

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS**

STANDING ORDER 2017-05

**ABROGATION AND AMENDMENTS TO MASSACHUSETTS LOCAL BANKRUPTCY RULES
AND TO MASSACHUSETTS LOCAL BANKRUPTCY RULES APPENDICES 1 AND 4**

It is hereby ORDERED that effective December 1, 2017, pending final adoption, the following Massachusetts Local Bankruptcy Rules and Appendices are abrogated and amended on an interim basis as described below.

RULE 2082-1. CONFIRMATION OF CHAPTER 12 PLANS

[Abrogated. *See* Rule 3015-2.]

RULE 3015-2. CHAPTER 12 PLANS

Upon the filing of a Chapter 12 plan, the Clerk shall schedule the confirmation hearing and establish a plan objection deadline and notify the debtor of these dates. The Chapter 12 plan need not be served initially. The debtor shall give notice of the hearing and the deadline for filing objections and shall serve a copy of the plan upon all creditors, equity security holders, the chapter 12 trustee, and the United States trustee in accordance with Fed. R. Bankr. P. 3015. In addition, if the plan provides for the determination of the amount of a secured claim under Fed. R. Bankr. P. 3012 or provides for the avoidance of a judicial lien under Fed. R. Bankr. P. 4003, then the debtor or debtor's attorney shall cause a copy of the plan to be served on the holders of any affected claims in accordance with Fed. R. Bankr. P. 7004. The debtor shall file a certificate of service with the Court indicating that service has been made.

**RULE 3002-1. DEADLINE FOR FILING REQUESTS FOR ADMINISTRATIVE EXPENSES
PURSUANT TO 11 U.S.C. § 503(b)(9); RECLAMATION OF GOODS**

Unless the Court orders otherwise, any request for allowance of an administrative expense for the value of goods delivered to a debtor in the ordinary course of the debtor's business within twenty (20) days prior to the commencement of a case pursuant to 11 U.S.C. § 503(b)(9) shall be filed with the Court, in writing, as follows:

- (a) In a Chapter 11 case, within sixty (60) days after the first date set for the meeting of creditors pursuant to 11 U.S.C. § 341.
- (b) In a Chapter 7, 12, or 13 case, within the deadline established for filing proofs of claim under Fed. R. Bankr. P. 3002.

Failure to file such a request for allowance within the time period specified in this Rule may result in denial of administrative expense treatment for such claim.

RULE 3007-1(b). OBJECTIONS TO CLAIMS

(b) Upon the filing of an objection, in a case other than Chapter 13, the Court shall issue a notice setting the deadline for filing responses and a hearing date. The objection need not be served initially. The Clerk shall transmit the notice to the objecting party who shall then cause the notice and a copy of the objection to be served upon the claimant in accordance with Fed. R. Bankr. P. 3007. The objecting party shall also cause the objection and the notice to be served upon the following:

- (1) the debtor and debtor's counsel;
- (2) the United States trustee; and
- (3) all attorneys who have filed an appearance in the case.

The objecting party shall file with the Court a certificate of service with respect to the notice.

RULE 3017-2. FILING OF PLAN AND DISCLOSURE STATEMENT IN SMALL BUSINESS CHAPTER 11 REORGANIZATION CASES

Fed. R. Bankr. P. 3017.1 shall apply in small business cases. The Official Bankruptcy Forms contain a sample disclosure statement and plan of reorganization.

Official Local Form 15-1 sets forth a Motion to Conditionally Approve and to Combine the Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan of Reorganization of Small Business Debtor. Official Local Form 15-2 sets forth an Order and Notice Conditionally Determining that the Disclosure Statement Accompanying the Plan of Reorganization for Small Business Debtor or Provides Adequate Information, and Setting Hearing on Confirmation and Related Matters. Official Local Form 15-3 sets forth a Ballot for Accepting or Rejecting the Plan of Reorganization for a small business debtor proposed by the debtor.

MLBR, Appendix 1, RULE 13-4 (a) and (b). **CHAPTER 13 PLAN**

(a) Form of Plan

A chapter 13 plan (including an amended plan) shall conform to MLBR Official Local Form 3.

(b) Service of Plan

Concurrently with the filing of the plan (including an amended plan), the debtor or the debtor's attorney shall cause a copy of the plan to be served by first class mail or other permitted means upon the chapter 13 trustee, all creditors of the debtor, all attorneys who have filed appearances and requested service of all pleadings, and other parties in interest. In addition, if the plan (or amended plan) provides for the determination of the amount of a secured claim under Fed. R. Bankr. P. 3012 or provides for the avoidance of a judicial lien under Fed. R. Bankr. P. 4003, then the debtor or debtor's attorney shall cause a copy of the plan to be served on the holders of any affected claims or liens in the manner provided by Fed. R. Bankr. P. 7004. The debtor or debtor's attorney shall file appropriate certificates of service within three business days.

MLBR, Appendix 1, RULE 13-5. **SERVICE OF MOTIONS**

All motions and requests for orders must be served on the chapter 13 trustee, the debtor, the debtor's attorney, persons who have filed appearances and requested service of all pleadings, and all creditors with the following exceptions:

- (a) a motion for relief from the automatic stay shall be served on the debtor, the debtor's attorney, and all persons with an interest in or lien on the subject collateral;
- (b) a chapter 13 trustee's motion to dismiss shall be served on the debtor and the debtor's attorney;
- (c) a debtor's motion to dismiss or notice of conversion to chapter 7 or 11 when there have been no prior conversions shall be served on the chapter 13 trustee;
- (d) objections to claims shall be served in accordance with Rule 13-13 on the chapter 13 trustee, the claimant, and the claimant's attorney and any other parties required under Rule 13-13;
- (e) objections to confirmation shall be served in accordance with Rule 13-8; and
- (f) a motion declaring a lien satisfied pursuant to Fed. R. Bankr. P. 5009 shall be served on the holder of any affected lien in the manner provided by Fed. R. Bankr. P. 7004.

MLBR, Appendix 1, RULE 13-10. **AMENDMENTS TO PLAN PRIOR TO CONFIRMATION**

- (a) Amendments to a plan which do not adversely affect creditors may be made at or prior to the 11 U.S.C. § 341 meeting without leave of the Court by a separate pleading entitled "Modification of Plan," which shall be filed with the Court and served on the chapter 13 trustee and any party or attorney who has filed an appearance and requested service of pleadings in the case. The modification shall be accompanied by a certificate of service. If no objections to the modification are filed within fourteen (14) days after service, the Court shall consider confirmation of the plan as amended.
- (b) Where an amendment to a plan adversely affects creditors, the debtor shall file with the Court an amended plan which conforms to MLBR Official Local Form 3 and a motion to approve the amended plan. The debtor shall cause a copy of the amended plan and motion to approve the amended plan to be served in accordance with Rule 13-4. The motion shall be accompanied by a certificate of service. If no objections to the motion to approve the amended plan or the amended plan are filed within thirty (30) days of the filing of the certificate of service, the Court may allow the motion without a hearing.

MLBR, Appendix 1, RULE 13-12(a) and (b). **AMENDMENTS TO PLAN AFTER CONFIRMATION**

- (a) A debtor who seeks to amend a chapter 13 plan after confirmation shall do so by filing a motion to amend the plan with a copy of the proposed amended plan (filed as a separate document). The proposed amended plan shall conform to MLBR Official Form 3. The motion to amend shall include a statement of the reason for the amendment and a summary of the provisions of the plan that are being changed. In conjunction with the motion to amend, the debtor shall file amended schedules I and J and an amended summary of schedules as appropriate if plan payments are changing under the terms of the amended plan. The chapter 13 trustee, in his or her discretion, may schedule a continued 11 U.S.C. § 341 meeting with respect to the amended plan.
- (b) The debtor shall cause a copy of the motion, amended plan and any updated schedules I and J to be served in accordance with Rule 13-4. In the event that the debtor proposes more than one amended plan, each amended plan shall indicate "First Amended Plan," "Second Amended Plan," and so on as may be appropriate.

MLBR, Appendix 1, RULE 13-13 (a), (b), (c), (e), and (h). **PROOFS OF CLAIM AND OBJECTIONS**

- (a) All secured, priority, or unsecured creditors of the debtor must have an allowed claim in order to receive distributions under the plan. To be eligible to have an allowed claim, a creditor, including a secured creditor who holds a mortgage on the debtor's property, must timely file a proof of claim that conforms to Official Form 410 and Fed. R. Bank. P. 3001, unless a surrogate proof of claim is timely filed by the debtor or chapter 13 trustee in accordance with Fed. R. Bankr. P. 3004. A proof of claim is timely filed if filed within the deadlines set forth in Fed. R. Bankr. P. 3002. The Court may extend the deadline for filing a proof of claim (i) for not more than 30 days, on motion filed by a creditor before the expiration of the time to file a proof of claim, or (ii) as otherwise provided in Fed. R. Bankr. P. 3002 (the original or extended original deadline being the "Initial Filing Deadline")
- (b) If a named creditor which has been separately treated in a plan (e.g., a secured creditor, a priority creditor, a creditor with a non-dischargeable claim or a creditor to whom 11 U.S.C. § 1301 applies) (a "Designated Creditor") does not timely file a proof of claim, the debtor must file a surrogate proof of claim for that creditor pursuant to Fed. R. Bankr. P. 3004 within 30 days after the expiration of the Initial Filing Deadline provided in section (a) (the "Surrogate Filing Deadline"). Upon the filing of a surrogate proof of claim, the Clerk shall issue a "Notice of Proof of Claim Filed under Fed. R. Bankr. P. 3004," establishing a deadline by which a creditor on whose behalf a proof of claim has been filed, may file an amended proof of claim. Within 7 days of the filing of an amended proof of claim by such creditor, the creditor shall file a certificate of service reflecting service of the amended proof of claim on the trustee and the debtor's attorney or the debtor if the debtor is appearing pro se. In the event an amended proof of claim is not timely filed in accordance with this Rule, the surrogate proof of claim filed under Fed. R. Bankr. P. 3004 shall be the allowed claim under 11 U.S.C. §§ 502(a) and 506, as applicable.

In the event the plan provides for payment to a Designated Creditor with an unfiled claim and no surrogate claim has been filed by the Surrogate Filing Deadline, the deadline for filing a surrogate claim for that Designated Creditor shall be deemed extended for an additional 30 days (the "Extended Surrogate Filing Deadline"); and the chapter 13 trustee must (a) file an objection to confirmation of the plan if the plan is not confirmed or a motion to dismiss the case no later than 10 days after the Surrogate Filing Deadline, on the grounds that the plan is not feasible because of the proposed distribution to a claimant for whom a claim has not been filed, and (b) seek an expedited or emergency determination and/or a hearing to be set prior to the Extended Surrogate Filing Deadline. The debtor or trustee may seek a further extension of time for filing a surrogate proof of claim by filing, prior to the expiration of the Extended Surrogate Filing Deadline, a motion to further extend that deadline. In

the event a Designated Creditor does not timely file a proof of claim and a surrogate claim is not timely filed in accordance with the foregoing deadlines, the chapter 13 trustee shall not distribute any monies to such creditor even though the creditor is listed in the debtor's schedules or the plan provides for payment to such creditor. Failure by debtor's counsel to file a surrogate proof of claim for a Designated Creditor who has not timely filed a proof of claim may be a factor in the Court's determination of the compensation due to that attorney.

- (c) If a claim is secured by real estate or other collateral, then the supporting documents required under Fed. R. Bank. P. 3001(c) shall include (i) copies of the original note, mortgage or security agreement; and (ii) if the claimant is not the original holder of the note and mortgage or security agreement, copies of any and all assignments or other appropriate documentation sufficient to trace the chain of ownership of the note, mortgage, or security agreement, and to establish its standing to file the proof of claim. In addition, a proof of secured claim shall include the detailed itemization of principal, interest, costs and all expenses as required under Fed. R. Bank. P. 3001 (c) (2). The Court, in its discretion, may order a claimant or a claimant's attorney to file an application for compensation and reimbursement of any such costs and expenses in accordance with MLBR 2016-1 or an accounting of any and all amounts due, including prepetition or postpetition arrearages, fees, or costs.
- (e) Only the provisions of MLBR 3007-1(a), (c), (d) and (f) apply to chapter 13 cases. A party objecting to a proof of claim shall attach a notice to the objection filed with the Court which conforms substantially to Official Form 420B, which shall advise claimant(s) that a response to the objection must be filed within 30 days of the filing of the objection with the Court. The objecting party shall cause the objection and the notice together with a certificate of service to be served (i) on the claimant in the manner provided for service under Fed. R. Bank. P. 3007(a)(2) (which includes requirements for service in the manner provided by Fed. R. Bank. P. 7004 for any objection to the claim of the United States, or any of its officers or agencies, or for an objection to the claim of an insured depository institution); and (ii) by first class mail or other permitted means on the debtor, the trustee and, if applicable, the entity filing the claim under Fed. R. Bank. P. 3005, and any other party entitled to notice.
- (h) If the Court has determined the allowed amount of a secured or unsecured claim pursuant to 11 U.S.C. § 506 or pursuant to confirmation of a plan as provided under Fed. R. Bank. P. 3015, the debtor or trustee need not file an objection to a secured creditor's proof of claim that varies from the Court's determination, and the chapter 13 trustee shall make distribution in accordance with the Court's order confirming the plan.

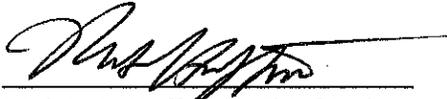
MLBR, Appendix 1, RULE 13-22. **DISCHARGE**

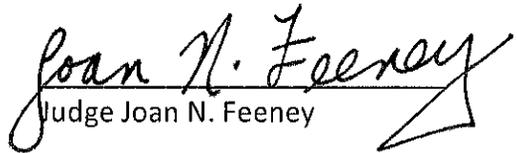
- (a) Upon completion of a chapter 13 plan, a debtor shall file a Motion for Entry of Discharge with Affidavit in Support of Motion for Entry of Discharge which conforms with MLBR Official Local Form 12. The motion may incorporate a request under Fed. R. Bankr. P. 5009 to declare a lien satisfied, or request that creditors who held secured claims which were fully paid execute and deliver to the debtor a release or other discharge certificate suitable for recording.
- (b) The debtor shall cause the Motion for Entry of Chapter 13 Discharge and Affidavit to be served upon the beneficiary of the debtor's domestic support obligations, if any, the chapter 13 trustee, the United States trustee, and all of the debtor's creditors. If the motion incorporates a request for relief under Fed. R. Bankr. P. 5009, or requests that creditors who held secured claims which were fully paid execute and deliver to the debtor a release or other discharge certificate suitable for recording, the debtor shall cause the motion to be served on the holder of any affected lien in the manner provided by Fed. R. Bankr. P. 7004. Any objections to the motion must be filed within fourteen (14) days after service. The Court may, in its discretion, schedule a hearing if an objection is filed. If the debtor fails to file the motion within a reasonable time after completion of plan payments due under the confirmed plan, the case may be closed without the entry of a discharge order.
- (c) Unless otherwise determined by the Court, the order of discharge shall include findings that:
 - (1) all allowed claims have been fully paid in accordance with the provisions of the confirmed plan; or
 - (2) with respect to secured claims which continue beyond the term of the plan, any pre-petition or post-petition defaults have been cured and such claims are in all respects current, with no escrow balance, late charges, costs or attorneys' fees owing.
- (d) The order of discharge shall direct that creditors who hold secured claims which continue beyond the term of the plan take no action inconsistent with the findings provided for in subsection (c)(2) of this Rule. If the motion has been served in accordance with this Rule on the affected lienholders, the order may also provide for the lien to be deemed satisfied or direct that creditors who held secured claims which were fully paid execute and deliver to the debtor a release or other discharge certificate suitable for recording.

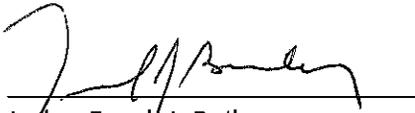
MLBR, Appendix 4(d). **NOTICES TO THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF MASSACHUSETTS**

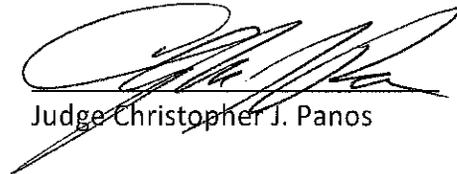
- (d) Fed. R. Bankr. P. 7004(b) and Fed. R. Civ. P. 4(i) govern service of process upon the United States in adversary proceedings, contested matters, and for objections to claims of the United States, its officers or agencies, as provided under Fed. R. Bank. P. 3007.

IT IS SO ORDERED:


Melvin S. Hoffman, Chief Judge


Judge Joan N. Feeney


Judge Frank J. Bailey


Judge Christopher J. Panos


Judge Elizabeth D. Katz

Dated: *November 15, 2017*