

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

May 1, 2018

To: Public
From: Board of Bankruptcy Judges

**NOTICE AND SUMMARY
OF PROPOSED AMENDMENTS TO
LOCAL BANKRUPTCY RULES AND LOCAL BANKRUPTCY FORMS**

The Board of Judges (“the BOJ”) of the U.S. Bankruptcy Court for the Eastern District of Pennsylvania intends to request that the U.S. District Court approve certain proposed amendments to four (4) local bankruptcy rules and the amendment or promulgation of four (4) local bankruptcy forms.

Prior to doing so, the BOJ is posting this notice on the court website and soliciting informal public comment to the proposed amendments.

Comments may be made by e-mail addressed to

Rulescomment2018@paeb.uscourts.gov on or before May 31, 2018.

The proposed amendments, most of which are technical in nature, are summarized below.

Rules

L.B.R. 2016-3

The proposed amendments to L.B.R. 2016-3(a)(2) and 2016-3(b) are purely technical and are designed to correct erroneous cross-references to L.B.F. 2016-3B and 2016-3C, respectively.

L.B.R. 3015-1

The proposed amendment to L.B.R. 3015-1 is purely technical and is designed to correct the cross-reference to L.B.F. 3015.1.

L.B.R. 3015-3

The proposed amendment to L.B.R. 3015-3 addresses the service requirements for a pre-confirmation, proposed amended chapter 13 plan.

In its current form, L.B.R. 3015-3, effective December 1, 2017, incorporates a national rule, Fed. R. Bankr. P. 3015(d). The BOJ believes that the national rule was intended to apply only to the debtor's initially filed chapter 13 plan, arguably leaving a gap in our local rules on the subject of the service requirement for an amended chapter 13 plan. The proposed amendment fills that gap.

The proposed rule requires service of the amended chapter 13 plan on those parties that, historically, have been served with amended chapter 13 plans in this district: the trustee, priority creditors, secured creditors, creditors requesting notice, creditors whose interests are materially affected by the amendments made in the plan and any entity the court directs.

L.B.R. 9014-2

The proposed amendment to L.B.R. 9014-2 is purely technical, replacing the erroneous cross-reference to L.B.R. 5070-1(f) with the correct cross-reference to L.B.R. 5070-1(g).

Forms

L.B.F. 3015.1

Effective December 1, 2017, this district, for the first time, mandated the use of a form chapter 13 plan. Rather than require use of the national form chapter 13 plan, see Fed. R. Bankr. P. 3015(c), this district "opted out" pursuant to Fed. R. Bankr. P. 3015.1 and adopted a mandatory local form chapter 13 plan. See L.B.F. 3015.1.

Based on the initial experience using the local form chapter 13 plan, and after receiving input from the chapter 13 trustees and some members of the consumer bar, the BOJ believes the form plan can be improved by the making the proposed amendments described below.

Part 2 Amendments

Part 2 of the form plan addresses the debtor's plan payment obligations.

The main change is the addition of a new subsection titled, "Estimated Distribution." In this section, the debtor will set forth the estimated amount of the distribution to be made to each class or entity as to which the plan proposes to make a distribution.

The BOJ believes this plan provision will provide two (2) benefits. First, it will improve "plan transparency" by providing all parties in interest, the trustee and the court with a summary overview of the economics of the proposed plan. Second, it will likely reduce the number of arithmetic errors that are made that often require the filing of amended plans that delay confirmation.

There is also a technical change in §2(c). The cross reference to the plan section addressing loan modifications has been changed because that provision of the form plan has been moved from Part 7 to Part 4.

Part 4 Amendments

Part 4 of the form plan addresses the treatment of secured creditors

The proposed form modifies Part 4 in seven (7) ways.

1. The proposed form plan includes a new §4(a) and renumbers the existing subsections.

New §4(a) provides a place in the form for the debtor to identify those secured claims which will not receive a distribution from the chapter 13 trustee under the plan. Also, if the debtor is not providing for a secured claim in the plan because the debtor is current on the obligation or otherwise intends to continue to make direct payments to the creditor in accordance with the original contract terms, rather than through a plan distribution, §4(a) provides a checkbox for the debtor to so indicate.

The BOJ expects that, by clarifying the debtor's intentions with respect to certain secured creditors, this provision will reduce the filing of unnecessary motions for relief from the automatic stay and the number of objections to confirmation.

2. The text of new §4(b) (former §4(a)) has been revised slightly.

Presently, this provision states “Debtor shall pay directly to the creditor monthly obligations falling due after the bankruptcy filing.” As amended, the phrase “in accordance with the parties’ contract” has been added to the end of the sentence. The purpose of the amendment is to clarify that the debtor’s “maintenance of payments” obligation under 11 U.S.C. §1322(b)(5) is governed by the parties’ contract and not by the the debtor’s disclosure in the §4(b) table of the current monthly payment being paid directly to the creditor. The additional phrase also clarifies that the amount of the “maintenance” payment may change during the course of the case due to changes in escrow requirements or other reasons based on the terms of the loan contract.

By clarifying that the plan disclosure of the amount of the ongoing contractual payment is not a binding determination of the amount of that payment, this amendment should reduce the number of objections to confirmation.

3. An additional sentence has been added (in italics) to §4(c)(4), the provision that addresses the confirmation requirement of paying the “present value” of an allowed secured claim that is being paid in full over the term of the chapter 13 plan, *see* 11 U.S.C. §1325(a)(5)(B)(ii).

The purpose of the additional text is to clarify that the a creditor must file an objection if it believes that the plan does not comply with the “present value” confirmation requirement. Absent an objection, the court can accept the present value, if any, provided by the plan. By comparison, unless the debtor has obtained an order through a contested matter or adversary proceeding or includes a plan provision authorized by Fed. R. Bankr. P. 3012, a creditor’s proof of claim controls over any contrary amounts listed in the plan as constituting a creditor’s allowed claim. *See* Plan §7(a)(2).

4. The plan provision formerly designated as §7(d), addressing those secured claims as to which the debtor intends to seek a loan modification, has been moved from Part 7 to Part 4 and designated as §4(f). The BOJ concluded that because loan modification is a form of treatment of a secured claim, it is more logical to place it in Part 4 among the various other options a debtor has for treating secured claims.

5. Two stylistic changes have been made to in Part 5. In §5(a), the heading “Specifically Classified Allowed Unsecured Non-Priority Claims” has been amended. The word “Specifically” has been changed to “Specially.” In §5(b), the words “All Other” have been deleted from the heading, so that it will now read, “Timely Filed Unsecured Non-Priority Claims.”

6. Section 5(b) has been amended in another respect. In addition to requiring disclosure of the value of the non-exempt property the debtor has, it will now require that the the debtor state the amount to be distributed under the plan to priority and general unsecured creditors.

7. Presently, §7(a)(2) provides that the amount of a creditor's claim listed in its proof of claim controls over any contrary amounts listed in Parts 3, 4 or 5 of the Plan. The proposed amendment to §7(a)(2) will add the qualifying phrase, "Subject to Bankruptcy Rule 3012."

This additional phrase is intended to clarify that if the debtor invokes the procedures authorized by Rule 3012, the plan may affect the allowed amount and status of a secured claim. purposes, i.e., the plan provisions may control over a creditor's filed proof of claim.

Presently, there are no provisions in the form plan that invoke Bankruptcy Rule 3012. A debtor seeking to override §7(a)(2) must draft appropriate Part 9 nonstandard provisions.

L.B.F. 3022-1

Effective December 1, 2017, L.B.R. 3022-1 was adopted. L.B.R. 3022-1 requires the Clerk, in certain instances to serve a notice on the Matrix List of creditors in the form of L.B.F. 3022-1. Due to an oversight, L.B.F. 3022-1 was not adopted when the rule went into effect. The adoption of proposed L.B.F. 3022-1 will correct that error.

L.B.F. 4004-3A and 4004-3B

Effective December 1, 2017, L.B.R. 4004-3 was adopted. L.B.F. 4004-2 requires a debtor who files a motion for entry of discharge to attach to the motion a completed and signed copy of either L.B.F. 4004-3A or L.B.F. 4004-3B, which is applicable. Due to an oversight, L.B.F. 4004-3A and L.B.F. 4004-3B were not adopted when the rule went into effect. The adoption of proposed L.B.F. 4004-3A and L.B.F. 4004-3B will correct that error.