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**To: Bankruptcy Bar, District of South Dakota**

**From:** Kay Cee Hodson, Law Clerk to  
the Hon. Charles L. Nail, Jr.,  
for the Local Bankruptcy Rules Committee

**Date:** Friday, September 1, 2017

**Subject:** Summary of the changes to the Federal Rules of Bankruptcy Procedure taking effect December 1, 2017 and the attendant proposed amendments to our local bankruptcy rules and appendices.

On December 1, 2017, several amendments to the Federal Rules of Bankruptcy Procedure will go into effect. The amendments to Fed.Rs.Bankr.P. 1001, 1006(b), and 1015(b) do not affect our local rules and appendices. Briefly, the amendment to rule 1001 is cosmetic, the amendment to rule 1006(b) directs the clerk to accept a petition regardless of whether a fee is received with it, and the amendment to rule 1015(b) changes a reference to "husband and wife" to "spouses."

The other amendments to the Federal Rules of Bankruptcy Procedure, collectively referred to as the "chapter 13 package," are more substantial and include amendments to Fed.Rs.Bankr.P. 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, 9009, a new Fed.R.Bankr.P. 3015.1, and a new Official Form 113—a nationwide chapter 13 plan form. The chapter 13 package necessitates numerous changes to our local rules and appendices. The local rules committee for the District of South Dakota also proposes the adoption of a local plan form rather than using the official nationwide plan form. Several other amendments are also proposed.

**Written comments regarding the proposed amendments to the local rules and appendices, including the local plan form, should be submitted on or before September 29, 2017, and should be directed to either Dale A. Wein, Chairman of the Local Bankruptcy Rules Committee, at [dalewein@rw-law.net](mailto:dalewein@rw-law.net) or P.O. Box 1329, Aberdeen, SD 57402, or Frederick M. Entwistle, Clerk of the United States Bankruptcy Court, at [Rick\\_Entwistle@sdb.uscourts.gov](mailto:Rick_Entwistle@sdb.uscourts.gov) or 400 South Phillips Avenue, Room 104, Sioux Falls, SD 57104.**

An informal educational session for bankruptcy attorneys and their staff will be held in each of the four divisions during September and October 2017. At each session, Trustee Wein and Law Clerk Kay Cee Hodson will discuss the changes to the federal and local rules of bankruptcy procedure that will take effect December 1, 2017 and the new local plan form. The dates and times for the sessions will be included in Clerk Rick Entwistle's *Bankruptcy Updates*.

The amendments in the chapter 13 package are summarized below, and then the attendant proposed changes to our local rules and appendices are also summarized.

For your reference, we are separately providing: (1) a copy of the federal rules chapter 13 package; (2) a copy of the new nation-wide official plan form; (3) a red-line copy of the proposed amendment to our local rules and appendices; and (4) a copy of the proposed new local plan form.

**Fed.R.Bankr.P. 2002.** Subsection (a)(9) is being added to reduce the notice period for *objecting* to a chapter 13 plan from 28 to 21 days, which becomes 24 days when the three days from Fed.R.Bankr.P. 9006(f) are added. Subsection (b) is also being changed to provide 28 days notice is still required for the *confirmation hearing*. When boiled down, it looks like the last date for objections has to be 24 days from service but not less than seven days before the confirmation hearing.

Proposed changes to local rules and appendices: The committee proposes to update Bankr. D.S.D. R. 2002-1(c) to reflect the new plan objection period, replace Bankr. D.S.D. Rs. 3015-3A and 3015-3B with a new rule 3015-3 that addresses confirmation of a plan in *both* chapter 12 and chapter 13 cases, and replace Bankr. D.S.D. Rs. 3015-4A and 3015-4B with a new rule 3015-4 that addresses modification of a plan before confirmation in *both* chapter 12 and chapter 13 cases. Appendix 2D, the sample notice of a confirmation hearing is likewise updated, and Appendix 2E (an outdated sample notice for an in-court confirmation hearing) is deleted.

**Fed.R.Bankr.P. 3002** is being substantially amended. First, under subsection (a), secured creditors will now be directed to file a proof of claim if they want their claim to "be allowed." However, if the secured creditor does not file a proof of claim, that act alone will not void the creditor's lien.

Under amendments to subsection (c), the deadline for filing a proof of claim in a voluntary chapter 7, 12, and 13 case is being reduced from 90 to 70 days *and* the starting date for the 70 days will now be the petition date rather than the date first set for the meeting of creditors. Consequently, the proof of claim deadline will now occur much sooner in a case for nongovernmental creditors. If a chapter 7 case converts to chapter 12 or chapter 13, the proof of claim deadline will now be 70 days after the order of conversion.

Under an amendment to subsection (c)(6)—one of the six filing deadline exceptions—a new exception seems to be created: If a debtor files his list of creditors' names and addresses untimely and the notice was insufficient to give the creditor a "reasonable" time to file a proof of claim and if the creditor files a motion before or after the original deadline, the Court may extend the time, up to an additional 60 days, for that creditor to file a proof of claim. The amendment, however, is not rock-solid clear; it does not seem to encompass the much more common problem of a debtor leaving a creditor—or two or three—off his original case mailing list that was timely filed.

Proposed changes to local rules and appendices: None identified.

**Fed.R.Bankr.P. 3007.** There are two material amendments to Rule 3007. First, the amended rule sets forth how an objection to a claim and the notice of the objection

must be served: service by mail is fine unless the claim holder is the federal government or an insured depository institution. If the claim holder is one of these, service must be made in compliance with the applicable subparts of Fed.R.Bankr.P. 7004. Second, the rule, as amended, will no longer require a hearing to be held if the claim holder does not file a response to the objection to the claim.

Proposed changes to local rules and appendices: Our local rule and sample notice regarding an objection to a claim, Bankr. D.S.D. R. 2002-1(b) and Appendix 2B, are updated so a telephonic hearing will be held only if a response to the claim objection is filed. The sample notice for an in-court hearing on an objection to claim, Appendix 2C, is deleted.

**Fed.R.Bankr.P. 3012.** The federal rule is substantially amended to clarify the procedure for determining the amount of a secured claim under 11 U.S.C. § 506(a) or the amount of a priority claim under 11 U.S.C. § 507. Most notably, it allows a chapter 12 or a chapter 13 debtor to request in a proposed plan that the amount of a particular secured claim be determined. Secured claims held by governmental agencies are excluded from this option.

Proposed changes to local rules and appendices: The options provided in the amendment are reflected in the proposed local plan form at Appendix 3A.

**Fed.R.Bankr.P. 3015.** This federal rule is amended to reflect the new official form for a chapter 13 plan. It also says any objection to a plan in a chapter 12 or a chapter 13 case must be filed at least seven days before the confirmation hearing. Finally, subsection (g) is added to state a secured creditor can be bound by a confirmed plan's determination of the amount of its claim and that a confirmed plan can provide for relief from the automatic stay.

Proposed changes to local rules and appendices: The local rule and sample notice of a telephonic confirmation hearing, Bankr. D.S.D. R. 2002-1(c) and Appendix 2D, are updated to reflect the new notice period. The sample notice for an in-court confirmation hearing, Appendix 2E, is deleted.

**Fed.R.Bankr.P. 3015.1.** This federal rule is being added to reflect the new official chapter 13 plan form. It sets forth the requirements for a local form plan if a district chooses to use a local form rather than the official form, which the local bankruptcy rules committee for the District of South Dakota has proposed.

Proposed changes to local rules and appendices: The committee proposes to amend our local plan form, Appendix 3A, to meet the requirements in Fed.R.Bankr.P. 3015.1(b), (c), (d), and (e). If a particular section of the local plan form does not apply to a debtor, the debtor may check the "not applicable" box for that section and delete the remainder of that section from the proposed plan. Once the local plan form is finalized, it will be provided to the Bar in both Word and WordPerfect formats, and eventually, we hope, as a fillable form.

**Fed.R.Bankr.P. 4003.** This federal rule is amended to provide that an avoidance of a

lien on exempt property or an avoidance of a transfer of exempt property under 11 U.S.C. § 522(f) may be made by motion *or* through a chapter 12 or a chapter 13 plan.

Proposed changes to local rules and appendices: None identified since the present proposed local form plan does *not* include this lien avoidance option.

**Fed.R.Bankr.P. 5009.** This federal rule is amended to create a new motion procedure for a chapter 12 or a chapter 13 debtor to request a declaration that a lien has been satisfied and released pursuant to plan terms.

Proposed changes to local rules and appendices: The standard sample notice form at Appendix 2A may be used and the default seven-day notice period provided by Bankr. D.S.D. R. 2002-1(f)(2), which becomes ten days when Fed.R.Bankr.P. 9006(f) kicks in, may be applied. Some cosmetic amendments to Appendix 2A are proposed.

**Fed.R.Bankr.P. 7001(2).** This federal rule, as amended, recognizes—and excepts from adversary proceedings—the new motion or plan procedure in Fed.R.Bankr.P. 3012 for determining the amount of a secured claim.

Proposed changes to local rules and appendices: None identified.

**Fed.R.Bankr.P. 9009.** The federal rule is amended to narrow how and when official forms may be modified on the local level. It would appear to be a general rule regarding all official forms, while new Fed.R.Bankr.P. 3015.1, discussed above, is a specific rule regarding a local form chapter 13 plan.

Proposed changes to local rules and appendices: None identified.

***Other amendments.*** In addition to the amendments to the local rules made necessary by the several amendments to the federal rules taking effect December 1, 2017, the local rules committee also considered and approved for submission for public comment some local rule amendments that Chambers and the Bankruptcy Clerk's office had proposed. These proposed amendments are summarized below:

**1. Revise how petitions, schedules, statements, and lists are amended.** In light of the new official forms, the procedure for amending a petition and most schedules, statements, and lists will be revamped. Rather than having a cover pleading that explains each change, a debtor will now prepare and sign the appropriate official form and check the "amended" box on it. In the attendant notice of the amendment, the debtor will detail the changes made in the amended petition, schedule, statement, or list. Only the notice—hopefully a one-page document—will be served. Who is served with the notice, which is governed by Fed.R.Bankr.P. 1009(a), remains the same. Separate local rules will govern the amendment of a debtor's Social Security number and the amendment of a debtor's case mailing list, where the amendment and the notice of amendment will still be a combined document.

Proposed changes to local rules and appendices: The affected local rules and

appendices, Bankr. D.S.D. Rs. 1009-1 and 1009-2 and Appendices 1H, 1I, and 1J, will be amended as set forth above, and Bankr. D.S.D. R. 1009-4 will be added to govern the amendment of a mailing list.

**2. Formalize the procedure for filing a "supplement" schedule I or J.** The official forms for schedule I and schedule J now include a check box in the upper right corner of the first page to indicate the schedule is either an amended schedule (for correcting information as of the petition date) or is a "supplement showing postpetition chapter 13 income as of the following date," with a place to insert the effective date included. This new "supplement" option replaces what we have generally referred to in our district as an "Exhibit Schedule I" or an "Exhibit Schedule J" in chapter 12 and chapter 13 cases to show a debtor's current income and expenses in support of a plan or a motion to modify a confirmed plan. A new local rule was needed to formalize the procedure for using the new "supplement" option on schedules I and J. Though the official form references only chapter 13 cases, it is proposed that the supplement option may be used in chapter 12 cases, also.

Proposed changes to local rules and appendices: Add Bankr. D.S.D. R. 1009-5.

**3. Make uniform the procedure for giving notice of a proposed chapter 12 or chapter 13 plan.** Presently, a chapter 13 debtor serves a notice of his or her proposed plan only if the debtor files the original plan late or if the debtor files a modified plan. Under the proposed amendments, the procedure for noticing a plan in a chapter 12 case or chapter 13 case would be the same, and a chapter 12 or a chapter 13 debtor would serve a notice with each proposed plan. The clerk's notice of commencement of case in chapter 13 cases would no longer contain the plan objection deadline or information regarding the first confirmation hearing. Instead, the notice of the confirmation hearing becomes the sole source of that information. Also, the confirmation hearing notice for chapter 12 and chapter 13 cases will now be prepared and filed by the Bankruptcy Clerk whenever a debtor files a plan or modified plan. Once the Clerk files the notice, the debtor will serve the proposed plan or modified plan and the notice together, which ensures creditors receive them at the same time, and then the debtor will file a certificate of service. The new confirmation hearing notice will also provide more complete information regarding how to file an objection to a plan and how the initial telephonic confirmation hearing will be conducted. Some cosmetic changes to the sample notice on confirmation hearing are also proposed.

Proposed changes to local rules and appendices: The separate local rules for chapter 12 and chapter 13 confirmation hearings, Bankr. D.S.D. Rs. 3015-3A and 3015-3B, will be merged into new local rule 3015-3. The separate local rules regarding a modified plan in chapter 12 and chapter 13 cases, Bankr. D.S.D. Rs. 3015-4A and 3015-4B, will be merged into new local rule 3015-4. The sample telephonic confirmation hearing notice, Appendix 2D, will be updated, and the sample in-court confirmation hearing notice, Appendix 2E, will be deleted.

**4. Recognize Official Form 25A for a plan in a small business chapter 11 case.** Under this proposed amendment, our local rules will now recognize the official form for a plan

in a small business chapter 11 case. There is also an Official Form 25B for a disclosure statement in a chapter 11 small business case, but since our district does not require a disclosure statement in small business cases, which is permitted by 11 U.S.C. § 1125(f)(1), our proposed local rules will only require a debtor to incorporate relevant provisions of Official Form 25B into the plan for a small business case.

Proposed changes to local rules and appendices: Amend Bankr. D.S.D. R. 3016-1, as summarized above.

**5. Eliminate the requirement for a chapter 12 or a chapter 13 debtor to file a proposed confirmation order** since the Court now enters a text order for these.

Proposed changes to local rules and appendices: Exclude the requirement from the new Bankr. D.S.D. R. 3015-3, discussed above, and delete Appendices 3B and 3C.

**6. Eliminate all references in the local rules to notices specifically for in-court hearings** since motion days will continue to be telephonic for the foreseeable future. In-court hearings will continue to be reserved for evidentiary matters and will be set by the Court by order.

Proposed changes to local rules and appendices: The committee proposes to update Bankr. D.S.D. Rs. 2002-1 and 9074-1 and new Bankr. D.S.D. R. 3015-3, and Appendices 2B and 2D will reference only a telephonic hearing. Appendices 2C and 2E may both be deleted.

**7. Update the chapter 13 hardship discharge procedure.** When a chapter 13 debtor is seeking a hardship discharge, the debtor needs to file a Certification Regarding Domestic Support Obligations and Section 522(q) using Director's Form 2830.

Proposed changes to local rules and appendices: Amend Bankr. D.S.D. R. 3072-1B(d), as discussed above.

**8. Update what documents may be filed in a closed case.** The committee has added the redaction-related notices and motions discussed in Fed.R.Bankr.P. 9037(d) and Bankr. D.S.D. Rs. 5077-1(e) and 9037-1, which is new (see below), to those documents that may be filed in a closed case.

Proposed changes to local rules and appendices: Amend Bankr. D.S.D. R. 5010-1(b), as set forth above.

**9. Update what hearings must be scheduled with the Bankruptcy Clerk.** The committee proposes to update Bankr. D.S.D. R. 5070-1(a) to remove chapter 12 and chapter 13 confirmation hearings and hearings on objections to a proof of claim from the list in local rule 5070-1 of hearings that must be scheduled before originating documents are filed. Confirmation hearings in chapter 12 and chapter 13 cases will now be set by the Court when the clerk prepares the confirmation hearing notice. A

hearing on an objection to claim is now only required if a response to the objection is filed.

Proposed changes to local rules and appendices: Amend Bankr. D.S.D. R. 5070-1(a), as set forth above.

**10. Update the local rule on transcripts.** Under these amendments, the title of Bankr. D.S.D. R. 5077-1 is corrected to include a meeting of creditors, Bankr. D.S.D. R. 5077-1(c) is clarified to state only a certified transcript of a meeting of creditors, 2004 exam, or deposition may be filed, and in the Practice Pointers for Bankr. D.S.D. R. 5077-1 guidance on obtaining and filing a certified transcript of a meeting of creditors is added.

Proposed changes to local rules and appendices: Amend Bankr. D.S.D. R. 5077-1, as set forth above.

**11. Formalize the procedure for substituting redacted documents.** Since it happens with some frequency, the committee proposes the addition of a local rule to govern the substitution of a document or a proof of claim that contains unredacted personal identifiers with a redacted copy.

Proposed changes to local rules and appendices: Add Bankr. D.S.D. R. 9037-1.

**12. Update the filing requirements "checklists" in Appendix 1A.** The checklists need to clarify that a mailing list of creditors has to be either uploaded electronically or filed on the petition date. The Bankruptcy Clerk will also, once all the local rule amendments are final, update the internal references in the checklists. Those are not included today.

Proposed changes to local rules and appendices: Amend Appendix 1A, as discussed above.

**13. Update the list of orders prepared by the Court.** Some minor changes are proposed to Appendix 9I to include other orders the Court generally prepares.

Proposed changes to local rules and appendices: Amend Appendix 9I, as discussed above.

**14. Update other notices** in the local rules to reflect the cosmetic changes made to the notice of a chapter 12 or chapter 13 confirmation hearing.

Proposed changes to local rules and appendices: Amend Appendices 2A, 2F, 2G, 2R, 6A and 6C, as discussed above.