

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: SUBCOMMITTEE ON FORMS
SUBJECT: CHAPTER 13 PLAN FORM AND RELATED RULES
DATE: MARCH 7, 2016

Since the Committee's fall meeting, the Subcommittee has gathered informal input from relevant constituencies on an opt-out proposal for chapter 13 plans—that is, rules that would require use of a national form for chapter 13 plans unless a district promulgated its own form that met the requirements specified in a new rule. Based on the Subcommittee's consideration of the feedback it received, **it recommends that the Committee ask the Standing Committee to publish for public comment this summer the proposed amendments to Rule 3015 and new Rule 3015.1 and that it provide for a shortened comment period that would permit an effective date for the chapter 13 plan form and related rules of December 1, 2017.**

To provide context for this recommendation, the memorandum provides a review of the history of the chapter-13-plan-form project, followed by a discussion of the informal comments that the Subcommittee received and the considerations that led to the recommendation.

Review of Past Deliberations

The Committee began considering the possibility of creating a chapter 13 plan Official Form at its spring 2011 meeting. At that meeting, the Committee discussed Suggestions 10-BK-G and 10-BK-M, which both proposed the promulgation of a national plan form, and the Committee approved the creation of a working group to pursue the suggestions. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Because the Committee made significant changes to the form in

response to comments it received, the revised form and rules were published again in August 2014.

At the spring 2015 Committee meeting, in response to comments that were submitted after republication, the Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory Official Form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but would allow districts to opt out of the use of the Official Form if certain conditions were met.

Following the spring 2015 meeting, the Forms Subcommittee and the Consumer Subcommittee worked together to: (i) study and refine an opt-out proposal, (ii) obtain further input from a broad spectrum of the bankruptcy community, and (iii) consider the detailed substantive comments submitted on the republished Official Form and related rules. The Subcommittees concluded that an opt-out proposal could be implemented by further amending Rule 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case). As published in 2014, Rule 3015 required the use of the Official Form for a chapter 13 plan and declared ineffective any nonstandard provisions that were not placed in the section specified for such provisions or that were not identified as the Official Form required.

To allow for an opt-out, the Subcommittees revised Rule 3015(c)(1) to permit the use of either the Official Form or a Local Form meeting the requirements of proposed new Rule 3015.1.

During the summer of 2015, the Subcommittees extensively reviewed all 138 comments submitted after republication of the proposed plan form and the related rules. Based on this review, the Subcommittees proposed a number of technical changes to the plan form and to Rules 3002, 3007, 3015, and the Committee Note to Rule 7001. No additional changes were proposed for Rules 2002, 3012, 4003, 5009, and 9009.

The Subcommittees also considered the concerns expressed by the National Association of Consumer Bankruptcy Attorneys (“NACBA”) and some members of Congress regarding the publication process relating to the proposed plan form and rules. They discussed and identified ways to continue productive discussions regarding the opt-out proposal with various bankruptcy constituencies, including NACBA, the National Association of Chapter 13 Trustees, and the National Conference of Bankruptcy Judges (“NCBJ”).

At last fall’s meeting, the Committee gave approval to proposed Official Form 113 and the related amendments to Rules 2002, 3002, 3007,¹ 3012, 4003, 5009, 7001, and 9009, but it voted to defer submitting those items to the Standing Committee. This deferral was to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

¹ The Committee approved the amendments to Rule 3007 subject to further review by the Subcommittee on Business Issues. As discussed at item 3(A) of the consent agenda, the Business Subcommittee recommends that Rule 3007 be withdrawn from the chapter-13-plan-form package and be given further consideration as part of that subcommittee’s noticing project.

Informal Feedback on the Opt-Out Proposal

Judge Dow reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether there is any need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference (“NBC”), NCBJ, NACBA, the American Bankruptcy Institute’s Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. Unfortunately, the bulk of the comments received were directed at the plan form itself, rather than on the opt-out proposal. Three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express general support for allowing districts to opt out of a national plan form, although for some of them it was a second choice, as they stated a preference either for only a national form or for no national form at all. Only the NCBJ provided any specific comments on the content of Rule 3015.

The response of NACBA was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that “adoption of the ‘compromise’ proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy.” NCBJ also advised that the opt-out proposal be published for public comment.

The Subcommittee’s Recommendation

During a conference call on January 15, the Subcommittee reviewed the informal comments and discussed the possible options before the Committee. Specifically, the

Subcommittee considered whether any further publication should be sought and, if so, what should be republished and on what time schedule.

The Subcommittee was unanimous in its conclusion that the amendments to Rule 3015 and proposed new Rule 3015.1 should be published for public comment. The opt-out concept was not included in the 2013 and 2014 publications, and, although it might be viewed as a lesser-included version of the proposal for a mandatory national form, it does represent a distinct change from the published proposals. Several members of the Subcommittee stated that they favor republication because of concern about the constituencies who do not feel that they have had a fair opportunity to express their comments on the opt-out proposal. A general desire was expressed to eliminate any possible procedural objections to the Committee's eventual recommendation.

The Subcommittee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, "The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained." Because of the two prior publications and the narrow focus of the revised rules, the Subcommittee believes that a strong case can be made for shortening the usual 6-month comment period so that an entire year can be eliminated from the period leading up to the effective date of the Committee's proposed rules and forms.

If the regular publication schedule were followed, Rules 3015 and 3015.1 would be published in August 2016, and comments would be received by sometime in February 2017. The Advisory Committee and the Standing Committee would have the opportunity to give

approval in spring 2017, followed by the Judicial Conference in September 2017. The Supreme Court would then be in line to promulgate the rules by May 1, 2018, with an effective date for the form and rules of December 1, 2018.

Alternatively, if Rules 3015 and 3015.1 could be published on a truncated schedule, they could be published in August 2016 with a 3-month deadline for submitting comments by sometime in November 2016.² The Advisory Committee could then vote on approval by special meeting or email in December 2016 and seek Standing Committee approval in January 2017. Approval of the Judicial Conference could be sought in March 2017. With advance notice to and permission of the Supreme Court, it could be asked to promulgate the rules by May 1, 2017, leading to an effective date for the form and rules of December 1, 2017.

Under either scenario, the rules and Official Form approved by the Committee last fall would continue to be held in abeyance until the Committee takes action on Rules 3015 and 3015.1. This would allow the entire chapter 13 plan package to be sent forward as a unit.

The proposed drafts of Rule 3015 and 3015.1 follow in the agenda materials. The only changes to them since the last meeting are the deletion of the last paragraph of the Committee Note to Rule 3015.1³ and stylistic changes to both rules suggested by the Standing Committee's style consultants.

² If the Standing Committees thinks that it might be confusing to have two different comment deadlines for the materials published in August, the Committee could propose an earlier publication date, such as July 15, for Rule 3015 and 3015.1.

³ That paragraph previously stated: "Local Forms may, but need not, require that valuation and lien avoidance occur through the plan confirmation process." It was deleted as possibly misleading because Rule 3012 provides three different means for determining the amount of a secured claim (claim objection, motion, and plan confirmation).

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case

1 (a) FILING A CHAPTER 12 PLAN. The debtor
2 may file a chapter 12 plan with the petition. If a plan is not
3 filed with the petition, it shall be filed within the time
4 prescribed by § 1221 of the Code.

5 (b) FILING A CHAPTER 13 PLAN. The debtor
6 may file a chapter 13 plan with the petition. If a plan is not
7 filed with the petition, it shall be filed within 14 days
8 thereafter, and such time may not be further extended
9 except for cause shown and on notice as the court may
10 direct. If a case is converted to chapter 13, a plan shall be
11 filed within 14 days thereafter, and such time may not be
12 further extended except for cause shown and on notice as
13 the court may direct.

14 (c) ~~DATING. Every proposed plan and any~~
15 ~~modification thereof shall be dated.~~ FORM OF CHAPTER

16 13 PLAN. If there is an Official Form for a plan filed in a
17 chapter 13 case, that form must be used unless a Local
18 Form has been adopted in compliance with Rule 3015.1.
19 With either the Official Form or a Local Form, a
20 nonstandard provision is effective only if it is included in a
21 section of the form designated for nonstandard provisions
22 and is also identified in accordance with any other
23 requirements of the form. As used in this rule and the
24 Official Form or a Local Form, “nonstandard provision”
25 means a provision not otherwise included in the Official or
26 Local Form or deviating from it.

27 (d) ~~NOTICE-AND-COPIES. If the plan~~ The plan or
28 ~~a summary of the plan shall be~~ is not included with the
29 ~~each~~ notice of the hearing on confirmation mailed under
30 ~~pursuant to Rule 2002, the debtor shall serve the plan on~~
31 the trustee and all creditors when it is filed with the court.
32 ~~If required by the court, the debtor shall furnish a sufficient~~

33 ~~number of copies to enable the clerk to include a copy of~~
34 ~~the plan with the notice of the hearing.~~

35 (e) TRANSMISSION TO UNITED STATES
36 TRUSTEE. The clerk shall forthwith transmit to the
37 United States trustee a copy of the plan and any
38 modification thereof filed under ~~pursuant to~~ subdivision (a)
39 or (b) of this rule.

40 (f) OBJECTION TO CONFIRMATION;
41 DETERMINATION OF GOOD FAITH IN THE
42 ABSENCE OF AN OBJECTION. An objection to
43 confirmation of a plan shall be filed and served on the
44 debtor, the trustee, and any other entity designated by the
45 court, and shall be transmitted to the United States trustee,
46 ~~before confirmation of the plan~~ at least seven days before
47 the date set for the hearing on confirmation, unless the
48 court orders otherwise. An objection to confirmation is
49 governed by Rule 9014. If no objection is timely filed, the
50 court may determine that the plan has been proposed in

51 good faith and not by any means forbidden by law without
52 receiving evidence on such issues.

53 (g) EFFECT OF CONFIRMATION. Upon the
54 confirmation of a chapter 12 or chapter 13 plan:

55 (1) any determination in the plan made under
56 Rule 3012 about the amount of a secured claim is
57 binding on the holder of the claim, even if the holder
58 files a contrary proof of claim or the debtor schedules
59 that claim, and regardless of whether an objection to
60 the claim has been filed;

61 (2) any request in the plan to terminate the stay
62 imposed by § 362(a), § 1201(a), or § 1301(a) is
63 granted.

64 ~~(g)~~(h) MODIFICATION OF PLAN AFTER
65 CONFIRMATION. A request to modify a plan under
66 ~~pursuant to~~ § 1229 or § 1329 of the Code shall identify the
67 proponent and shall be filed together with the proposed
68 modification. The clerk, or some other person as the court

69 may direct, shall give the debtor, the trustee, and all
70 creditors not less than 21 days' notice by mail of the time
71 fixed for filing objections and, if an objection is filed, the
72 hearing to consider the proposed modification, unless the
73 court orders otherwise with respect to creditors who are not
74 affected by the proposed modification. A copy of the
75 notice shall be transmitted to the United States trustee. A
76 copy of the proposed modification, or a summary thereof,
77 shall be included with the notice. ~~If required by the court,~~
78 ~~the proponent shall furnish a sufficient number of copies of~~
79 ~~the proposed modification, or a summary thereof, to enable~~
80 ~~the clerk to include a copy with each notice.~~ Any objection
81 to the proposed modification shall be filed and served on
82 the debtor, the trustee, and any other entity designated by
83 the court, and shall be transmitted to the United States
84 trustee. An objection to a proposed modification is
85 governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

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1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based on
16 a valuation of the collateral for the claim; or

17 (3) avoid a security interest or lien;

18 (d) the Local Form contains separate paragraphs
19 for:

20 (1) curing any default and maintaining payments
21 on a claim secured by the debtor's principal residence;

22 (2) paying a domestic-support obligation;

23 (3) paying a claim described in the final
24 paragraph of § 1325(a) of the Bankruptcy Code; and

25 (4) surrendering property that secures a claim
26 with a request that the stay be terminated as to the
27 surrendered collateral; and

28 (e) the Local Form contains a final paragraph for:

29 (1) the placement of nonstandard provisions, as
30 defined in Rule 3015(c), along with a statement that
31 any nonstandard provision placed elsewhere in the
32 plan is void; and

33 (2) certification by the debtor's attorney or by
34 an unrepresented debtor that the plan contains no

- 35 nonstandard provision other than those set out in the
36 final paragraph.

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor’s individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact that the plan contains a nonstandard provision, limits the amount of a secured claim based on a valuation of the collateral, or avoids a lien. The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard

provisions placed elsewhere in the plan are void. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.