
- (b) **Notice and Service Generally.** When a notice, motion or other paper is electronically filed, the CM/ECF system generates a “Notice of Electronic Filing” that is transmitted to the filing party and all registered users of the CM/ECF system having appeared in the case in which the filing is made.
- (1) **Service Upon a Registered User Who Has Appeared in the Case.** Transmission of the Notice of Electronic Filing to a registered user via the CM/ECF system, constitutes service of the notice, motion or other paper.
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- (c) **Certificate of Service.** A certificate of service upon both registered and non-registered users of the CM/ECF system is required. The certificate must state the manner in which service or notice was accomplished on each party. The moving party shall file a certificate of service, not later than seven (7) days prior to the return date of the motion. Failure to file a certificate of service may result in the motion not appearing on the Court's calendar. Sample language for a certificate of service can be found in the [Administrative Procedures](#).
- (d) **Supporting Affidavit, Application, and Exhibits.**
- (1) **Service Not Required.** Except as provided in the subparagraphs below, where a motion is made for the relief set forth in subparagraphs (a)(1), (2), (3), and (5) of [LBR 2002-1](#) and the relief sought and the affected parties are clearly and unambiguously stated in the notice of motion, a supporting affidavit, application, or exhibits need not be served on all parties in interest. In such case, the notice of motion must clearly indicate that a copy of the supporting affidavit, application, or exhibit is available, without charge, from the movant upon request. The movant

must provide a contact name and telephone number and/or email address to which such a request may be made.

- (2) **Service Required.** A complete copy of a motion with any supporting affidavit, application, and exhibits shall be served upon the United States trustee, the trustee, any official committee, opposing counsel, and any party that may be directly adversely affected by the granting of the requested relief.
- (3) **Filing Requirements.** Any motion, supporting affidavit, and application must be filed with the Court. For filing requirements related to exhibits, see [LBR 9013-2](#).
- (e) **Timeliness of Filing and Service of a Motion.** Unless otherwise specified in the Federal Rules of Bankruptcy Procedure (particularly [Rules 2002](#), [3007](#), and [4007](#)), these rules, the [Administrative Procedures](#), or as ordered by the Court, any motion shall be filed and served at least twenty-one (21) days before the return date of the motion.
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- (l) **Procedure for Notification of Withdrawal.** Notice of the withdrawal of a motion shall be provided not later than 2:00 p.m. the day prior to the hearing by electronically filing an [Adjournment Request/Withdrawal/Settlement Notification for Motion Related Matters](#) form.
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