

United States Bankruptcy Court, Southern District of Alabama
Quarterly Bankruptcy Section Meeting, August 15, 2023

1. Herman Padgett, Section Chair
2. Judges Oldshue and Callaway
 - Please respond to emails from chambers (Jennifer, Jeanna, Angie, Antoinette, Carol, and Lisa) promptly. Same with trustee's office, especially if it is an issue about confirmation (generally, can the debtor agree to the numbers and then the trustee can recommend and take off the docket).
 - Monitor the emails from where you are submitting orders. If there is a problem with the order, it will come back to that email. Don't submit orders from unmonitored emails.
 - Filer and signer must be same when you file documents. We are starting to have problems with this again. If you get a notice to correct, do it promptly.
 - *The document filed does not contain the name of the electronic-filing account owner on a signature block and is thus considered unsigned under Bankruptcy Rule 5005(a)(2)(C). The court will take no action on this document. If a corrected pleading is not filed within three business days, the document will be stricken pursuant to Bankruptcy Rule 9011(a).*
 - Service. We are starting to have problems with this again. Service memo (attached) is available on the website. Please educate your staffs.
 - Amended Local Rules effective September 1, including new procedure for Rule 2004 exams (see attached).
 - Timely filing of final plan summaries or amended final plan summaries. Trustee will file a motion to reduce attorney's fee if not filed within 10 days.
 - Additional attorney's fee for student loan AP's in chapter 13? Need input from the bar.
 - New form for chapter 13 motion for discharge when one debtor is deceased (attached).
 - Send CLE info to Jennifer Morgan.
3. Andrea Redmon, Clerk of Court
4. Chris Conte, Chapter 13 Trustee
 - Trustee objections to claims that do not have 410-A forms
 - Filing amended schedules and declarations of debtors
 - Out-of-pocket costs related to personal injury claims
5. Consumer committee – Stephen Klimjack
6. Business committee – Danielle Mashburn-Myrick
7. Open the floor
8. Next meeting Tuesday, November 14, 2023 – jury assembly room, second floor of Federal Courthouse, with Microsoft Teams component

Local Bankruptcy Rule 1009-1

AMENDMENTS TO PETITIONS, LISTS, SCHEDULES, AND STATEMENTS

(a) If the debtor amends any schedule to add creditors after the clerk of court has issued the notice of bankruptcy case, the debtor must serve the notice of bankruptcy case and the amended schedule on each newly-scheduled creditor and file a certificate of service reflecting that service. Pursuant to Bankruptcy Rule 1009(a), no motion to amend is required. The addition of a creditor constitutes a representation by the debtor and debtor's counsel that the creditor's claim arose prepetition.

(b) An amended petition, list, schedule, or statement shall be accompanied by a cumulative statement of amendment which describes each specific amendment which is being made and those which have been previously made. Each amended document shall be refiled in its entirety unless otherwise authorized by the court.

Local Bankruptcy Rule 1019-1

CONVERSION FROM CHAPTER 13 TO CHAPTER 7

If a chapter 13 case is converted to chapter 7, the chapter 13 trustee shall file a final report and account within 30 days after all outstanding checks issued by the chapter 13 trustee in that case have cleared.

Local Bankruptcy Rule 2004-1

EXAMINATION OF DEBTOR AND OTHERS

(a) Rule not applicable in adversary proceedings and contested matters. This rule applies only to examinations conducted pursuant to Bankruptcy Rule 2004. The rules governing discovery in adversary proceedings and contested matters are set forth in Part VII of the Federal Rules of Bankruptcy Procedure.

(b) Manner of setting examination. A motion or court order is not necessary to authorize an examination pursuant Bankruptcy Rule 2004 or to require production of documents or electronically stored information at the examination. Examinations shall be scheduled upon notice filed with the court and served on the trustee, the debtor, the debtor's attorney, and the party to be examined.

(c) Reasonable notice. The attendance of the examinee and the production of documents or electronically stored information may not be required less than 21 days after service of the notice, except by agreement of the parties or order of the court. To the extent that a request for production of documents or electronically stored information under this rule may be construed as a request under Bankruptcy Rule 7034, the time to respond is shortened to 21 days. The notice of examination may provide for the production of documents or electronically stored information

in advance of the examination, but in no event shall the production of documents or electronically stored information be required less than 21 days from service of the notice of examination, unless otherwise agreed to by the parties or ordered by the court.

(d) Who may attend. Any party in interest who wishes to attend an examination scheduled under this rule may do so by filing and serving a cross-notice of examination at least 14 days in advance of the scheduled examination.

(e) Motion for protective order. An interested party may file, at least 7 days before the date of the proposed examination or production of documents or electronically stored information, a motion for protective order stating the reasons for prohibiting, limiting, or rescheduling the examination or production of documents or electronically stored information. A motion for protective order shall be filed with a request for expedited hearing. The examination and/or production of documents or electronically stored information shall be stayed until the court rules on the motion. If the court schedules a hearing on a motion for protective order, the parties shall meet and confer prior to the hearing in an effort to resolve the issues presented in the motion.

(f) Subpoena. No subpoena is necessary to compel the attendance of, or the production of documents or electronically stored information by, the debtor at an examination of the debtor. A subpoena is necessary to compel the attendance of, or production of documents or electronically stored information by, a witness other than the debtor. The provisions of Federal Rule of Civil Procedure 45 apply to subpoenas issued under this rule.

(g) Videotaped examinations. Examinations may be videotaped if the notice of examination or subpoena states that the examination will be videotaped and whether it will also be recorded stenographically.

(h) Motion to compel; payment of expenses. If an interested party files a motion to compel compliance with a properly issued notice of examination under this rule, Federal Rule of Civil Procedure 37(a)(5) applies.

Local Bankruptcy Rule 2016-1

COMPENSATION OF PROFESSIONALS FROM RETAINERS

If a professional whose compensation is subject to approval under Bankruptcy Code § 330 has accepted a retainer from any source for future services in a bankruptcy case in this court, the professional must obtain court approval before making any draw against the retainer funds.

Local Bankruptcy Rule 2016-2

**SEPARATE PRE- AND POSTPETITION LEGAL SERVICES CONTRACTS
IN CHAPTER 7 CASES**

The debtor and the debtor's counsel may agree to separate prepetition and postpetition contracts for legal services in a chapter 7 bankruptcy case. The contracts shall be in writing and comply with Alabama Rules of Professional Conduct 1.1 and 1.2, Bankruptcy Code §§ 526-28, and any other applicable standards. The prepetition agreement must allow the debtor at least 10 days postpetition to decide whether to enter into a postpetition legal services contract and must provide that the debtor's counsel will remain as counsel of record until allowed to withdraw. The postpetition contract must cover all remaining aspects of the case except for adversary proceedings. All compensation paid or agreed to be paid must be disclosed pursuant to Bankruptcy Code § 329(a) and Bankruptcy Rule 2016(b). Pursuant to Bankruptcy Rule 1006(b)(3), no attorney's fees shall be paid or accepted postpetition until the filing fee has been paid in full.

If the debtor's counsel has not agreed to postpetition representation and the debtor fails to enter into an agreement for postpetition legal services, the court may allow the attorney to withdraw from the representation of the debtor upon the attorney's motion with service on the debtor, trustee, and bankruptcy administrator. Motions to withdraw may be considered on an expedited basis without being set for hearing.

Local Bankruptcy Rule 3010-1

CHAPTER 13 DIVIDENDS

If unsecured claims have been paid pursuant to the terms of a confirmed plan, the chapter 13 trustee may increase the monthly disbursements on secured claims.

Local Bankruptcy Rule 3015-1

REQUIRED LOCAL FORM FOR CHAPTER 13 PLANS

Pursuant to Bankruptcy Rule 3015.1, this district has adopted a local form for chapter 13 plans which is available on the court's website. Use of the applicable local plan form is required in chapter 13 cases.

Local Bankruptcy Rule 3015-2

CHAPTER 13 CONFIRMATION PROCEDURES

(a) § 341 meeting and confirmation hearing. The debtor is required to appear for examination at the § 341 meeting of creditors. Confirmation hearings will be scheduled and held

after the expiration of the non-governmental claims bar date. The debtor and the debtor's counsel are not required to appear at the scheduled confirmation hearing if there are no unresolved objections to confirmation.

(b) Service of original plan. If the debtor files a plan at the same time of the filing of the petition and creditor matrix, the clerk of court will serve the plan with the notice of a commencement of a chapter 13 case on the creditor matrix. The debtor is responsible for any additional service required by Bankruptcy Rules 3012(b) and 7004. Otherwise, pursuant to Bankruptcy Rule 3015(d) the debtor shall serve the plan on all creditors when it is filed with the court.

(c) Preconfirmation modification of a plan. The modification of treatment for a secured, priority, or nondischargeable debt that is already addressed in the original plan can be handled with an agreed withdrawal of objection to confirmation and/or joint motion for valuation which is not required to be served on other creditors. The modified treatment must be reflected in the final plan summary as set out below.

However, preconfirmation plan modifications (1) to add or delete a secured, priority or nondischargeable debt or (2) modify the treatment of a secured, priority, or nondischargeable debt other than by agreement must be made by an amended plan. The debtor must serve the amended plan on all creditors as listed on the most recent creditor matrix. The debtor is also responsible for any additional service required by Bankruptcy Rules 3012(b) and 7004. The debtor is not required to sign the amended plan if signed by the debtor's counsel.

omitted modifying plan payment or term of plan

If a chapter 13 debtor files an amended plan before confirmation, any objections previously filed to any prior plan are deemed denied without prejudice as moot, except those of secured creditors whose treatment has not changed as provided by Bankruptcy Code § 1323(c). Objections to the plan as last amended must be filed at least seven days prior to the confirmation hearing date as provided by Bankruptcy Rule 3015(f).

new

(d) Final plan summary. Within 14 days of the chapter 13 trustee's recommendation of confirmation, the debtor shall file a final plan summary, using the form provided on the court's website, which shall include all changes made to the debtor's plan since it was originally filed. Failure to timely file the final plan summary may result in dismissal of the case or reduction of attorney's fees. The final plan summary will be a private filing event in CM/ECF.

(e) Confirmation order. After the final plan summary has been filed, the chapter 13 trustee shall prepare and submit to the court a proposed order confirming the terms of the debtor's plan. Upon its entry, the clerk of court shall serve the confirmation order on all creditors. The confirmation order will include a summary of the plan terms and the percentage distribution to be paid on unsecured claims. The confirmation order will also include a negative notice provision that a creditor with an allowed unsecured claim may file an objection to the treatment of unsecured claims within 21 days of the entry of the order. The court will schedule a hearing on any timely-filed objection to the confirmation order. The chapter 13 trustee shall begin disbursements pursuant to the plan upon entry of the confirmation order.

incorporates AO 2022-1

(f) Postconfirmation modifications to plans. A motion to modify a confirmed plan must be specific as to the proposed modification. The debtor is not required to sign the motion to modify, and no amended plan is required. All motions to modify a confirmed plan must be served upon the debtor(s), trustee (unless filed by the trustee), and counsel for debtor(s) (unless filed by that counsel). The motion must also be served on any creditor whose treatment is proposed to be modified (using the notice address on the creditor's most recent proof of claim). A proposed modification which would reduce the percentage distribution on unsecured claims must also be served on all creditors that have filed a proof of claim by using the mailing matrix available in CM/ECF. However, a debtor's motion to modify seeking to change the term of the plan or temporarily suspend plan payments is not required to be served on creditors other than the chapter 13 trustee if it does not otherwise seek to modify the treatment of claims.

If the motion is granted, the chapter 13 trustee shall prepare and submit to the court a proposed order approving modification of the terms of the debtor's plan, which the clerk of court shall serve on all creditors upon its entry. The order approving the modification shall include a summary of the plan terms as modified and the percentage distribution to be paid on unsecured claims. An exception to the above is that the court may issue a separate order regarding any temporary plan payment suspension.

(g) When service on all creditors as listed on the most recent creditor matrix is required, the certificate of service must show what and how creditors were served either by listing them or by referencing and attaching a copy of the applicable creditor matrix. A bare recitation that "all creditors" or "all creditors on the matrix" were served is insufficient.

new

Local Bankruptcy Rule 3022-1

CLOSING INDIVIDUAL CHAPTER 11 CASES

(a) After confirmation of a chapter 11 case filed by an individual, the clerk of court shall administratively close the case upon the recommendation of the bankruptcy administrator.

(b) Upon application by the debtor with certification that all plan payments have been made, the debtor may move to reopen the case and request entry of an order of discharge. Because the closing is required by local rule at least in part for the court's administrative convenience, no filing fee will be required.

Local Bankruptcy Rule 4001-1

MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY

(a) Upon the filing of a motion for relief from the automatic stay imposed by Bankruptcy Code § 362 or from the co-debtor stay imposed by Bankruptcy Code § 1301, the preliminary hearing shall be consolidated with the final hearing unless directed otherwise by the court. The movant shall serve the motion upon the following parties with an appropriate certificate of service: the debtor, the debtor's counsel, any co-debtor, the chapter 11 debtor-in-possession, the

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
) Case No. _____
)
Debtors.)

MOTION FOR DISCHARGE FOR CHAPTER 12 AND 13 CASES
(ONE DEBTOR DECEASED)

Debtor _____ moves for a discharge on behalf of both
debtors and certifies as follows:

Part I. Certification Regarding Domestic Support Obligations (check only one)

Pursuant to 11 U.S.C. §§ 1228(a) or 1328(a), I certify that:

- Neither my deceased co-debtor nor I owed any domestic support obligation when we filed our bankruptcy petition, and neither of us have been required to pay any such obligation since then.
- Either my deceased co-debtor or I am or have been required to pay a domestic support obligation. We have paid all such amounts that our chapter 12 or 13 plan required us to pay. We have also paid all such amounts that became due between the filing of our bankruptcy petition and today.

If you checked the second box and the surviving debtor is currently required to pay a domestic support obligation, you must provide the information below:

My current address: _____

My current employer and my employer's address: _____

Part II. Certification Regarding Section 522(q) (check only one)

Pursuant to 11 U.S.C. §§ 1228(f) or 1328(h), I certify that:

- My deceased co-debtor and I have not claimed an exemption pursuant to § 522(b)(3) and state or local law (1) in property that either of us or a dependent of either uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds \$189,250* in value in the aggregate.
- My deceased co-debtor and I have claimed an exemption in property pursuant to § 522(b)(3) and state or local law (1) that either of us or a dependent of either uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds \$189,250* in value in the aggregate.

**Amounts are subject to adjustment on 4/1/2025 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Part III. Signature of Debtor

I declare under penalty under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ Date _____ Debtor _____

Certificate of Service

I hereby certify that a true and correct copy of the foregoing motion for discharge was served upon the chapter 13 trustee and all creditors who have filed proofs of claim by United States first-class mail, postage prepaid and properly addressed, on this _____ day of _____, 202__.

SERVICE OF PROCESS CHECKLIST

*This outline is offered as an aid to bankruptcy practitioners in the Southern District of Alabama and does not reflect any official policy or rulings of that court.

Objections to claims

- Governed by Rules 3007(a)(2) and 7004

(1) For everyone EXCEPT federal government (including agencies and officers) and insured depository institutions, the objection “shall be served on a claimant by first-class mail to the person most recently designated on the claimant’s original or amended proof of claim as the person to receive notices, at the address so indicated”

(2) For federal government (including agencies such as the IRS and Dept. of Education, as well as officers) – serve both address on claim form AND under Rule 7004(b), which requires service by first class mail on

- The civil process clerk at the U.S. attorney’s office for this district,
- The Attorney General in Washington, D.C., and
- The agency or officer, as applicable (most common is IRS)

(3) For insured depository institutions – serve both address on claim form AND under Rule 7004(h), which requires service by **certified mail** addressed to **an officer of the institution**¹

¹ New Rule 7004(i), which will go into effect in December 2022, states: “The defendant’s officer or agent need not be correctly named in the address – or even named – if the envelope is addressed to the defendant’s proper address and directed to the attention of the officer’s or agent’s position or title.”

- Exception – if the institution’s attorney has filed a notice of appearance,² you can serve the attorney by first-class mail to satisfy the second prong
- Check FDIC.gov (under “Deposit Insurance” and then “BankFind”) to determine whether a bank is an insured depository institution

Service in APs, contested matters (including lien avoidance),
and plan cramdowns of secured claims

- Governed by Rule 7004 (APs), 9014 (contested matters, but the rule says to serve in accordance with Rule 7004 so service is the same for both APs and contested matters), and 3012(b) (plan cramdowns, but the rule says to serve in accordance with Rule 7004)
- Service by first class mail is permissible EXCEPT on a federally-insured depository institution, which must be by certified mail
- PITFALL (particularly re: lien avoidance) – service on the attorney listed on the judgment is NOT sufficient; service must also be made on the creditor itself.

Corporation, partnership, or unincorporated association

- First class mail addressed to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process – Rule 7004(b)³
- Certified mail addressed to an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process – FRCP 4(h)(1)(A) and Ala. R. Civ. P. 4(c)(6)
- Delivering a copy to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process – FRCP 4(h)(1)(B)

² Filing a creditor request for notices or filing a pleading on behalf of a bank is not the same as filing an actual notice of appearance. Only use this rule if the bank’s attorney has filed an actual notice of appearance in the bankruptcy.

³ New Rule 7004(i), which will go into effect in December 2022, states: “The defendant’s officer or agent need not be correctly named in the address – or even named – if the envelope is addressed to the defendant’s proper address and directed to the attention of the officer’s or agent’s position or title.”

Insured depository institution

- By **certified mail** addressed to **an officer of the institution** – Rule 7004(h)
 - Exception – if the institution’s attorney has noticed an appearance,⁴ then serve the attorney by first-class mail (there are other rare exceptions)
 - Check FDIC.gov (under “Deposit Insurance” and then “BankFind”) to determine whether a bank is an insured depository institution

Federal government (including agencies and officers)

- First class mail on the civil process clerk at the U.S. attorney’s office for this district, the Attorney General in Washington, D.C., AND on the agency or officer as applicable (most common is IRS) – Rule 7004(b)
- Alternatively, for the United States, by delivering a copy to the U.S. attorney’s office for this district or sending by registered or certified mail thereto AND by sending a copy to the Attorney General in Washington, D.C. by registered or certified mail – FRCP 4(i)(1)
- Alternatively, for an agency or officer sued in official capacity, by serving the U.S. as discussed immediately above AND by sending a copy by registered or certified mail to the agency or officer – FRCP 4(i)(2). There are separate rules if officer is sued in individual capacity.

State or municipal corporation or other governmental organization

- By first class mail to the person or office upon whom process is prescribed to be served by Alabama state law or, in the absence of the designation of any such person or office, then the chief executive officer thereof – Rule 7004(b)
 - For the state or any of its departments, agencies, officers, or institutions – by serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of the state. Most common is Department of Revenue. Note that service is required on both the Revenue Commissioner and the AG – Ala. R. Civ. P. 4(c)(7)
 - For a county, municipal corporation, or any other governmental entity not previously mentioned – by serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process (can also serve attorney general if such persons are unknown or cannot be located, but case law requires quite a lot before an affidavit saying this is accepted). – Ala. R. Civ. P. 4(c)(8).

⁴ See footnote 2 above.

- By delivering a copy to the state or local government's chief executive officer – FRCP 4(j)

Competent adult individual within U.S.

- First class mail addressed to individual's residence – Rule 7004(b)
- First class mail addressed to individual's business address (not PO Box) – Rule 7004(b)
- Following Alabama state law for serving a summons – FRCP 4(e)(1)
- Personal service on the individual – FRCP 4(e)(2)(A)
- Leaving a copy at the individual's residence with someone of suitable age and discretion who resides there – FRCP 4(e)(2)(B)
- Delivering a copy to an agent authorized by appointment or by law to receive service of process – FRCP 4(e)(2)(C)