

THE CHAPTER 13 REPORTER

SPRING 2012

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

Trustee Corner



Trustee Comment

**Michael H. Meyer,
Standing Chapter 13
Trustee**

It has become evident that disseminating information to attorneys filing Chapter 13 cases is more critical than ever before. In the past I have sent information by e-mail to attorneys whose e-mail addresses I had, but keeping the list up to date was impossible.

My Senior Staff attorney, Deanna Hazelton, suggested a newsletter. "The Chapter 13 Reporter" was first sent out in December 2011. The Winter 2011 edition was an attempt to apprise everyone of the important changes in our office's procedures and the attorney assignment. We also wanted to welcome topics for brown bag meetings. The Chapter 13 Trustee's office is now committed to sending more frequent newsletters providing critical information to the bankruptcy bar. We have found that the key to success in this area of law is in communication.

This Spring 2012 edition, contains information regarding new procedures and changes in the old procedures that the Trustee's Office and the courts will be implementing in response to the growing calendars and the new local rules. For instance, the Winter 2011 edition stated that all Motions to Dismiss will be filed on 28 days notice. That procedure has been changed. The Trustee's office will only select a few matters that will be set on 28 days notice. Those that are set on 28 days notice do, however, require a response pursuant to local rule 9014-1(f)(1)(B) within 14 days of the hearing date. Failure to file a timely opposition may result in the courts' predisposal of the matter.

New Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys

Effective May 1, 2012 there is a new "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys". Enclosed herein with this edition is a copy of the new form with a notation of the changes, deletions and additions highlighted.

Please use the new form as failure to do so will delay confirmation of the plan.

Brown Bag Lunch

The bankruptcy court has invited all **Bankruptcy Practitioners** (attorneys and trustees) to attend a brown bag lunch in the bankruptcy clerks' conference room on May 31, 2012 from 12:00 to 1:00 pm. If you plan to attend, please RSVP to Kathy Torres by May 29th at 499-5860, or email Kathy_Torres@caeb.uscourts.gov so that they will know how many are attending. Please put "Brown Bag Lunch" in the subject line.

New Local Rules and Chapter 13 Plan

The court has signed General order 12-01 which adopts the Local Rules effective May 1, 2012. The Local Rules shall govern in all bankruptcy cases and proceedings thereafter filed and, insofar as just and practicable, all bankruptcy cases and proceedings then pending. For a copy of the local rules and new Chapter 13 plan visit www.caeb.uscourts.gov.

Residential Capital Bankruptcy Filing

Fifty-one different entities including GMAC Mortgage and Homecoming Financial, LLC have filed Chapter 11 petitions in New York. Your local motions to avoid liens and other activity may be affected. Go to <http://www.kccllc.net/rescap> for information.

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Orders Confirming Plans



As of May 1st the local rules will require that the order confirming plan be submitted within 21 days of the meeting of the creditors for plans that do not have objections pending or within 14 days of the hearing confirming a plan.

Also, as of May 1st, the new local rules require that all valuation and lien avoidance motions must be concluded before or in conjunction with plan confirmation or the court may deny confirmation.

These two rules have required changes in the Trustee and Debtors prior submittal of order confirming plans.

341 Meetings

Starting May 8, 2012, we will be requiring order confirming plans at the meeting of the creditors. In that minor changes are usually required to the orders, please bring a thumb disk version of your order to the 341 meeting. The Trustee will be finalizing orders that need changes at the meeting of the creditors. Therefore, you will need to wait at the meeting until your order is completed, approved and signed.

Valuation Requirements

The Judges have informed us that they would like to proceed differently with respect to order confirming plans and valuation/lien avoidance requirements.

Courtroom A: The Trustee's office has been requested not to submit order confirming plans to chambers in courtroom A, if a valuation/lien avoidance order has not yet been entered. Therefore, in courtroom A your plans will not be confirmed until you submit an order on your

valuation/lien avoidance motions on all claims in the plan.

This requirement starts as of May 1st and will apply to new as well as existing plans. Therefore, if you have filed a plan prior to May 1st that has not yet been confirmed, and you have yet to file a valuation/lien avoidance motion you will need to do so quickly, in that your orders will not be submitted until the Trustee's office has verification that a valuation order/lien avoidance order has been submitted.

This process will hold up the current order confirming plans that we are holding and will slow down the submittal of new orders that we receive after May 1st. As a result, if the order confirming plans can not be submitted in a timely manner as required by the new local rule due to the failure of the Debtor completing the valuation/lien avoidance process, the Trustee will be forced to bring a motion to dismiss for unreasonable delay.

Courtroom B: Courtroom B chooses to handle this matter differently. Therefore, the Trustee's Office has been requested to submit the order confirming plans as soon as possible to the court. Our office will not be reviewing courtroom B orders for valuation/lien avoidance orders prior to submitting the orders confirming plans.

Untimely Orders

Without a finalized order confirming plan by the meeting date, the deadlines set forth in the local rules makes it difficult for the Trustee to comply. There-

fore, without a timely order, the Trustee will have to either bring a motion to dismiss or object to the plan.

Additionally, if our office cannot submit plans after the confirmation hearing in a timely manner, the Trustee's office will have to file a motion to dismiss for unreasonable delay.

The Trustee's office is currently monitoring numerous pre-May 1st cases that do not have orders confirming plan submitted by Debtors' counsel. Please submit those orders quickly in that the orders are now deemed late pursuant to the old and new local rules.

We will be filing motions to dismiss for all pre-May 1st cases that do not have orders submitted to our office.

We know that everyone involved would appreciate less unnecessary objections to plans and motions to dismiss so we would really appreciate your cooperation while we attempt to put this new rule into effect.



Judges Corner



Chapter 13 Modified Plans: Service, Notice and Genuine Confusion

Fredrick E. Clement, Bankruptcy Judge
Joseph H. Flack, Law Clerk

That Chapter 13 plans frequently require modification is a truism. But the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (“Rules”) are mercilessly silent on the procedure by which confirmation of a modified plan is to be accomplished. The Eastern District of California requires confirmation by motion. LBR 3015-1(d)(1), (2); *see generally In re Lynch*, 109 B.R. 792, 795 (Bankr. W.D. Tenn. 1989).

The question is how the motion and modified Chapter 13 plan must be delivered to parties in interest. Is notice sufficient? Or must the debtor serve the motion and plan on parties in interest as described in Rule 7004? *See In re Ass’n of Volleyball Professionals*, 256 B.R. 313, 319 (Bankr. C.D. Cal. 2000) (discussing the difference between service and notice). On this issue, the rules are less than clear. Some argue the sufficiency of delivery by notice and cite Rule 3015(g), which provides, “The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days *notice by mail* of the time fixed for filing objections.” Fed. R. Bankr. P. 3015(g) (emphasis added); *cf.* Fed. R. Bankr. P. 2002(b). Proponents of this view point to the purposeful use of the word *notice*, rather than the word *service*. They also argue that noticing, as opposed to serving, modified plans is consistent with long-standing Eastern District of California practice.

Others suggest that Rule 3015(g) must be read in conjunction with Rule 9013 and Local Bankruptcy Rule 3015-1(d)(1), (2). Since a modification requires a motion, the service requirements of Rule 9013 may be triggered. Rule 9013 requires that “[e]very motion . . . shall be *served* by the moving party . . .” Fed. R. Bankr. P. 9013 (emphasis added). Furthermore, modified plans may also alter creditors’ rights significantly in a way that could implicate Rule 9014, which requires Rule 7004 service of contested matters on parties against whom relief is sought. Fed. R. Bankr. P. 9014(a), (b) (requiring service of contested matters under Rule 7004); *see also* Fed. R. Bankr. P. 7004(b)(3), (h) (imposing heightened delivery requirements when serving corporations and FDIC-insured institutions).

Local Bankruptcy Rule 3015-1(d)(2) provides, moreover, “If the debtor . . . modifies the chapter 13 plan after confirmation . . . the plan proponent *shall file and serve* the modified chapter 13 plan together with a motion to confirm it.” LBR 3015-1(d)(2) (emphasis added). Proponents of this view also point to the purposeful use of words, in this case “service,” and suggest that Rule 7004 is implicated.



Given a genuine dispute as to the propriety of the proper method for delivery of a modified chapter 13 plan, this court will not raise, *sua sponte*, the question of the propriety of confirmation using the notice procedure of Rules 2002(b) or 3015(g). But a creditor or other party in interest is not similarly foreclosed. And the consequences of failing to effect proper service, when required, can be disastrous. *See Beneficial California, Inc. v. Villar (In re Villar)*, 317 B.R. 88 (B.A.P. 9th Cir. 2004) (reversing order granting motion to avoid lien where notice but not service was given).



What's Old, What's New

When are Payments "Received" by the Trustee

Kelly Groth, Accounting Supervisor

The Local Rules and Chapter 13 plan state that the debtor(s) monthly plan payment **"must be received by the trustee not later than the 25th day of each month"**. In order for the Trustee to make the payments as required in the plan, the Trustee must have the funds to make the payments. Therefore, it is when the payment has been posted to the Debtors' actual case, that we deem the payment has been "received." The Trustee in Fresno, like a majority of the Chapter 13 Trustees, banks with SunTrust Bank in Memphis, Tennessee. For almost a year now, the Trustee has had the bank operate a "lockbox" site where the receipts that are delivered to the Memphis P.O. Box are securely opened, scanned and divided into batches for the Trustee's office to process.

The general sequence of events for the Trustee's office receiving plan payments is as follows:

1. The postal service delivers items to the P.O. Box in Memphis.
2. A secured transport service picks up these items multiple times throughout the day and delivers them to the secure processing site.
3. Depending on the time the items are picked up from the post office and delivered to the processing site, the items will either be put in batches that day or at the latest, the next business day.
4. The Trustee's office will receive the batches for posting to cases the business day after items are divided into batches. ***Therefore, this is the day the Trustee deems the payment received.***

If the debtor is tracking the payment through a website, please note that the date that the postal service delivers the payment to our P.O. Box in Memphis is only the first of numerous steps before the Trustee deems the payment "received."

Like most bills, it is recommended that you allow 7-10 business days for plan payments to be posted. This means that weekends and holidays must be considered when mailing payments. Please keep in mind that on-line bill pay checks are not an acceptable form of payment. Payment must be made by wage order, cashier's check, money order, or other form of guaranteed funds.

New Court Calendar

Deanna Hazelton, Senior Staff Attorney

The Trustee's Office and the Bankruptcy Court Judges have combined efforts to create more functional and efficient Chapter 13 calendars for all parties involved.

The Chapter 13 calendar has been divided into two separate calendars. We have been referring to the first calendar as the "regular self-set calendar." The second, slightly later calendar is referred to as the "triage" calendar.

The triage calendar will contain only motions and objections to plans brought by the Trustee, unless the court has hand picked other matters for this calendar. This triage calendar will take place immediately following the regular self set calendar on the same day.

The triage calendar is essentially all objections to plans that are filed immediately after the meeting of the creditors. This calendar will also have the motions to dismiss for delinquency, feasibility, and failures to provide documents.

You will also notice that the Trustee will start combining the motions to dismiss with the objections to plan where applicable. For instance, instead of having a separate motion to dismiss and separate objection to plan for failure to appear, the two will be combined.

Please bear with us while we are attempting to work out the kinks with the time and matters set for hearings. This is a work in progress and we will try our best to make this transition as smooth as possible for all involved.

