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**Rule 1001-1. Scope of Rules and Sample Forms; Short Title.**

These local rules and appendices govern procedures for cases filed in the District of South Dakota under Title 11 of the United States Code. They are effective . They shall be cited as "Bankr. D.S.D. R.," *e.g.*, Bankr. D.S.D. R. 4001-1(b).

**PART I**

**COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO  
PETITION AND ORDER FOR RELIEF**

Rule	
1002-1	Petition.
1007-1	Lists (other than mailing list), Schedules, Statements, and Payment Advices; Extension of Time to File.
1007-2	Mailing List.
1009-1	Amended Petition; Amendment to Petition.
1009-2	Amendment to List (other than mailing list), Schedule, or Statement.
1014-1	Transfer of Case or Adversary Proceeding to Another District.
1014-2	Change of Venue (Division) within District.
1015-1	Consolidation of Estates in Joint Case; Consolidation or Deconsolidation of Estates.

**Rule 1002-1. Petition.** A petition shall conform to the Official Form and shall be typewritten, unless the Court permits the petition to be handwritten. Only the original petition shall be filed with the Court (no copies).

REFERENCES: 11 U.S.C. §§ 301 and 303; Fed.Rs.Bankr.P. 1002, 1005, 1006, 9004, 9009, and 9011; Official Forms 1 or 5.

**Practice Pointer:** A checklist of filing requirements for each chapter may be found at Appendix 1A.

**Rule 1007-1. Lists (other than mailing list), Schedules, Statements, and Payment Advices; Extension of Time to File.**

**(a) Form.**

(1) Lists (other than the mailing list), schedules, and statements. All lists (other than the mailing list), schedules, and statements shall conform to the Official

Forms and be typewritten, unless the court permits the list, schedule, or statement to be handwritten. On schedules D, E, and F, creditors shall be listed in alphabetical order by name, with their complete mailing address, including zip code. A creditor must be listed at its own address and may not be listed only in care of its attorney at the attorney's address.

(2) Payment advices. Payment advices (also known as wage or earnings statements) shall be attached to a signed and dated statement that conforms to the sample at Appendix 1B.

**(b) Non-disclosure of personal data identifiers.** The debtor is solely responsible for redacting any personal data identifiers that may appear in the documents governed by this rule. The Clerk shall have no responsibility for doing so and no liability for not doing so.

(1) Minor children. A debtor shall disclose only the relationships (*e.g.*, "daughter"), not the full name or initials, and only the age or year of birth, not the full date of birth, of any minor children. A debtor shall not disclose the Social Security number of a dependent.

(2) Social Security number. A debtor represented by an attorney shall disclose his full Social Security number only through the electronic petition filing process. A debtor not represented by an attorney shall file an Official Form 21, Statement of Social Security Number, with his petition. If a debtor needs to disclose his Social Security number in any other document governed by this rule, he shall list only the last four digits.

(3) Account numbers. Unless otherwise ordered, a debtor shall include only the last four digits of any account number on schedules D, E, and F or other document governed by this rule.

**(c) Documents filed only by an individual debtor.** Notwithstanding any suggestion to the contrary in the Federal Rules of Bankruptcy Procedure, only an individual debtor shall file a schedule C, a schedule I, a schedule J, an Official Form B22, payment advices described in Fed.R.Bankr.P. 1007(b)(1)(E) and paragraph (a)(2) above, and a record of any interest the debtor has in an account or program of the type specified in 11 U.S.C. § 521(c).

**(d) Submission.** Only the original of each list, schedule, and statement shall be filed with the Court (no copies).

**(e) Extension of time to file.**

(1) Content of motion. A motion to extend the time to file a list, schedule, statement, or payment advices shall state the cause for the extension requested and the specific extension requested (*e.g.*, "until April 1, 2010"). Absent exigent circumstances, the motion should not request an extension to a date that is fewer than three days before the meeting of creditors under 11 U.S.C. § 341(a).

(2) Service. A motion to extend the time to file a list, schedule, statement, or payment advices shall be served on parties in interest.

(3) Objection. An objection or other response to a motion to extend the time to file a list, schedule, statement, or payment advices shall be filed with the Court and served on the movant within seven days after the motion is filed with the Court.

**(f) Statement of Corporate Ownership.** A corporate debtor under any chapter shall file the statement of corporate ownership required by Fed.R.Bankr.P. 1007(a)(1) using the form at Appendix 1C.

**(g) Chapter 11 Small Business Debtor Statement.** A small business chapter 11 debtor shall file the statement regarding certain business records, using the form at Appendix 1D, and attach, when applicable, the business records required by 11 U.S.C. § 1116(1).

REFERENCES: 11 U.S.C. §§ 341, 521, and 1116; Fed.Rs.Bankr.P. 1007, 9004, and 9037; Official Forms 4, 6, 7, and 8.

**Practice Pointer:** A checklist of filing requirements for each chapter may be found at Appendix 1A.

**Rule 1007-2. Mailing List.** A debtor not represented by an attorney shall file, with his petition, a mailing list that includes the full name and the full mailing address for each creditor and any other party in interest, excluding the debtor, the debtor's attorney, the case trustee, and the United States Trustee. The mailing list shall strictly conform to the guidelines, sample, and "Trouble Sheet" at Appendix 1E. If there are more than ten creditors, the mailing list shall be submitted on a compact disk.

REFERENCES: 11 U.S.C. § 521(a)(1)(A); Fed.R.Bankr.P. 1007(a).

### **Rule 1009-1. Amended Petition; Amendment to Petition.**

**(a) Amended Petition.** If a petition is filed without all required signatures or without all appropriate boxes checked in sections that require the debtor to make a declaration, the debtor shall immediately file an amended petition, Official Form 1, labeled "AMENDED" at the top of the first page, with all appropriate boxes checked, a current date, and new signatures. Unless otherwise directed by the Clerk, no notice or service of the amended petition shall be made except as may be provided electronically by the Clerk.

### **(b) Amendment to Petition.**

(1) Required content. Except as provided in paragraph (a) above, if a petition contains information that is incorrect or incomplete as of the petition date, the debtor shall file a combined amendment *to* the petition (not an amended petition) and notice of amendment that conforms to the sample at Appendix 1F. The amendment to the petition shall specifically state each change from the original petition that is being made. The amendment shall *not* include an amended petition (Official Form 1) as an attachment.

(2) Service. If the amendment to the petition is filed before the Clerk generates the notice of commencement of case, the debtor shall serve the combined amendment and notice of amendment on parties in interest. If the amendment to the petition is filed after the Clerk generates the notice of commencement of case, the debtor shall serve the combined amendment and notice of amendment on all creditors and other parties in interest.

REFERENCE: Fed.R.Bankr.P. 1009.

### **Rule 1009-2. Amendment to List (other than mailing list), Schedule, or Statement.**

**(a) Required content.** If a list (other than a mailing list), schedule, or statement contains information that is incorrect or incomplete as of the petition date, the debtor shall file a combined amendment and notice of amendment that conforms to the samples at Appendices 1G or 1H. The amendment shall state each change from the original document that is being made, including any change in a value, amount, or total. If schedule B, C, I, or J is amended, the amendment shall also include as an attachment a revised schedule (Official Form 6B, 6C, 6I, or 6J) that incorporates all of the changes. If a statement of monthly income is amended, the amendment shall also include as an attachment a revised statement (Official Form B22A, B22B, or B22C, depending on the chapter) that incorporates all of the changes. Any revised schedule or statement attached to an amendment shall be labeled "AMENDED" at the

top of the first page, *e.g.*, "AMENDED Schedule C."

**(b) Service.** The debtor shall serve a copy of the amendment and any attachments on parties in interest, including any affected party. Whenever a schedule C is amended, all creditors and other parties in interest are deemed to be affected parties. Whenever a schedule D, E, or F is amended, any creditor that is being added or deleted by the amendment is an affected party.

REFERENCES: Fed.Rs.Bankr.P. 1007, 1008, and 1009.

**Practice Pointer:** A debtor no longer needs to amend his mailing list. If a creditor was omitted from the mailing list or if the creditor's name or address was listed incorrectly on the mailing list, the debtor should file an amendment to the appropriate schedule. The Clerk will update the case mailing list accordingly.

**Rule 1014-1. Transfer of Case or Adversary Proceeding to Another District.** A motion to transfer a case or adversary proceeding to another district shall state the cause for such relief and shall be served with a notice of motion on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall state any objection must be filed with the Court by a date certain (month, day, year) 14 days after service of the motion.

REFERENCES: 28 U.S.C. §§ 1408, 1409, and 1412.

**Practice Pointer:** If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 1014-2. Change of Venue (Division) within District.** A motion to change the venue of a case or adversary proceeding to another division within this district shall state the cause for such relief and shall be served with a notice of motion on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall state any objection must be filed with the Court by a date certain (month, day, year) seven days after service of the motion.

**Practice Pointers:** A list of the counties within each division of the District of South Dakota, Bankruptcy Court sites, and Bankruptcy Clerk's offices may be found at Appendix 1I.

If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 1015-1. Consolidation of Estates in Joint Case; Consolidation or Deconsolidation of Estates.**

**(a) Joint case.** Unless otherwise ordered, the estates in a joint case filed under 11 U.S.C. § 302(a) are substantively consolidated pursuant to 11 U.S.C. § 302(b) for all purposes.

**(b) Motion regarding consolidation.** A motion to substantively consolidate two or more estates under Fed.R.Bankr.P. 1015(b) or a motion to deconsolidate the estates of joint debtors shall state the cause for such relief and shall be served with a notice of motion on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall state any objection must be filed with the Court by a date certain (month, day, year) 21 days after service of the motion.

REFERENCES: 11 U.S.C. § 302; Fed.R.Bankr.P. 1015.

**Practice Pointers:** Substantive consolidation and joint administration are distinct legal procedures. Under joint administration, the estates are not combined, but the separate cases are handled under one docket for convenience and efficiency. Separate accounts are kept, and a separate distribution is made to creditors. Fed.R.Bankr.P. 2009(e). When cases involving different debtors are substantively consolidated, the estates are combined into one, and only a single distribution to all the creditors from all the consolidated cases is made from all the consolidated assets. Although no Bankruptcy Code section or federal rule specifically governs substantive consolidation, some courts rely on 11 U.S.C. § 105(a) for authority. *See In re Glen J. Brinkman*, Bankr. No. 94-30004, slip op. (Bankr D.S.D. June 20, 1994).

If any party is served by mail, the notice period stated in paragraph (b) above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**PART II**

**OFFICERS AND ADMINISTRATION; NOTICES; 341 MEETINGS;  
EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

Rule	
2002-1	Notices: General and Particular.
2002-1A	Reduced (shortened) Notice.
2002-1B	Limited Notice.
2002-4	Returned Mail.
2002-5	Notice of Appearance and Request for Notice.
2003-1	Meeting of Creditors under 11 U.S.C. § 341(a).

2004-1	Filing Transcript of Rule 2004 Examination.
2014-1	Employment of Estate Professionals.
2015-3	Reports Filed with the United States Trustee.
2016-1	Disclosure of Compensation.
2016-2	Fees for Estate Professional.
2016-3	Administrative Expense other than for Estate Professional.
2016-4	Administrative Expense upon Conversion of Chapter 13 Case.
2072-1	Debtor's Service of Notice of Commencement of Case.
2090-1	Admission and Practice of Attorneys.
2091-1	Withdrawal or Substitution of Attorney.

**Rule 2002-1. Notices: General and Particular.**

**(a) General notice.** A notice of a motion, application, or other request for relief, including a notice of an objection to claimed exempt property (but excluding a notice of an objection to the allowance of a claim, a notice of a confirmation hearing in a chapter 12 or chapter 13 case, a notice of an application for fees, and a notice of a motion to approve a sale of estate property) shall conform to Official Form 20A and the sample at Appendix 2A; shall include the last date (month, day, year), as determined by paragraph (f) below, by which an objection or other response must be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b); and shall state a hearing will be set by separate order if an objection is timely filed with the Court.

**(b) Notice of hearing on an objection to the allowance of a claim.** A notice of hearing on an objection to the allowance of a claim shall conform to Official Form 20B and the sample at Appendix 2B (telephonic hearing) or 2C (in-court hearing) and shall include:

(1) a last date (month, day, year) by which a response must be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b) that is 30 days after service of the motion; and

(2) the date, time, and place of the hearing on the objection as provided by the Scheduling Deputy Clerk.

**(c) Notice of a chapter 12 or chapter 13 confirmation hearing.** A notice of a confirmation hearing in any chapter 12 case or in a chapter 13 case when required by Bankr. D.S.D. R. 3015-3B or 3015-4B shall conform to Official Form 20A and the sample at Appendix 2D (telephonic hearing) or 2E (in-court hearing) and shall include:

(1) the last date (month, day, year) by which an objection or other response must be filed with the Court and served in compliance with Bankr. D.S.D. R.

9014-1(b) that is 21 days after service of the plan in a chapter 12 case and 28 days after service of the plan in a chapter 13 case;

(2) the date, time, and place of the confirmation hearing as provided by the Scheduling Deputy Clerk; and

(3) if requested by the case trustee, the date, time, and place of any pre-confirmation meeting.

**(d) Notice of a motion to sell property of the estate.** A notice of a motion to sell property of the estate shall conform to Fed.R.Bankr.P. 2002(c)(1), Official Form 20A, and the sample at Appendix 2F, and shall include:

(1) the last date (month, day, year) by which an objection or other response must be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b) that is 21 days after service of the motion;

(2) a description of the property to be sold; and

(3) a summary of the terms of the proposed sale.

**(e) Notice of an application for fees in excess of \$1,000.00.** A notice of an application for fees in excess of \$1,000.00 shall conform to Fed.R.Bankr.P. 2002(c)(2), Official Form 20A, and the sample at Appendix 2G, and shall include:

(1) the last date (month, day, year) by which an objection or other response must be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b) that is 21 days after service of the motion; and

(2) the identity of the applicant and the amounts sought for compensation for services, applicable sales tax, and reimbursement of expenses.

**(f) Determining the last date to file an objection or other response included in a notice.**

(1) The last date for filing and serving an objection or other response set forth in a notice shall be the date on which the required notice period prescribed by the Code, applicable Federal Rule of Bankruptcy Procedure, local rule, or order expires, plus an additional three days as provided by Fed.R.Bankr.P. 9006(f) if any party is served by mail. The last date shall also not be fewer than three days prior to any scheduled hearing, unless the Court for cause directs otherwise. If the last date falls on a Saturday, Sunday, or federal holiday, then the next day that is not a Saturday, Sunday, or federal holiday shall be used in the notice as the last date for filing and serving an objection or other response.

(2) If notice of a particular motion, application, or other request for relief is required by the Code or Federal Rules of Bankruptcy Procedure but the length of notice is not prescribed by the Code or Federal Rules of Bankruptcy Procedure, a local rule, or an order, the notice given shall be reasonable under the circumstances. Absent exigent circumstances, seven days notice is presumed reasonable.

REFERENCES: 11 U.S.C. §§ 342, 1128, 1224, and 1324; Fed.Rs.Bankr.P. 2002, 3020(b), and 9013.

**Practice Pointer:** A list of common motions and applications and the required notice period for each is maintained on the Court's website ([www.sdb.uscourts.gov](http://www.sdb.uscourts.gov)) under the tab "Information," and then the tab "Practice Pointers."

Here is a sample calculation for determining a last date for objections under paragraph (f)(1):

*A creditor's attorney prepares a motion to dismiss a chapter 12 case and a notice, which he intends to file and serve by mail on September 15, 2010. A hearing on the motion does not yet need to be set. Under Fed.R.Bankr.P. 2002(a)(4), the creditor's attorney must give 21 days notice of that motion. Under Fed.R.Bankr.P. 9006(f), the creditor's attorney must also give an additional three days notice because the notice is being served by mail on some parties. The minimum notice period, therefore, is 24 days. The attorney counts the notice period beginning the day after the motion is to be served, September 16, 2010. The twenty-fourth day falls on Saturday, October 9, 2010. The next day that is not a Saturday, Sunday, or federal holiday is Tuesday, October 12, 2010. Under this local rule, the last date for filing and serving an objection set forth in this notice would therefore be October 12, 2010.*

#### **Rule 2002-1A. Reduced (shortened) Notice.**

**(a) Motion.** A motion to reduce any notice period required by the Code, the Federal Rules of Bankruptcy Procedure, these local rules, or an order shall be filed with the motion, application, plan, or other request for relief for which reduced notice is sought. The motion shall conform to the sample at Appendix 2H; shall specify the desired date (month, day, year) by which an objection or other response to the underlying motion, application, plan, or other request for relief must be filed with the Court and served; and shall state the cause for such relief.

**(b) Order constitutes the notice.** If a motion for reduced notice is granted, the order reducing notice shall constitute notice of the underlying motion, application, plan, or other request for relief. The movant or applicant shall *not* prepare, file, or serve a separate notice.

**(c) Service.** Upon entry of an order reducing notice, the movant or applicant shall serve the order reducing notice and the underlying motion, application, plan, or other request for relief on the appropriate parties within the time directed by the Court in the order.

REFERENCES: 11 U.S.C. § 342; Fed.Rs.Bankr.P. 2002, 9006(c), and 9007.

**Practice Pointers:** Certain notice periods cannot be reduced. See Fed.R.Bankr.P. 9006(c)(2).

This procedure does not apply to a motion for use of cash collateral or a motion for authority to obtain credit, which are separately governed by Fed.Rs.Bankr.P. 4001(b)(2) and (c)(2) and Bankr. D.S.D. Rs. 4001-2 and 4001-3. Rather than requesting reduced notice, the movant must request a preliminary hearing on those motions.

A party requesting reduced notice should *not* merely state it will "suffer irreparable harm" if the notice period is not reduced. Instead, the movant should set forth specific facts supporting reduced notice and the reasonably anticipated consequences to the movant or others if the notice is not reduced.

The movant should **not** prepare and file a notice and certificate of service and should **not** file or serve any documents other than those specified in the rule until the Court rules on the motion for reduced notice. If the motion for reduced notice is granted, the movant will serve the order reducing notice in lieu of a notice. If the motion for reduced notice is denied, the Court's order will direct the movant to prepare, file, and serve a regular notice regarding the movant's underlying motion, application, plan, or other request for relief.

The movant should anticipate serving any order reducing notice on the day the motion for reduced notice is filed with the Court. Accordingly, the earlier in the day the motion for reduced notice is filed, the better.

#### **Rule 2002-1B. Limited Notice.**

**(a) Automatic limitation of notice in chapter 7 asset cases.** In any chapter 7 case, if more than 90 days have passed since the Clerk has notified creditors of the need to

file proofs of claim, any notice required by the Code, the Federal Rules of Bankruptcy Procedure, these local rules, or an order to be served on “all creditors and other parties in interest,” need only be served on creditors that have timely filed a proof of claim, creditors that may still timely file a proof of claim, and the other parties in interest.

**(b) Motion to limit notice.** A motion to limit the parties to be served with a notice required by the Code, the Federal Rules of Bankruptcy Procedure, these local rules, or an order shall be filed with the underlying motion, application, plan, or other request for relief for which limited notice is sought. The motion shall conform to the sample at Appendix 2I; shall specify the parties to whom notice is to be limited; and shall state the cause for such relief.

REFERENCES: 11 U.S.C. § 342; Fed.Rs.Bankr.P. 2002 and 9007.

**Practice Pointers:** The movant should **not** prepare and file a notice or a certificate of service and should **not** file or serve any documents other than those specified in the rule until the Court rules on the motion to limit notice. Once the Court rules on the motion to limit notice, the movant may prepare, file, and serve a notice and a certificate of service in the manner directed by the Court in its order.

#### **Rule 2002-4. Returned Mail.**

**(a) Recipient's duty.** Upon receipt of any document returned as undeliverable, the recipient shall make a reasonable effort to determine the correct address for the party who did not receive the document, and if a correct address is determined, re-serve the undelivered document at the correct address and file a certificate of service reflecting the correct address. The certificate of service shall identify the address as a corrected address. If a correct address cannot be determined, the party receiving the returned mail shall advise the Clerk.

**(b) Amendment of mailing list.** If any party, including the debtor, files a certificate of service under paragraph (a) above, the clerk shall amend the case mailing list to reflect the correct address.

#### **2002-5. Notice of Appearance and Request for Notice.**

**(a) Consent to electronic service.** Unless otherwise ordered, any person, as defined by 11 U.S.C. § 101(41), governmental entity, or an attorney or other agent for a person or governmental entity, who files a notice of appearance and request to receive notice under Fed.R.Bankr.P. 2002(g)(1) is deemed to have consented to electronic service of all documents in that case.

**(b) Provision of electronic mailing address.** Unless otherwise ordered, any notice of appearance and request to receive notice under Fed.R.Bankr.P. 2002(g)(1) shall include, within the notice, the filer's electronic mailing address. An attorney who files a notice of appearance and request to receive notice under Fed.R.Bankr.P. 2002(g)(1) may provide only the attorney's own name and electronic mailing address for service. If the notice of appearance and request to receive notice under Fed.R.Bankr.P. 2002(g)(1) does not contain the filer's electronic mailing address, the filer shall supply it to the Clerk immediately upon request.

REFERENCES: Fed.R.Bankr.P. 2002(g). *See also* 11 U.S.C. § 503 and Fed.R.Bankr.P. 9010(b) and Bankr. D.S.D. R. 9010-1.

**Rule 2003-1. Meeting of Creditors under 11 U.S.C. § 341(a).**

**(a) Appearance by or for the debtor.** The debtor shall appear in person at the meeting of creditors under 11 U.S.C. § 341(a). If the debtor is a formal legal entity, such as a partnership or corporation, the debtor shall appear through a designated lawful representative.

**(b) Rescheduled meeting.** A meeting of creditors under 11 U.S.C. § 341(a) may be rescheduled only at the discretion of and with the approval of the presiding officer. If a meeting of creditors is rescheduled, the presiding officer or the presiding officer's designee shall file a notice of the rescheduled meeting and serve a copy of the notice on all creditors and other parties in interest not fewer than seven days prior to the originally scheduled meeting. The notice shall state who requested the rescheduling and the reason for the request. If service is made fewer than seven days before the originally scheduled meeting, the presiding officer or the presiding officer's designee shall give personal notice to the debtor's attorney or the debtor, if unrepresented, and appear at the originally scheduled date, time, and place of the meeting to advise any party who appears of the change. The party serving the notice shall file an appropriate certificate of service.

**(c) Continued meeting.** If a meeting of creditors under 11 U.S.C. § 341(a) is continued, the presiding officer or the presiding officer's designee shall file a notice of the continued meeting and serve a copy of the notice on the debtor, the debtor's attorney, any other party who appeared at the first meeting or a previously continued meeting, and any party who has filed a notice of appearance. The notice shall state who requested the continuance and the reason for the request. The party serving the notice shall file an appropriate certificate of service.

**(d) Statement of conclusion.** Within seven days after a meeting of creditors under 11 U.S.C. § 341(a) is concluded, the presiding officer shall file a statement of

conclusion.

REFERENCES: 11 U.S.C. §§ 341, 342, and 343; Fed.Rs.Bankr.P. 2002 and 2003; Official Form 9.

**Practice Pointer:** A meeting of creditors is "rescheduled" if the meeting on the original date was not held. A meeting of creditors is "continued" if the meeting was begun on the original date but was not concluded.

**Rule 2004-1. Filing Transcript of Rule 2004 Examination.** If a transcript of an examination under Fed.R.Bankr.P. 2004 is prepared, the original transcript shall be filed with the Court in compliance with Bankr. D.S.D. 5077-1(c), regardless of whether any party intends to use the transcript during a hearing or trial.

REFERENCES: Fed.Rs.Bankr.P. 2004 and 9037.

**Practice Pointers:** A transcript of a Rule 2004 examination should be captioned for the main bankruptcy case and should be filed in the main bankruptcy case. A deposition transcript should be captioned for the adversary proceeding to which it relates and should be filed in that adversary proceeding. On the rare occasion that a deposition is taken in connection with a pending contested matter, the deposition should be captioned for the main bankruptcy case and should be filed in the main bankruptcy case.

**Rule 2014-1. Employment of Estate Professionals.**

**(a) Authority for employment.** An application to employ an estate professional under Fed.R.Bankr.P. 2014(a) shall, in addition to the particular information and the supporting affidavit of the professional to be employed required by Fed.R.Bankr.P. 2014(a), set forth the particular subsection or subsections of 11 U.S.C. § 327 under which authority for the employment is sought.

**(b) Nondisclosure of possible litigants.** If a trustee, debtor in possession, or committee wishes to employ an attorney to commence litigation to recover money or property for the estate or to employ an attorney, accountant, or other estate professional to conduct an investigation, the application filed under Fed.R.Bankr.P. 2014(a) need not disclose the name of any party to such litigation or investigation, other than the applicant. In that event, the trustee, debtor in possession, or committee shall submit to the United States Trustee a separate statement disclosing such additional information as may be necessary for the United States Trustee to complete its review and comment to the Court.

**(c) Comments by the United States Trustee.** Within seven days after an application to employ an estate professional is filed with the Court, the United States Trustee shall file any comments regarding the application, retain in its file any separate statement submitted by the applicant under paragraph (b) above, and serve upon the applicant a copy of any comments filed with the Court. If the United States Trustee files comments before the expiration of the seven days, the Court may, in its discretion and subject to any limitations imposed by Fed.R.Bankr.P. 6003(a), enter an appropriate order on the application before the expiration of the seven days.

**(d) Hearing.** If the United States Trustee files any comments regarding an application to employ an estate professional within the time allowed by paragraph (c) above, the Court may, in its discretion, rule on the application or schedule a hearing on the application. If the United States Trustee does not file any comments within that time, the Court may enter an appropriate order on an employment application under Fed.R.Bankr.P. 2014(a) without further notice or hearing.

**(e) Effective date of employment.** Unless the Court orders otherwise, upon the entry of an order approving the employment of an estate professional, the employment is deemed effective as of the date the original application to employ was filed with the Court.

REFERENCES: 11 U.S.C. § 327; Fed.Rs.Bankr.P. 2014 and 6005.

**Practice Pointer:** The party filing an application to employ an estate professional does not need to submit a proposed order. If the application is granted, a docket text order will be entered. If the application is denied, the Court will prepare the order.

**Rule 2015-3. Reports Filed with the United States Trustee.** Unless otherwise ordered, financial, inventory, or other reports required by Fed.Rs.Bankr.P. 2015(a)(1), (a)(3), (a)(5), (a)(6), (b), (c)(1), or (e); 2015.1; or 2015.3 shall be submitted *only* to the United States Trustee, and shall be deemed filed with the Court when received by the United States Trustee.

REFERENCES: Fed.Rs.Bankr.P. 2002(k), 2015, 2015.1, and 2015.3.

#### **Rule 2016-1. Disclosure of Compensation.**

**(a) Required content.** A disclosure of compensation by an attorney for a debtor shall include the information required by Fed.R.Bankr.P. 2016(b) and Director's Form 203 and shall conform to the sample at Appendix 2J (chapter 7 case) or 2K (chapter 11, chapter 12, or chapter 13 case).

**(b) Supplemental disclosure.** An attorney for a debtor shall file a supplemental disclosure of compensation whenever the attorney's fee arrangement with the debtor changes or the attorney receives fees from a debtor that were not previously disclosed. The supplemental disclosure shall include the information required by Fed.R.Bankr.P. 2016(b) and shall conform to the sample at Appendix 2L.

REFERENCES: 11 U.S.C. § 329(b); Fed.R.Bankr.P. 2016(a).

**Practice Pointer:** The Disclosure of Compensation form provided to a debtor's attorney in many software packages is useful only in a chapter 7 case. Use of the local forms is strongly encouraged because they address fees after a possible conversion of the case, and the form at Appendix 2K is better tailored to a reorganization case.

### **Rule 2016-2. Fees for Estate Professionals.**

**(a) Fee application: required content and service.** An application by a professional employed by the estate for payment of fees (compensation for services, applicable sales tax, and reimbursement of expenses, including any clerk's fees) from the estate shall contain the information required by Fed.R.Bankr.P. 2016(a); shall identify the applicable sales tax rate; and shall conform to the sample at Appendix 2M. If a trustee or a debtor in possession files a fee application on behalf of another estate professional, the itemization of services rendered and expenses to be reimbursed shall be signed and dated by the estate professional and attached to the application. The application shall be served on parties in interest, and a notice of the application shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(e).

**(b) Fee application: time for filing in a chapter 12 or a chapter 13 case.** An attorney for the debtor or an accountant, appraiser, agent, or other professional employed by the estate shall, within 30 days after the plan is confirmed, file an application for fees incurred through the date of confirmation.

**(c) Proposed order awarding fees.** A proposed order awarding fees from the estate shall conform to the sample at Appendix 2N.

REFERENCES: 11 U.S.C. §§ 328, 329, and 330; Fed.R.Bankr.P. 2016(a).

### **Rule 2016-3. Administrative Expense other than for Estate Professional.**

**(a) Application and notice.** An application for allowance of an administrative expense under 11 U.S.C. § 503 (other than one on behalf of a professional employed by the

estate or a fully secured creditor seeking fees, costs, or charges under 11 U.S.C. § 506(b)) shall be filed with the Court within a reasonable time after the expense is incurred and in no event later than any deadline set by the Code, the Federal Rules of Bankruptcy Procedure, these local rules, or an order, and shall identify the entity to be paid, state the statutory basis for the claim, and itemize the expense. The itemization shall be signed and dated by the entity to be paid. The application shall be served on parties in interest, and a notice of the application shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(e).

**(b) Treatment of administrative expense filed as a claim.** If an entity files a proof of claim or similar document in the claims registry that indicates the claimant is requesting an administrative expense other than an expense allowable under 11 U.S.C. § 506(b), the Clerk shall docket a copy of the proof of claim or similar document as an application for administrative expense and direct the claimant to give notice pursuant to paragraph (a) above.

**(c) Claims under 11 U.S.C. § 506(b).** A fully secured creditor making a claim under 11 U.S.C. § 506(b) for an allowable fee, cost, or charge may make such claim by specifically itemizing the fee, cost, or charge in its proof of claim or filing an application under paragraph (a) above.

REFERENCES: 11 U.S.C. §§ 503 and 506(b).

**Practice Pointer:** If any party is served by mail, the notice period stated in paragraph (a) above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 2016-4. Administrative Expense upon Conversion of Chapter 13 Case.** Unless otherwise ordered, if a chapter 13 case is dismissed or converted to another chapter before confirmation of a plan, the chapter 13 trustee may retain as an administrative expense \$100.00 from any pre-confirmation payments.

**Rule 2072-1. Debtor's Service of Notice of Commencement of Case.** If at the time a petition is filed, there is pending in any federal or state court located within South Dakota a proceeding that is stayed by 11 U.S.C. §§ 362, 1201, or 1301, the debtor shall serve a copy of the Clerk's notice of commencement of case on each stayed federal or state court within South Dakota. Service shall be made before any scheduled hearing before the stayed court and in no event later than seven days after the filing of the petition and may be made in any manner permitted by the stayed court. The debtor shall contemporaneously file with the Bankruptcy Court a certificate of service identifying the clerks of court who were served a copy of the notice of commencement of case.

REFERENCES: 11 U.S.C. §§ 362, 1201, and 1301.

**Rule 2090-1. Admission and Practice of Attorneys.** The admission and practice of attorneys before this Court shall be governed by D.S.D. CIV. LR 83.2 and the rules of professional conduct as adopted by the State of South Dakota.

REFERENCES: D.S.D. CIV. LR 83.2; S.D.C.L. Appendix to Chapter 16-18, South Dakota Rules of Professional Conduct.

**Rule 2091-1. Withdrawal or Substitution of Attorney.**

**(a) Withdrawal as attorney for debtor with substitution of new attorney.** If a debtor has retained a new attorney:

(1) the debtor shall sign a motion to substitute attorney and the debtor's new attorney shall file the motion and submit a proposed order granting the motion. If the proposed substitution is in a chapter 11 or chapter 12 case, the motion shall contain all the information required in an application for employment under 11 U.S.C. § 327, Fed.R.Bankr.P. 2014(a), and Bankr. D.S.D. R. 2014-1, and shall include as an attachment the new attorney's affidavit as the professional to be employed, as required by Fed.R.Bankr.P. 2014(a). The motion and any affidavit shall be served on parties in interest;

(2) the former attorney shall:

(A) in a chapter 7 case, in compliance with Bankr. D.S.D. R. 2016-1(b), file a supplemental disclosure of compensation if the former attorney, since the filing of the attorney's original disclosure of compensation, has rendered or has agreed to render additional services, or has received or has been promised additional payments; or

(B) in a chapter 11, 12, or 13 case, file an application and notice under Fed.R.Bankr.P. 2016(a) and Bankr. D.S.D. Rs. 2002-1(e) and 2016-2 for fees incurred in connection with the case that have not yet been allowed and serve the application and notice in compliance with Fed.R.Bankr.P. 2016(a) and Bankr. D.S.D. R. 2016-2; and

(3) the new attorney shall promptly file a disclosure of compensation pursuant to 11 U.S.C. § 329(a), Fed.R.Bankr.P. 2016(b), and Bankr. D.S.D. R. 2016-1(a) and serve a copy of the disclosure on the debtor.

**(b) Withdrawal as attorney for a debtor *without* substitution of new counsel.** If an attorney wishes to withdraw as counsel for a debtor and the debtor has not retained a substitute attorney; the withdrawing attorney shall:

- (1) schedule a hearing by contacting the Scheduling Deputy Clerk pursuant to Bankr. D.S.D. R. 5070-1(a)(6);
- (2) file a motion to withdraw and a notice of hearing. The motion shall include a statement regarding whether any fees are owed but not yet paid. The notice shall state the date, time, and place of the scheduled hearing and state the debtor is required to appear at the hearing;
- (3) serve the motion and notice on parties in interest; and
- (4) (A) in a chapter 7 case, file a supplemental disclosure of compensation in compliance with Bankr. D.S.D. R. 2016-1(b) if the withdrawing attorney, since the filing of his or her original disclosure of compensation, has rendered or has agreed to render additional services, or has received or has been promised additional payments; or  
  
(B) in a chapter 11, 12, or 13 case, file an application and notice under Fed.R.Bankr.P. 2016(a) and Bankr. D.S.D. Rs. 2002-1(e) and 2016-2 for fees incurred in connection with the case that have not yet been awarded and serve the application and notice in compliance with Fed.R.Bankr.P. 2016(a) and Bankr. D.S.D. R. 2016-2.

**(c) Withdrawal as attorney for a party other than a debtor.**

- (1) Pending contested matter or adversary proceeding. If an attorney wishes to withdraw from further representation of a party (other than a debtor) while a contested matter or adversary proceeding involving that party is pending, the withdrawing attorney shall file a motion to withdraw and a proposed order granting the motion. The motion shall state whether the party has consented to the withdrawal and whether a substitute attorney has been retained. The withdrawing attorney shall serve a copy of the motion and the proposed order on parties in interest.
- (2) No pending contested matter or adversary proceeding. If an attorney wishes to withdraw from further representation of a party (other than a debtor) and no contested matter or adversary proceeding involving that party is pending, the withdrawing attorney shall file a notice of withdrawal and serve a copy of the notice on parties in interest.

REFERENCES: 11 U.S.C. §§ 327 and 329(a); Fed.Rs.Bankr.P. 1014(a) and 2016.

### PART III

#### CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule	
3003-1	Chapter 11 Deadline to File Proof of Claim or Interest.
3015-1A	Chapter 12 Extension of Time to File Plan or Hold Confirmation Hearing.
3015-1B	Chapter 13 Extension of Time to File Plan; Automatic Extension of Time to Hold Confirmation Hearing.
3015-2	Chapter 12 or Chapter 13 Required Plan Content.
3015-3A	Chapter 12 Confirmation of Plan.
3015-3B	Chapter 13 Confirmation of Plan.
3015-4A	Chapter 12 Modification of Plan Before Confirmation.
3015-4B	Chapter 13 Modification of Plan Before Confirmation.
3015-5	Chapter 12 or Chapter 13 Modification of Plan After Confirmation.
3016-1	Chapter 11 Required Plan Content.
3016-2	Disclosure Statements in a Small Business Chapter 11.
3016-3	Chapter 11 Reductions or Extensions of Time.
3018-1	Chapter 11 Ballots.
3019-1	Chapter 11 Modification of a Plan After Confirmation (Individual Debtors Only).
3022-1	Chapter 11 Discharge and Entry of Final Decree.
3072-1A	Chapter 12 Discharge and Closing Case.
3072-1B	Chapter 13 Discharge and Closing Case (cases filed on or after October 17, 2005).
3072-1C	Chapter 13 Discharge (cases filed before October 17, 2005).

**Rule 3003-1. Chapter 11 Deadline to File Proof of Claim or Interest.** Unless otherwise ordered, in a chapter 11 case, the last day to timely file a proof of claim or interest shall be 60 days after the date first set for the meeting of creditors under 11 U.S.C. § 341. The Clerk shall give notice of this deadline in the notice of commencement of case.

REFERENCE: Fed.R.Bankr.P. 3003(c).

**Rule 3015-1A. Chapter 12 Extension of Time to File Plan or Hold Confirmation Hearing.**

**(a) Extension of time to file a plan.** A motion to extend the time to file a chapter 12 plan shall be filed with the Court before the original time for filing a plan has expired; shall state the specific extension requested; and shall state the cause for the relief requested. The motion shall constitute notice of the extension sought and shall be served on parties in interest.

**(b) Extension of time for confirmation hearing.**

(1) Automatic extension of time. If the notice requirements of the Federal Rules of Bankruptcy Procedure do not allow a confirmation hearing to be held on the first available hearing date for the division in which the case was filed within the time allowed by 11 U.S.C. § 1224, the 45-day deadline in § 1224 is automatically extended to permit the hearing to be held on the next available hearing date for the division in which the case was filed.

(2) Motion for extension of time. A motion to extend the time for a confirmation hearing beyond any automatic extension provided by paragraph (1) above shall be filed with the Court before the expiration of the deadline for filing a plan; shall state the specific extension requested; and shall state the cause for the relief requested. The motion shall constitute notice of the extension sought and shall be served on parties in interest.

**(c) Objection to a request for an extension.** An objection or other response to a motion to extend the time to file a chapter 12 plan or a motion to extend the time for a confirmation hearing shall be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b) within seven days after the motion is filed with the Court.

REFERENCES: 11 U.S.C. §§ 1221 and 1224; Fed.Rs.Bankr.P. 2002(a)(8) and 3015.

**Rule 3015-1B. Chapter 13 Extension of Time to File Plan; Automatic Extension of Time to Hold Confirmation Hearing.**

**(a) Extension of time to file a plan.** A motion to extend the time to file a chapter 13 plan shall be filed with the Court before the original time for filing a plan has expired; shall state the specific extension requested; and shall state the cause for the relief sought. The motion shall constitute notice of the extension sought and shall be served on parties in interest.

**(b) Objection to a request for an extension.** An objection or other response to a

motion to extend the time to file a chapter 13 plan shall be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1(b) within seven days after the motion is filed with the Court.

**(c) Automatic extension of time for confirmation hearing.** If the notice requirements of the Federal Rules of Bankruptcy Procedure do not allow a confirmation hearing to be held on the first available hearing date for the division in which the case was filed within the time allowed by 11 U.S.C. § 1324, the 45-day deadline in § 1324 is automatically extended to permit the hearing to be held on the next available hearing date for the division in which the case was filed.

REFERENCES: 11 U.S.C. § 1321; Fed.Rs.Bankr.P. 2002(b)(2) and 3015(b).

### **Rule 3015-2. Chapter 12 or Chapter 13 Required Plan Content.**

**(a) Content of plan.** A proposed chapter 12 or chapter 13 plan shall:

(1) conform to the sample at Appendix 3A by including all provisions applicable in a particular case *and* deleting all provisions not applicable in a particular case;

(2) be entitled "Debtor's Plan Dated [insert date the debtor signed the plan]," *e.g.*, "Debtor's Plan Dated October 19, 2010";

(3) be signed by the debtor and any attorney for the debtor; and

(4) include:

(A) a *detailed* liquidation analysis, excluding any fees for the debtor's attorney, that demonstrates the plan's compliance with 11 U.S.C. § 1225(a)(4) or § 1325(a)(4);

(B) as attachments, if appropriate, an Exhibit Schedule I, an Exhibit Schedule J, and/or an Exhibit Form 22C that reflect each actual or reasonably anticipated material change in the debtor's financial circumstances since the petition date; and

(C) the dates (month, day, year) of the first payment under the plan and the last payment under the plan, whether for an administrative expense or a pre-petition claim.

REFERENCES: 11 U.S.C. §§ 1222, 1225, 1322, and 1325; Fed.R.Bankr.P. 3013.

### **3015-3A. Chapter 12 Confirmation of Plan.**

**(a) Service of plan and notice of confirmation hearing.** A proposed chapter 12 plan and a notice of confirmation hearing shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(c) and the sample at Appendix 2D (telephonic hearing) or Appendix 2E (in-court hearing).

**(b) Content of a confirmation order.** A proposed order confirming a chapter 12 plan shall strictly conform to the sample at Appendix 3B or 3C and shall not restate claim treatment or other information set forth in the confirmed plan.

REFERENCES: 11 U.S.C. §§ 1222, 1224, and 1225; Fed.R.Bankr.P. 2002(a)(8) and 3015.

**Practice Pointer:** See *also* Bankr. D.S.D. R. 3015-4A (modification of a plan before confirmation) and Bankr. D.S.D. R. 3015-5 (modification of a plan after confirmation).

### **Rule 3015-3B. Chapter 13 Confirmation of Plan.**

**(a) Service of plan and notice of confirmation hearing.** A proposed chapter 13 plan and, if required by paragraph (b) below, a notice of rescheduled confirmation hearing shall be served on all creditors and other parties in interest.

**(b) Notice of rescheduled confirmation hearing.** If a chapter 13 debtor does not file and serve a proposed plan at least 31 days before the last date for objections set forth in the Clerk's notice of commencement of case, the debtor, after consultation with the chapter 13 trustee and the Scheduling Deputy Clerk, shall file and serve with the plan a notice of rescheduled confirmation hearing. The notice shall conform to Bankr. D.S.D. R. 2002-1(c) and the sample at Appendix 2D (telephonic hearing) or Appendix 2E (in-court hearing) and include:

(1) a new last date (month, day, year) for filing an objection to the plan that is 28 days after service of the plan but not fewer than three business days before the date of the confirmation hearing;

(2) if the confirmation hearing date originally set forth in the § 341 notice is fewer than three business days after the new last date for objections, a new date, time, and place of the confirmation hearing obtained from the Scheduling Deputy Clerk;

(3) if requested by the trustee, the date, time, and place of any rescheduled or

continued meeting of creditors under 11 U.S.C. § 341; and

(4) if requested by the trustee, the date, time, and place of any pre-confirmation meeting.

**(c) Confirmation hearing not held.**

(1) Notice of Rescheduled Confirmation Hearing or Notice of Modified Plan. If a debtor in good faith files and serves a notice of rescheduled confirmation hearing pursuant to paragraph (b) above or a notice of confirmation hearing on a modified plan pursuant to Bankr. D.S.D. R. 3015-4B, the previously scheduled confirmation hearing shall be deemed cancelled without further notice.

(2) No objections. If, following appropriate notice and service, no objection to a plan or modified plan is timely filed with the Court or all objections to a plan or modified plan are withdrawn and the plan may be confirmed as filed, the Court may, in its discretion, cancel the confirmation hearing and enter the confirmation order.

(3) No plan timely filed. If a debtor fails to timely file a plan, the confirmation hearing set forth in the Clerk's notice of commencement of case will be cancelled.

**(d) Content of a confirmation order.** A proposed order confirming a chapter 13 plan shall strictly conform to the appropriate sample at Appendix 3B, 3C, or 3D and shall not restate claim treatment or other information set forth in the confirmed plan.

REFERENCES: 11 U.S.C. §§ 1322, 1324, and 1325; Fed.Rs.Bankr.P. 2002(b) and 3015.

**Practice Pointers:** If any party is served by mail, the notice period stated in paragraph (b)(1) above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

*See also* Bankr. D.S.D. R. 3015-4B (modification of a plan before confirmation) and Bankr. D.S.D. R. 3015-5 (modification of a plan after confirmation)

**Rule 3015-4A. Chapter 12 Modification of Plan Before Confirmation.**

**(a) Content and notice.** A proposed chapter 12 plan that is modified before confirmation shall:

(1) comply with Bankr. D.S.D. R. 3015-2;

(2) be captioned “Modified Plan Dated [insert date the debtor signs the modified plan]”; and

(3) be filed with a notice of confirmation hearing that complies with Bankr. D.S.D. R. 2002-1(c). If at least 24 days remain between the date the modified chapter 12 plan is served and the last date for objections to the previously filed plan, the notice may incorporate the previously scheduled date and time for the confirmation hearing. If fewer than 24 days remain between the date the modified chapter 12 plan is served and the last date for objections to the previously filed plan, the notice shall incorporate a new date and time for the confirmation hearing, which the debtor shall obtain from the Scheduling Deputy Clerk before preparing the notice.

**(b) Service.** The modified plan and the notice shall be served in compliance with Bankr. D.S.D. R. 3015-3A on parties in interest, which shall include but are not limited to, any creditor or other party in interest that may be adversely affected by the modification, any party who has filed an objection to a previously filed plan, and any party who has filed a notice of appearance.

**(c) Effect of filing and serving a modified plan.** If a debtor in good faith properly files, serves, and gives notice of a hearing on a modified plan as provided by these rules, the previously filed plan and any objection to the previously filed plan shall be deemed moot, and any previously scheduled confirmation hearing will be cancelled without further notice.

REFERENCES: 11 U.S.C. §§ 1222, 1223, 1224, and 1225; Fed.Rs.Bankr.P. 2002(a)(8) and 3015.

**Practice Pointers:** Most often, a debtor will serve a modified plan on *all* creditors and other parties in interest because the effect of the modification is difficult to ascertain or the modification affects feasibility of the plan, which makes every creditor a party adversely affected by the modification.

If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

*Compare* Bankr. D.S.D. R. 3015-5 (modification of a plan after confirmation).

**Rule 3015-4B. Chapter 13 Modification of Plan Before Confirmation.**

**(a) Content and notice.** A proposed chapter 13 plan that is modified before confirmation shall:

(1) comply with Bankr. D.S.D. R. 3015-2;

(2) be captioned “Modified Plan Dated [insert date the debtor signs the modified plan]”; and

(3) be filed with a notice of confirmation hearing that complies with Bankr. D.S.D. R. 2002-1(c). If at least 31 days remain between the date a modified chapter 13 plan is served and the last date for objections to the previously filed plan, the notice may incorporate the previously scheduled date and time for the confirmation hearing. If fewer than 31 days remain between the date the modified chapter 13 plan is served and the last date for objections to the previously filed plan, the notice shall incorporate a new date and time for the confirmation hearing, which the debtor shall obtain from the Scheduling Deputy Clerk before preparing the notice.

**(b) Service.** The modified plan and the notice shall be served in compliance with Bankr. D.S.D. R. 3015-3B on parties in interest, which shall include but are not limited to, any creditor or other party in interest that may be adversely affected by the modification, any party who has filed an objection to a previously filed plan, and any party who has filed a notice of appearance.

**(c) Effect of filing and serving a modified plan.** If a debtor in good faith properly files, serves, and gives notice of a hearing on a modified plan as provided by these rules, the previously filed plan and any objection to the previously filed plan shall be deemed moot, and any previously scheduled confirmation hearing will be cancelled without further notice.

REFERENCES: 11 U.S.C. § 1323; Fed.R.Bankr.P. 2002(a)(5).

**Practice Pointer:** Most often, a debtor will serve a modified plan on *all* creditors and other parties in interest because the effect of the modification is difficult to ascertain or the modification affects feasibility of the plan, which makes every creditor a party adversely affected by the modification.

*Compare* Bankr. D.S.D. R. 3015-5 (modification of a plan after confirmation).

**Rule 3015-5. Chapter 12 or Chapter 13 Modification of a Plan After Confirmation.**

**(a) Content of motion.** A motion to modify a confirmed chapter 12 or chapter 13 plan shall include:

- (1) the name of each affected creditor or class of creditors;
- (2) a detailed description of each proposed change to the confirmed plan;
- (3) statements of the debtor's current and prior years' actual income and expenses;
- (4) a statement of the debtor's projected income and expenses for the remaining term of the plan;
- (5) a current liquidation analysis; and
- (6) a statement of any change to the first plan payment date or the last plan payment date.

**(b) Notice.** The notice of a motion to modify a confirmed chapter 12 or chapter 13 plan shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 21 days after service of the notice.

**(c) Service.** The motion to modify and the notice shall be served on parties in interest, which shall include but are not limited to, any creditor or other party in interest that may be adversely affected by the modification and any party who has filed a notice of appearance.

**(d) Required content of a proposed order.** A proposed order granting a motion to modify a confirmed chapter 12 or chapter 13 plan shall conform to Appendix 3E and shall include a statement of any change in the date of the last payment under the plan.

REFERENCES: 11 U.S.C. § 1229 or § 1329; Fed.Rs.Bankr.P. 2002(b)(5) and 3015(g).

**Practice Pointers:** If any party is served by mail, the notice period stated in paragraph (b) above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Often, a debtor will serve a motion to modify a confirmed plan on *all* creditors and other parties in interest because the effect of the modification is difficult to ascertain or the modification affects feasibility of the plan, which makes every creditor a party adversely affected by the modification.

*Compare* Bankr. D.S.D. Rs. 3015-4A (modification of chapter 12 plan before confirmation) and 3015-4B (modification of a chapter 13 plan before confirmation).

**Rule 3016-1. Chapter 11 Plan Content.** A chapter 11 plan shall be entitled "[insert name of proponent]'s Plan Dated [insert date the proponent signed the plan]," *e.g.*, "Debtor's Plan Dated October 19, 2010." If the debtor is an individual, the plan shall set forth in the opening paragraph the date of the last payment being made under the plan.

REFERENCES: 11 U.S.C. § 1123; Fed.R.Bankr.P. 3016.

**Rules 3016-2. Disclosure Statement in a Small Business Chapter 11.** Pursuant to 11 U.S.C. § 1125(f)(1) and unless otherwise ordered, a small business chapter 11 debtor's plan is presumed to contain adequate information and the small business chapter 11 debtor need not prepare, file, and serve a disclosure statement with the plan.

**Rule 3016-3. Chapter 11 Reductions or Extensions of Time.** A motion for a reduction or an extension of the time within which only the debtor may file a chapter 11 plan or obtain confirmation of a chapter 11 plan shall be filed with the Court before the expiration of the original exclusivity period and any previous extension; shall contain the information required by 11 U.S.C. § 1121; shall state the specific reduction or extension requested; and shall state the cause for the relief sought. The motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall state any objection to the motion must be filed with the Court by a date certain (month, day, year) within seven days after service of the motion.

REFERENCES: 11 U.S.C. § 1121; Fed.R.Bankr.P. 3016.

**Practice Pointer:** If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 3018-1. Chapter 11 Ballots.**

**(a) Sample ballots.** The proponent of a chapter 11 plan shall prepare a sample ballot for each class of voting creditors under the plan and shall file the sample ballots as attachments to an appropriately captioned statement at the same time the plan and disclosure statement are filed with the Court. The statement shall conform to Bankr.

D.S.D. R. Appendix 3F. Each sample ballot shall conform to Official Form 14. The sample ballots shall not include the deadline for returning ballots, which will not be set by the Court until after the sample ballots are filed with the Court.

**(b) Final ballots and service.** Upon approval of the disclosure statement, the proponent of a chapter 11 plan shall prepare a final ballot for each class of creditors under the plan by making any changes to each sample ballot as may be directed by the Court and inserting the date set by the Court as the deadline for returning ballots. The plan proponent shall serve a copy of the appropriate ballot on each creditor and other party in interest at the same time the proponent serves the order setting the confirmation hearing and related deadlines.

**(c) Tabulation of ballots.** The plan proponent shall tabulate the ballots and file a completed tabulation not less than two days before the scheduled confirmation hearing. The completed tabulation shall be captioned as required by Bankr. D.S.D. R. 9004-2, shall be signed by the plan proponent or the plan proponent's attorney, and shall include:

- (1) with respect to each class of claims or interests, a statement of whether the class has accepted the plan or is not impaired under the plan;
- (2) if a class of claims is impaired under the plan, a statement of whether at least one class of impaired claims has accepted the plan; and
- (3) if not every class of impaired claims has accepted the plan, a statement of whether the plan proponent will seek to confirm the plan under 11 U.S.C. § 1129(b).

REFERENCES: 11 U.S.C. §§ 1126 and 1129; Official Form 14; Fed.R.Bankr.P. 3018.

**Rule 3019-1. Chapter 11 Modification of a Plan After Confirmation (Individual Debtors Only).**

**(a) Content of motion.** A motion to modify a confirmed chapter 11 plan shall include:

- (1) the name of each affected creditor or class of creditors;
- (2) a detailed description of each proposed change to the confirmed plan;
- (3) statements of the debtor's current and prior years' actual income and expenses;

(4) a statement of the debtor's projected income and expenses for the remaining term of the plan;

(5) a current liquidation analysis; and

(6) if the debtor is an individual, a statement of any change to the last plan payment date.

**(b) Notice.** The notice of a motion to modify a confirmed chapter 11 plan shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 21 days after service of the notice.

**(c) Service.** The motion to modify and the notice shall be served on parties in interest, which shall include but are not limited to, any creditor or other party in interest that may be adversely affected by the modification and any party who has filed a notice of appearance.

**(d) Required content of a proposed order.** A proposed order granting a motion to modify a confirmed chapter 11 plan shall conform to Appendix 3E and if the debtor is an individual, shall include a statement of any change in the date of the last payment under the plan.

REFERENCES: 11 U.S.C. § 1127(e); Fed.Rs.Bankr.P. 2002(a)(5) and 3019(b).

**Practice Pointers:** If any party is served by mail, the notice period stated in paragraph (b) above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Often, the movant will serve a motion to modify a confirmed plan on *all* creditors and other parties in interest because the effect of the modification is difficult to ascertain or the modification affects feasibility of the plan, which makes every creditor a party adversely affected by the modification.

#### **Rule 3022-1. Chapter 11 Discharge and Entry of Final Decree.**

**(a) Entry of final decree in a case for a debtor that is not an individual.** Not later than 30 days after substantial consummation of a confirmed chapter 11 plan, the debtor or the trustee, if one has been appointed, shall file a motion for entry of a final decree. The motion shall be served on parties in interest.

**(b) Discharge and entry of final decree in a case for a debtor who is an individual.**

- (1) Debtor's certification. Not later than 45 days after completion of all plan payments, an individual chapter 11 debtor shall file a Certification and Request for Discharge and Entry of Final Decree that strictly conforms to the sample at Appendix 3G. Joint debtors shall prepare and file separate Certifications and Requests for Discharge.
- (2) Clerk's Notice of Certification and Request for Discharge. Upon a debtor's timely compliance with paragraph (1) above, the Clerk shall serve a Notice of Certification and Request for Discharge on all creditors and other parties in interest. The Clerk's notice shall state any party wishing to object to the debtor's discharge must file an objection or other response to the debtor's Certification and Request for Discharge before a stated date not less than 24 days after the date the Clerk's notice was generated.
- (3) Entry of discharge. The Court will enter an order of discharge if:
  - (A) no party in interest timely files an objection or other response to the debtor's Certification and Request for Discharge; or
  - (B) any timely filed objection or other response to the debtor's Certification and Request for Discharge is overruled.
- (4) Entry of final decree. The Court may enter a final decree after the discharge order is final and, if a trustee has been appointed in the case, the trustee has filed a final report and account.

REFERENCES: 11 U.S.C. § 1141; Fed.R.Bankr.P. 3022.

#### **Rule 3072-1A. Chapter 12 Discharge and Closing Case.**

##### **(a) Discharge upon completion of plan payments.**

- (1) Service of debtor's final report and account form. Within 14 days after the date on which all plan payments, other than payments to holders of allowed claims provided for under 11 U.S.C. § 1222(b)(5) or § 1222(b)(9), have been completed by the debtor, the chapter 12 trustee shall serve on the debtor the Final Report and Final Account form and file an appropriate certificate of service.
- (2) Filing and notice of the debtor's Final Report and Final Account. Within 45

days after service of the Final Report and Final Account form, a debtor eligible for discharge under 11 U.S.C. § 1228(a) shall:

(A) file and serve on the chapter 12 trustee a completed Final Report and Final Account; and

(B) file and serve on all creditors and other parties in interest a Notice of Filing Final Report and Final Account that strictly conforms to the sample at Appendix 3H and states:

(i) the debtor has filed with the Court and served on the chapter 12 trustee a completed Final Report and Final Account;

(ii) the debtor has completed all payments under the plan, other than payments to holders of allowed claims provided for under 11 U.S.C. § 1222(b)(5) or 1222(b)(9);

(iii) any party objecting to entry of a discharge on the grounds that the debtor has failed to complete all plan payments, other than payments to holders of allowed claims provided for under 11 U.S.C. § 1222(b)(5) or 1222(b)(9), must file a motion to dismiss on or before 21 days after service of the notice; and

(iv) if no party timely files a motion to dismiss for failure to complete all plan payments, the discharge will be entered.

(3) Failure to file final report and account. If a debtor who is eligible for a discharge under 11 U.S.C. § 1228(a) fails to timely comply with paragraph (2) above, the chapter 12 trustee shall seek an appropriate remedy from the Court that ensures the case is timely closed, including, but not limited to, dismissal of the case.

(4) Motion to dismiss for failure to complete plan payments. Any party objecting to the entry of a discharge in a chapter 12 case on the grounds that the debtor has failed to complete all plan payments, other than payments to holders of allowed claims provided for under 11 U.S.C. § 1222(b)(5) or 1222(b)(9), shall, not more than 21 days after the debtor serves the Notice of Filing Final Report and Final Account, obtain a hearing date from the Clerk and file and serve a motion to dismiss for failure to complete plan payments and a notice. The notice shall conform to Bankr. D.S.D. R. 2002-(1)(a) and shall contain the date, time, and place for the hearing on the motion.

**(b) Discharge prior to completion of plan payments ("hardship" discharge).** A debtor seeking a discharge prior to completion of all plan payments shall:

(1) obtain a completed Final Report and Final Account form from the chapter 12 trustee or the United States Trustee;

(2) complete and file the Final Report and Final Account;

(3) file and serve on all creditors and other parties in interest a motion for hardship discharge that:

(A) states the debtor has filed with the Court and served on the chapter 12 trustee a Final Report and Final Account;

(B) describes the circumstances for which the debtor should not justly be held accountable that render the debtor unable to complete payments under the plan;

(C) includes a liquidation analysis showing the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the bankruptcy estate had been liquidated under chapter 7 on such date; and

(D) explains why modification of the confirmed plan is not practicable; and

(4) file and serve on all creditors and other parties in interest a notice of the motion for hardship discharge. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion.

**(c) Entry of discharge.** The Court may enter an order of discharge:

(1) if no motion to dismiss for failure to complete plan payments is timely filed with the Court;

(2) upon entry of an order denying a motion to dismiss for failure to complete plan payments; or

(3) upon entry of an order granting a motion for hardship discharge.

**(d) Closing the case.** After entry of an order discharging the debtor, the chapter 12 trustee shall file and serve on the United States Trustee, the debtor, and debtor's counsel a final report and account. If no objection to the trustee's final report and account is received within 30 days after service of the final report and account, the Clerk may close the case.

REFERENCES: 11 U.S.C. § 1328; Fed.R.Bankr.P. 4007.

**Practice Pointer:** If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 3072-1B. Chapter 13 Discharge and Closing Case (cases filed on or after October 17, 2005).**

**(a) Trustee's Notice of Completion of Plan Payments.** When the chapter 13 trustee is satisfied the debtor has completed all plan payments, the trustee shall file a Notice of Completion of Plan Payments. The Notice of Completion of Plan Payments shall be served on parties in interest and shall advise the debtor that:

(1) the debtor must timely comply with Bankr. D.S.D. R. 3072-1B(b); and

(2) in the event the debtor does not timely comply with Bankr. D.S.D. R. 3072-1B(b), the Clerk may administratively close the case without entry of a discharge.

**(b) Debtor's Certification and Request for Discharge upon completion of plan payments.** Within 30 days after service of the Notice of Completion of Plan Payments, a debtor shall file a Certification and Request for Discharge that strictly conforms to the sample at Appendix 3I. Joint debtors shall prepare and file separate Certifications and Requests for Discharge.

**(c) Clerk's Notice of Certification and Request for Discharge.** Upon a debtor's timely compliance with paragraph (b) above, the Clerk shall serve a Notice of Certification and Request for Discharge on all creditors and other parties in interest. The Clerk's notice shall state any party wishing to object to the debtor's discharge must file an objection or other response to the debtor's Certification and Request for Discharge on or before a stated date not less than 21 days after the date the Clerk's notice was generated.

**(d) Debtor's request for discharge before completion of all plan payments ("hardship" discharge).** A debtor seeking a discharge prior to completion of all plan payments shall

file and serve on all creditors and other parties in interest:

(1) a motion for hardship discharge that:

(A) describes the circumstances for which the debtor should not justly be held accountable that render the debtor unable to complete payments under the plan;

(B) includes a liquidation analysis showing the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the bankruptcy estate had been liquidated under chapter 7 on such date; and

(C) explains why modification of the confirmed plan is not practicable; and

(2) a notice of the motion for hardship discharge. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion.

**(e) Entry of discharge.** The Court may enter an order of discharge if:

(1) no party in interest timely files an objection or other response to the debtor's Certification and Request for Discharge;

(2) any timely filed objection or other response to the debtor's Certification and Request for Discharge is overruled; or

(3) upon entry of an order granting a motion for hardship discharge.

**(f) Closing of case.** A chapter 13 case may be closed by the Clerk after the trustee files his final report and account and when:

(1) the debtor has failed, or in a joint case, both debtors have failed, to timely comply with Bankr. D.S.D. R. 3072-1B(b);

(2) the debtor has failed, or in a joint case, both debtors have failed, to timely cure any arrearage in plan payments as may have been ordered by the Court following a hearing on an objection to the debtor's Certification and Request for Discharge; or

- (3) the debtor has, or in a joint case, both debtors have timely cured any arrearage in plan payments as may have been ordered by the Court following a hearing on an objection to a debtor's Certification and Request for Discharge.

REFERENCES: 11 U.S.C. § 1328; Fed.R.Bankr.P. 4007.

**Practice Pointer:** If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

**Rule 3072-1C. Chapter 13 Discharge (cases filed before October 17, 2005).**

**(a) Following completion of all plan payments.** When the chapter 13 trustee is satisfied the debtor has completed all plan payments, including any payments of disposable income, the chapter 13 trustee shall file a notice of eligibility for discharge. The notice of eligibility for discharge shall include:

- (1) the last date (month, day, year) by which an objection or other response must be filed with the Court and served on parties in interest in compliance with Bankr. D.S.D. R. 9014-1(b), which date shall be 21 days after the notice is filed;
- (2) a statement that a hearing will be scheduled and notice thereof will be given to parties in interest if an objection or other response is filed with the Court; and
- (3) a statement that the Court may grant the debtor a discharge without conducting a hearing if no objection or other response is filed with the Court and served timely.

**(b) Before completion of all plan payments.** A debtor seeking a discharge prior to completion of all plan payments shall file and serve on all creditors and other parties in interest:

- (1) a motion for hardship discharge that:
  - (A) describes the circumstances for which the debtor should not justly be held accountable that render the debtor unable to complete payments under the plan;
  - (B) includes a liquidation analysis showing the value, as of the effective

date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the bankruptcy estate had been liquidated under chapter 7 on such date; and

(C) explains why modification of the confirmed plan is not practicable; and

(2) a notice of the motion for hardship discharge. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion.

REFERENCES: 11 U.S.C. § 1328; Fed.R.Bankr.P. 4007.

**Practice Pointer:** If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).