

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

In re

**ADDITIONAL PROPOSED
AMENDMENTS TO LOCAL RULES**

No. 2018-02

GENERAL ORDER

Pursuant to Rule 9029 of the Federal Rules of Bankruptcy Procedure and Rule 83 of the Federal Rules of Civil Procedure, it is ORDERED that the Clerk of Court give public notice of the additional proposed amendments to the court's local rules as set forth on the attachment hereto. Comments must be in writing and should be directed to the attention of the Clerk of Court: William T. Magill, Esq., James H. Quillen United States Courthouse, 220 West Depot Street, Suite 218, Greeneville, Tennessee 37743. The comment period will end November 9, 2018.

ENTERED: October 25, 2018

/s/ Marcia Phillips Parsons
MARCIA PHILLIPS PARSONS
Chief United States Bankruptcy Judge

/s/ Shelley D. Rucker
SHELLEY D. RUCKER
United States Bankruptcy Judge

/s/ Suzanne H. Bauknight
SUZANNE H. BAUKNIGHT
United States Bankruptcy Judge

/s/ Nicholas W. Whittenburg
NICHOLAS W. WHITTENBURG
United States Bankruptcy Judge

**PROPOSED AMENDMENTS TO LOCAL RULES IN ADDITION TO THOSE
PUBLISHED FOR PUBLIC COMMENT ON SEPTEMBER 12, 2018**

RULE 3015-1. CHAPTER 13 — PLAN

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(b) ~~Service~~Notice Generally. If the chapter 13 plan is filed with the petition, the clerk of court will ~~serve the plan on~~ provide creditors and parties in interest ~~at the addresses~~ listed on the debtor's master address list, ~~with a copy of the plan when giving notice of the bankruptcy filing upon commencement of the case.~~ If a debtor elects to file a plan after filing the petition, the debtor must serve the plan on creditors, parties in interest, and the chapter 13 trustee, and file a certificate of service in accordance with E.D. Tenn. LBR 9013-3.

(c) Service Required by Fed. R. Bankr. P. ~~9014 and~~7004. When a chapter 13 plan includes a request to determine the amount of a creditor's secured claim under Fed. R. Bankr. P. 3012(b); ~~or provides for the partial or entire avoidance of a creditor's lien under Fed. R. Bankr. P. 4003(d), or otherwise contains a provision that must requires the creditor be served in the manner required provided by Fed. R. Bankr. P. 9014 and 7004 for service of a summons and complaint,~~ the debtor ~~must—~~

- ~~—— (1) — include on the master address list required by E.D. Tenn. LBR 1007-2 the names and addresses necessary to properly effectuate service upon those affected creditors by first class mail under Fed. R. Bankr. P. 7004(b); and~~
- ~~—— (2) — if service by some manner other than first class mail is required, such as certified mail upon an insured depository institution under Fed. R. Bankr. P. 7004(h), file along with the plan a certificate evidencing service of the plan upon those affected creditors in the manner required.~~

~~must file with the plan a certificate evidencing service of the plan upon the affected creditors by first class mail in the manner required by Fed. R. Bankr. P. 7004(b) or by certified mail in the manner required by Fed. R. Bankr. P. 7004(h) if a creditor is an insured depository institution.~~

Comment

Under Federal Rule of Bankruptcy Procedure 3012(b) and 4003(d), a chapter 13 plan that seeks to determine the amount of a secured claim or avoid a lien must be served in the manner provided by Fed. R. Bankr. P. 7004 for service of a summons and complaint. While, if the plan is filed with the petition, the clerk of court through the Bankruptcy Noticing Center (BNC) includes a copy of the plan with the Notice of Chapter 13 Bankruptcy Case issued by the clerk upon the commencement of the case and these are sent either electronically or by first class mail to the creditors and parties in interest listed in the debtor's matrix, such notice does not constitute service of the plan in the manner provided by Fed. R. Bankr. P. 7004. These local rule amendments, which recognize the distinction between notice and service and require the debtor to serve the plan upon those creditors entitled to service in the manner provided by Fed. R. Bankr. P. 7004, ensure that the plan is served as required by Fed. R. Bankr. P. 3012(b) and 4003(d).

RULE 6004-1. SALE OF ESTATE PROPERTY

The original proposed amendment to this rule is deleted.

RULE 9013-3. CERTIFICATE OF SERVICE

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- (b) Content.** ~~The certificate of service must include a description of the paper served and—~~
- ~~— (1) — with respect to entities served electronically through the court’s electronic case filing system, a statement that the paper will be served electronically on the entities specified in the Notice of Electronic Filing to be issued by the electronic case filing system; and~~
 - ~~— (2) — with respect to entities not served electronically through the court’s electronic case filing system —~~
 - ~~— (i) — the name of every entity served;~~
 - ~~— (ii) — the service address of every entity served;~~
 - ~~— (iii) — the manner of service; and~~
 - ~~— (iv) — the date that the paper was served.~~

The certificate of service must include a description of the paper served or noticed and with respect to each person or entity being served or noticed, the name, service address, manner of service, and date of service.

Comment

The small changes to this rule seek to recognize that the Federal Rules of Bankruptcy Procedure require only notice of some filings, while certain other filings have to be served by first class mail or in the manner of a summons and complaint provided by Fed. R. Bankr. P. 7004. For example, Fed. R. Bankr. P. 2002(a)(3) requires notice of a proposed sale of property of the estate other than in the ordinary course of business. Rule 3007(a)(2) requires an objection to claim “be served on a claimant by first class mail,” or if the claimant is the United States “in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5),” or if the claimant is an insured depository institution “in the manner provided by Rule 7004(h)” (certified mail). Similarly, Rule 4001(a)(1) states that a motion for relief from an automatic stay must “be made in accordance with Rule 9014,” which in turn requires the motion “be served in the manner provided for service of a summons and complaint by Rule 7004.” These service requirements are not satisfied by electronic service through the court’s electronic case filing system, except with respect to service on attorneys who have consented to electronic service by registering as a Registered User for the court’s ECF system. See E.D. Tenn. LBR 5005-4(b)(2). The simplified provision for the content of a certificate of service is designed to recognize these differences in notice and service. This amendment is also designed to clarify that the certificate of service must clearly identify the manner of service for each creditor and party in interest so that the court can readily ascertain that the method of service

required by the applicable rule has been satisfied. Certificates that simply recite a motion or objection “has been served all creditors by electronic mail and/or first class mail” are insufficient.