

**SUPPLEMENT TO SC LBR 9013-4**

As a result of the recent changes to the District’s local bankruptcy rules, Judge Waites’ Chambers provides the following additional instructions for notice and service of pleadings and supplements the information contained in Exhibits A and B of SC LBR 9013-4. These additional instructions contain variances from past procedures and prior versions of Chambers Guidelines, as well as the current local rules. These variances are indicated with an asterisk (\*).

**Chapter 13 Plan and Embedded Motions:** Pursuant to Amended Operating Order 18-04, the deadline for filing a response/objection to the confirmation of a chapter 13 plan or any embedded motions included in the plan, including motions regarding valuation, assumption or rejection of executory contracts and leases, and lien avoidance, is 21 days.<sup>1</sup> There is no change from the prior case procedures for cases assigned to Judge Waites.

In addition, statements in support of confirmation are no longer required with a chapter 13 plan, and the Court prefers that the statements are not included with the plan.

**\*Requests for Discharge (11 U.S.C. §§ 1228(a) or 1328(a)) (“Certification of Plan Completion and Request for Discharge”):** In chapter 12 and 13 cases, a debtor’s request for discharge shall be served on the case trustee, the U.S. Trustee and any parties receiving direct payments under the confirmed plan (including recipients of post-petition domestic support obligations).<sup>2</sup> **Service on the entire mailing matrix is not required.**

**\*Hardship Discharge (11 U.S.C. §§ 1228(b) & 1328(b)):** A chapter 12 or 13 debtor’s motion for hardship discharge shall be served on the case trustee and the U.S. Trustee.<sup>3</sup> **Service on the entire mailing matrix is not required.**

**\*Motions to Reopen:** A hearing and notice/response deadline is not necessary for motions to reopen. Therefore, motions to reopen shall be filed without a passive or non-passive notice form (SC LBR 9013-4(b)(2)(A) & (B)) and shall be served only on the U.S. Trustee, the prior case trustee (if applicable), the debtor and the debtor’s counsel. The Court will consider the motion upon its filing. After review of the motion, the Court may determine that additional parties must be served with the motion to reopen and/or a response deadline and hearing set on the motion or the Trustee’s response to the pleading. In such instances, the Court will issue a separate notice or order directing the relevant action. The reappointment of the case trustee may occur, if necessary.

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<sup>1</sup> To the extent that a debtor is filing a post-confirmation modified plan that uses the local form plan in place from December 2017 to April 2019, the debtor must include the non-standard plan language stated in Amended Operating Order 18-04, available [here](#). Use of the local form plan presently in effect is encouraged for these post-confirmation modified plans to avoid the need for the inclusion of the non-standard plan language.

<sup>2</sup> This is different than the instructions in Exhibit A of SC LBR 9013-4, which indicate that the mailing matrix should be served with the motion. Pursuant to SC LBR 1001-1(d), Judge Waites modifies the application of that local rule as to certifications of plan completion and requests for discharge filed in the cases assigned to him.

<sup>3</sup> This is different than the instructions in Exhibit B of SC LBR 9013-4, which indicate that the mailing matrix should be served with the motion. Pursuant to SC LBR 1001-1(d), Judge Waites modifies the application of that local rule as to motions for hardship discharge in the cases assigned to him.

In addition, the filing of a motion to reopen and the payment of a reopening fee is not required in the following circumstances unless otherwise ordered:

- To file a motion to reconsider dismissal.
- To file a motion to avoid a lien (as well as amend schedules to the extent necessary for the lien avoidance) after the completion of plan payments.
- To file an adversary proceeding or motion to enforce plan (unless the Court otherwise orders).
- To file a motion to obtain a lien satisfaction in a chapter 13 case.
- To file pleadings to enforce the discharge injunction.
- To file a motion seeking sanctions (unless the Court otherwise orders).
- To file a Financial Management Court Certificate (and Certification of Plan Completion and Request for Discharge, if necessary), if filed no more than 60 days after the initial closing of the case.
- To file an affidavit or correspondence and proof of payment to resolve issues regarding a response to the notice of final cure (and file the Certification of Plan Completion and Request for Discharge, if necessary), if filed no more than 60 days after the initial closing of the case.
- To file amended schedules to disclose property obtained post-petition or claim an exemption that arose post-petition.

**\*Motion to Continue Administration after Debtor's Death or Disability:** In chapter 13 cases, Motions to Continue Administration after Debtor's Death or Disability should be served only on the Chapter 13 Trustee and do not require a hearing notice.<sup>4</sup> After review of the motion, the Court may enter an order or set the motion for hearing.

**Debtor's Motion to Convert from Chapter 11 to Chapter 7:** In voluntary cases where the debtor is the debtor in possession and the case has not been previously converted by the request of a non-debtor party, the debtor may file a motion of conversion without a hearing notice. Unless otherwise ordered by the Court, service is required only on the U.S. Trustee. To the extent the Court determines a hearing, a response deadline or additional service is necessary for the motion, the Court will issue a separate notice or order directing the relevant action.

**Debtor's Motion to Convert from Chapter 13 to Chapter 11 or 12:** If the case has not been previously converted, a debtor must file a motion to convert with a passive hearing notice (SC LBR 9013-4(b)(2)(A)) providing a 14-day response deadline and serve the motion and notice on the Chapter 13 Trustee, all creditors, and the U.S. Trustee.

**Debtor's Motion to Convert from Chapter 12 to Chapter 11 or 13:** If the case has not been previously converted, a debtor must file a motion to convert with a passive hearing notice (SC LBR 9013-4(b)(2)(A)) providing a 14-day response deadline and serve the motion and notice on the Chapter 12 Trustee, all creditors, and the U.S. Trustee.

**Change of Case Division:** For a case filed in the District of South Carolina where the debtor seeks to change the assigned location division within the District, a motion is not necessary, but an amended petition may be filed setting forth the proper county for assigning the correct division.

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<sup>4</sup> Motion to Continue Administration after Debtor's Death or Disability should require no service by mail if filed electronically on CM/ECF as the Chapter 13 Trustee receives service of the motion through a Notice of Electronic Filing.

**\*Motion to Divide a Case or for Joint Administration:** Service of a motion to divide a case or for joint administration should be made on the case trustee (if applicable), U.S. Trustee, Debtor(s) and Debtor(s)' counsel.<sup>5</sup>

**\*Allowance of Administrative Claims or Interest (11 U.S.C. § 503):** Service of a Motion for Allowance of Administrative Claims or Interest under 11 U.S.C. § 503 may be limited to Debtor(s), Debtor(s)' counsel, U.S. Trustee, case trustee (if applicable) and all creditor committees, or in a chapter 11 case, if no committee is appointed, the 20 largest unsecured creditors.<sup>6</sup> For Chapter 13 cases, the hearing on the application for allowance of administrative claims or interest should be scheduled on the Chapter 13 Calendar. For all other cases, the application should be scheduled on the General Docket for Chapters 7, 11, and 12.

**\*Application for Authorization to Employ Professional:** In chapter 13 cases, debtors are not required to seek authorization to employ professionals under § 327(e), including the hiring of counsel to assist post-confirmation with adversary proceedings, domestic law proceedings, criminal law proceedings, or tort proceedings. *See In re Boyd*, 618 B.R. 133, 173–75 (Bankr. D.S.C. 2020). However, all attorneys retained by the chapter 13 debtor must disclose compensation to the Court through the filing of a statement of compensation under § 329(a) both at the time of the entry of the compensation agreement and at the time of payment of compensation.

**\*Motion for Examination under Rule 2004:** Absent a court order stating otherwise or the consent of all relevant parties, including the party to be examined, an examination under Fed. R. Bankr. P. 2004 must be scheduled no earlier than 10 days after the filing of the motion for the examination. In addition, counsel for the appropriate parties, including the party to be examined, must consult and cooperate on the scheduling of the examination before a motion is filed.

**\*Motion for Waiver of Financial Management:** A hearing and notice/response deadline is not necessary for motions for waiver of financial management. Therefore, motions for waiver of financial management shall be filed without a passive or non-passive notice form (SC LBR 9013-4(b)(2)(A) & (B)) and shall be served only on the U.S. Trustee and the Chapter 13 Trustee. The Court will consider the motion upon its filing. After review of the motion, the Court may determine that additional parties must be served with the motion and/or a response deadline and hearing set on the motion or the Trustee's response to the pleading. In such instances, the Court will issue a separate notice or order directing the relevant action.

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<sup>5</sup> This is different than the instructions in Exhibit A of SC LBR 9013-4, which indicate that the mailing matrix should be served with the motion. Pursuant to SC LBR 1001-1(d), Judge Waites modifies the application of that local rule as to motions to divide a case or for joint administration filed in the cases assigned to him.

<sup>6</sup> This is different than the instruction in Exhibit A of SC LBR 9013-4, which indicate that the mailing matrix should be served with the motion. Pursuant to SC LBR 1001-1(d), Judge Waites modifies the application of that local rule as to motions for allowance of administrative claims or interests filed in the cases assigned to him.