Theodore Lyons Araujo, Esq.
Bodow Law Firm, PLLC
1925 Park Avenue
Syracuse, New York 13208

Lynn Harper Wilson, Esq.
Staff Attorney
Office of the Standing Chapter 13 Trustee
250 S. Clinton St., Suite 203
Syracuse, New York 13202

Re: Peter J. Krawczyk
Case no. 00-64031 Chapter 13

LETTER DECISION AND ORDER

On October 13, 2004, Mark W. Swimelar, Esq., the Chapter 13 Trustee ("Trustee"), in the instant case of Peter J. Krawczyk ("Debtor"), filed an opposition to a motion by Debtor to modify his chapter 13 Plan. Specifically, the Trustee objected to the Debtor's proposed terms for modification of the plan and to the requested attorney's fees and costs associated with preparing and filing the motion to modify the plan. Notwithstanding the Trustee's objections, the Debtor's motion was granted at a hearing before this Court in Syracuse, New York on October 19, 2004; however, the Court agreed to further consider the issue of whether the fees and costs requested by Debtor's counsel for preparation and filing of the motion to modify were appropriate.

In a letter dated October 20, 2004, the Trustee brought to this Court's attention an apparent incongruence that exists between the Local Bankruptcy Rules for the Northern District of New York ("Local Rules"), specifically Local Rule 3015-2(a) and the Federal Rules of Bankruptcy Procedure ("Fed.R.Bankr.P."), specifically Rule 3015(g). Local Rule 3015-2(a) directs the debtor in Chapter

12 and 13 cases to serve a copy of the notice of modification only upon the "trustee, United States trustee and *all detrimentally affected creditors..."* Fed.R.Bankr.P. 3015(g) requires that the "clerk, or some other person as the court may direct, shall give ...*all creditors* not less than 20-days notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, *unless the court orders otherwise with respect to creditors who are not affected by the proposed modification."* In short, if an objection is filed, the creditors are additionally entitled to a minimum twenty-day notice of the hearing to consider the proposed modification. The court, however, may circumscribe notice to less than all creditors if it enters an order limiting notice; in this situation, it appears the Rule stands for the proposition that notice need not be sent to those creditors who are deemed *not affected by the proposed modification. See* 3-1329 *Collier Bankruptcy Manual*, 3d Edition Rvised P 1329.09.

The question presented to this Court for decision is limited to whether a debtor, when moving the court for modification of a chapter 13 plan, may adhere to the more limited requirements of Local Rule 3015-2(a), which mandates notice only to creditors who are *detrimentally affected*, or Fed.R.Bankr.P. 3015(g), which requires notice to all creditors *unless limited by court order.*

DISCUSSION

Pursuant to Fed.R.Bankr.P. Rule 9029(a), a district court is authorized to adopt local rules governing procedure within their bankruptcy jurisdiction, provided that such rules "are not inconsistent with Bankruptcy Rules." *In re Salisbury Flower Markets, Inc.,* BKY No. 4-89-3142 1991 LEXIS 225, *2 (Bankr. D. Minn. Feb. 22, 1999); *See also Somlyo v. J. Lu-Rob Enterprises,*

Inc., 932 F.2d 1043, 1046 (2d Cir. 1991). This delegation of authority is further circumscribed; that is, although a local rule may dictate a practice or procedure, it "may not enlarge, abridge, or modify any substantive right." *See In re Gaona,* 290 B.R. 381, 383 (Bankr.S.D.Cal. 2003). This is in harmony with the comment accompanying Local Rule 1001-1, which states: "Under the authority of Fed.R.Bankr.P. 9029, the district court may make and amend rules of practice and procedure *not inconsistent* with the Federal Rules of Bankruptcy Procedure and which do not prohibit or limit the use of the official forms."

Rule 9029 provides, in pertinent part:

(a) Local Bankruptcy Rules.

> (1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with – but not duplicative of – Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedures which are consistent with - - but not duplicative of - - Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

Local Rule 3015-2(a) is not only in conflict with the notice provisions promulgated under Fed.R.Bankr.P. 3015(g), but it is also somewhat in conflict with its own sibling, Local Rule 2002-1(a)(4) which, generally, requires a notice of the time fixed to accept or reject a proposed modification of a plan to be served on *all* creditors. Although Local Rule 3015-2(a) is procedural in nature, the inconsistency between the Local Rule and its federal counterpart could substantively impact the rights of the creditor: for example, if a debtor were to follow the notice provisions of

Local Rule 3015-2(a), instead of Fed.R.Bankr.P. 3015(g), a creditor, who was not a disinterested party to the petition, could be deprived of the fundamental right to notice and the opportunity to be heard on a debtor's proposed modification to the plan. Seemingly, it appears, that under Local Rule 3015-2(a), the debtor is charged with the subjective responsibility of providing notice to all *detrimentally affected* creditors rather than seeking a court order limiting notice. If this is indeed the case, then clearly, when the burden of notice to creditors is placed squarely at the feet of the debtor, the adjective phrase, *detrimentally affected,* is open-textured enough such that notice may not encompass all interested parties. On the other hand, Fed.R.Bankr.P. 3015(g) requires notice from the clerk or some other person as the court may direct, to all the creditors unless limited by court order. In summary, Local Rule 3015-2(g) and Fed.R.Bank.P. 3015(g) each possess irreconcilable structural differences, and the preeminence of the Federal Rules of Bankruptcy Procedure dictates that Fed.R.Bankr.P. 3015(g) trumps the Local Rules.

CONCLUSION

Local Rule 3015-2(a) expressly conflicts with Fed.R.Bankr.P. 3015(g). Moreover, Local Rule 3015-2(a) delegates to the debtor the bare authority to decide which creditor is detrimentally affected; in essence, the debtor, pursuant to the local rule, usurps the court's discretionary authority found in Fed.R.Bankr.P. 3015(g). Therefore, based on the foregoing, the Court concludes that Local Rule 3015-2(a) is unenforceable and a motion to modify a Chapter 13 plan is properly served upon all creditors unless the court orders otherwise. Accordingly it is,

ORDERED, that Debtor's motion is granted and Debtor's attorney, Wayne Bodow, Esq.,

shall receive attorney's fees in the sum of $350 and reimbursements of costs in the sum of $72.33 resulting from the service of the motion upon all creditors, all of which shall be paid through Debtor's chapter 13 plan.

Dated at Utica, New York

this 30th day of November 2004

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge