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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:	
CHAMBERS GUIDELINES – CASES ASSIGNED TO JUDGE WAITES	**OPERATING ORDER 21-05**

The attached Chambers Guidelines are effective November 29, 2021 in all cases assigned to and administered by the undersigned and are binding upon counsel and all parties appearing therein. The failure by any party/counsel to comply with these guidelines may result in the dismissal, striking, or denial of the party's position, pleading, or plan of reorganization without a hearing, the cancellation of a hearing, or other sanctions pursuant to Fed. R. Bankr. P. 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

John E Waites

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 29, 2021

CHAMBERS GUIDELINES

Hon. John E. Waites, Judge
United States Bankruptcy Court

Chambers Contact Information	
Telephone Numbers	803-253-3751 Please leave a message on Chamber's voicemail. If this is an urgent matter, please call the Court's main number: 803-765-5436.
Fax Numbers	803-253-3464
Chambers Staff	Law Clerks: Sarah Kistler (Sarah_Kistler@scb.uscourts.gov) Brian Calub (Brian_Calub@scb.uscourts.gov)
Courtroom Deputy	Nicole Stalvey (Nicole_Stalvey@scb.uscourts.gov)
Preferred Communication Method	For all matters, e-mail law clerks directly, unless the guidelines provide otherwise.

Proposed Orders: File on CM/ECF unless otherwise advised. All proposed orders should include a cover page and must clearly set forth the grounds and contain findings that justify the entry of the order.[1]

Deadline to Object to Confirmation of Chapter 13 Plan: For cases assigned to Judge Waites, the deadline to object to the confirmation of a chapter 13 plan is no later than 21 days after the date of service of the plan as computed under Fed. R. Bankr. P. 9006(a). *See* Operating Order 18-04 (Chapter 13 Confirmation Procedures in Cases Assigned to Judge Waites) (revised Mar. 1, 2021)

A Joint Statement of Dispute for all contested matters, including § 362 motions, chapter 13 plan objections, claim objections, must be filed no CM/ECF no later than 10:00 a.m. three business days before the date of the hearing unless otherwise directed by the Court. The form Joint Statement of Dispute is available here.

Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the hearing calendar: 10:00 a.m. three business days before the hearing.

Self-Scheduled Hearings: To determine if a matter should be self-scheduled, consult lists provided in SC LBR 9013-4 and the Court Calendar available here.

Scheduling Chapter 13 Matters: To determine whether a Chapter 13 matter is to be scheduled on the Chapter 13 docket or the 362 13 docket, please consult LIST OF MATTERS FOR SCHEDULING IN CHAPTER 13 CASES (JUDGE WAITES CASES ONLY) set forth in the attachment available here. **Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued without notice as necessary by the Court or in the interests of justice.**

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[1] A proposed order should not merely refer to or approve the application/motion without sufficient information to advise the record of the matters being addressed.

INDEX

Guidelines Applicable to Contested Matters in All Chapters

Continuances, Settlements, & Withdrawals
Statement of Dispute
Exhibits in Contested Matters
Requests for Emergency Relief
Telephone/Video Conference Participation in Hearings
Supplement to SC LBR 9013-4
Tentative Rulings

Guidelines Applicable to Chapter 13 Cases

Deadline to Object to Confirmation
Conduit Procedure
Scheduling of Matters in Chapter 13 Cases
Attorney's Fees for Debtor's Counsel
LM/MM Guidelines
Valuation Dispute Mediation Program
Practice Guides to Assist the Bar
Applicable Operating Orders

Guidelines Applicable to Matters Involving § 362

Standard Form Orders Regarding Motions for Relief in Chapter 13 Cases
Affidavit of Default filed pursuant to a Settlement Order
Motions to Extend the Automatic Stay

Guidelines Applicable to Adversary Proceedings

Scheduling Orders
Modification of Scheduling Orders
Consent to Entry of Final Orders and Judgments
Requests for Continuances
Availability of Court During Depositions
Settlements
Other Guidelines Applicable to Adversary Proceedings

GUIDELINES APPLICABLE TO CONTESTED MATTERS IN ALL CHAPTERS

CONTINUANCES, SETTLEMENTS, & WITHDRAWALS

This section applies to all matters on the Judge's docket, with the exception of adversary proceedings, which are governed by separate sections below. **In order to be timely considered by the Judge, requests for continuances, notifications of settlement, or withdrawals must be filed on CM/ECF by no later than 10:00 a.m. three business days prior to the date of the hearing.**[2] **Absent removal of the matter from the court calendar, all counsel and parties shall attend.**

I. Continuances

Continuances may be timely requested using the *Request for Continuance* text event on CM/ECF (if all responding parties consent) or by filing a motion for continuance along with a separate calendar removal request (if unable to obtain consents of all responding parties). Prior to making a continuance request in chapter 13 matters, the chapter 13 trustee should be consulted.[3] Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court not granting the relief requested.

Continuances are not effective until granted by court order.[4]

II. Settlements

The settlement of a matter scheduled for hearing should be promptly reported to chambers by the filing of a proposed settlement order or the filing a notice and application for settlement pursuant to Fed. R. Bankr. P. 4001(d) or 9019, and a calendar removal request.

III. Withdrawals

Withdrawals of any filing upon which a hearing has been set should be filed on CM/ECF using the *Withdrawal from the Court Calendar* text event. When prompted by the text event, the party filing the withdrawal must specify the reason for withdrawal, including, but not limited to, the debtor's agreement to file an amended plan or the parties' agreement to enter into a consent order or take other action. Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court requiring the parties to withdraw the matter at hearing.

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[2] Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline. To make a late request due to extraordinary circumstances, counsel should both file the request on CM/ECF and email the request to Chambers.

[3] For some matters relating to confirmation, the matter may not be removed from the calendar in advance, but the Trustee may announce the continuance on the record during the hearing.

[4] With regard to motions to dismiss or convert pursuant to 11 U.S.C. § 1112 and motions for relief from stay pursuant to 11 U.S.C. § 362, a request for a continuance by the movant or consent to a continuance by the movant shall be deemed a waiver of the scheduling and ruling deadlines imposed by 11 U.S.C. §§ 1112(b)(3) & 362(e) and the rules.

STATEMENT OF DISPUTE

For contested matters, the parties must file a joint statement of dispute by the applicable deadline, in substantial compliance with the appropriate form and instructions, which are available here.[5] In the rare occasion where the parties cannot agree to a joint statement of dispute, each party shall submit a separate statement of dispute by the applicable deadline in substantial compliance with the appropriate form and instructions. Separate statements of dispute must by served upon the opposing counsel (or party if *pro se*) by e-mail or hand delivery. Parties and counsel should be readily available to discuss the statement of dispute with the Court at any time after its submission.

Parties submitting a joint or separate statement of dispute are bound to the positions, disclosures and representations provided therein, and any issues or arguments not included in the statement may be considered by the Court to be abandoned or waived by the respective party, even if they were previously stated in other pleadings. Opposing parties may rely upon the statement's list of proposed evidence and witnesses to be presented at the hearing, and the failure to list certain evidence or witnesses may result in the Court denying the presentation of such evidence or testimony at the hearing.

The Court may deem that a party has failed to prosecute its position and may dismiss or deny that party's position, pleading or plan of reorganization upon the failure of the party or its counsel:

- To timely submit in good faith a completed statement of dispute;
- To timely and fully consult with the Trustee or opposing party/counsel; or
- To be reasonably available for discussion with the Court.

These failures may also result in other sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

Unless ordered otherwise, the deadline to submit proposed Joint or Separate Statements of Dispute is 10:00 a.m. three business days before the hearing. If a matter settles after the filing of a joint or separate statement of dispute, counsel should advise chambers by an email to the Law Clerks and Courtroom Deputy.

EXHIBITS IN CONTESTED MATTERS

Duty of Counsel and Parties to Confer about Exhibits: The parties shall exchange exhibits and confer **prior** to the hearing to determine whether they will be able to stipulate to the admission of exhibits.

Providing Copies in Advance of Hearing: The original and two (2) bench copies of all paper exhibits and an itemized list of the exhibits are to be submitted to the Courtroom Deputy (Nicole Stalvey) two days prior to the hearing and are not to be filed on CM/ECF.[6] Parties must indicate on the list if the exhibits are stipulated, and if not stipulated, the grounds for the objection to the exhibit. Parties and counsel may not reserve the right to raise additional objections at hearing that are not included in the itemized list of exhibits.

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[5] The form to be used in cases assigned to Judge Waites differs from the form provided in the local rules.

[6] Exhibits in Adversaries are to be submitted with the Joint Pretrial Order in accordance with the terms of the Judge's Scheduling Order.

Copies at Hearing: In addition to the copies provided to the Courtroom Deputy in advance of the hearing, counsel shall ensure that there are enough copies of the exhibits for all opposing counsel, *pro se* parties, and any witness providing testimony regarding the exhibits.

Designating Exhibits: To avoid confusion, the exhibits of the party initiating the matter should be premarked using letters (e.g., Movant's or Plaintiff's Exhibit A, B, C, etc.), and the responding party's exhibits should be premarked using numbers (e.g., Respondent's or Defendant's Exhibit 1, 2, 3, *etc.*).[7]

Exhibits for Hearing Held by Video/Telephone: If a matter is scheduled to be heard by video or telephone conference, the premarked exhibits shall be provided to the Courtroom Deputy three business days prior to the scheduled hearing by email to the Courtroom Deputy, Nicole Stalvey, or by delivery to the applicable Court location via U.S. Mail, FedEx/UPS, or hand delivery.

Electronic Evidence: Counsel shall contact the Courtroom Deputy no later than five business days prior to the hearing/trial to make arrangements for the presentation of the electronic evidence and to ensure compatibility of your electronic devices with the Court's equipment.

REQUESTS FOR EMERGENCY RELIEF
(Supplement to Local Rule 9075-1)

Motions for Expedited Hearings or for Shortened Notice. Motions for expedited or emergency hearings or to shorten notice are to be filed in accordance with SC LBR 9075-1. The Motion should state the time period or proposed date for the emergency hearing. Upon the failure to indicate how quickly the matter needs to be heard, the Court may set the matter for a hearing within approximately 20 days from the date of the filing of the motion. **Hearings set on less than 10 days notice may require service of motion/pleading and notice of hearing on all parties entitled to notice by expedited means (facsimile, e-mail, overnight mail or hand delivery).**

TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS

Requests to Participate by Telephone or Videoconference: Requests by counsel to participate by telephone or videoconference capabilities at hearings or trial must be in writing made to chambers and the Courtroom Deputy (Nicole Stalvey) **as soon as possible but no later than three business days before the date of the hearing or trial.**

Explanation for Remote Appearance: The written request must provide an explanation for the remote appearance (including demonstrating that travel or attendance creates an unnecessary expense or burden) and indicate whether the opposing counsel/party consents to such an appearance, the extent of counsel's participation at the hearing (mere listening, argument, presenting evidence), and whether contested evidence or testimony (including cross-examination by the counsel appearing remotely) will be presented at the hearing

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[7] For example, for a hearing on an objection to confirmation, the party objecting to confirmation will premark the exhibits by letters, while the Debtor's exhibits will be premarked with numbers.

Absent unusual circumstances, remote appearances will generally only be granted if the opposing counsel consents to the remote appearance and the party appearing by telephone/videoconference's participation is limited to argument or the presentation of stipulated evidence.

Presentation of Evidence: In circumstances where the Court will allow the presentation or viewing of evidence by the non-attending counsel, counsel for both parties must coordinate with the Courtroom Deputy (Nicole Stalvey) in advance of the hearing. Failure to cooperate with the Courtroom Deputy may result in counsel being required to appear in person at the hearing.

Counsel should anticipate attending the hearing in person unless and until the Court approves the request for remote appearance.

SUPPLEMENT TO SC LBR 9013-4

As a result of the recent changes under Operating Order 21-04, 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. 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 should not be included.

***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).[8] **The passive hearing notice should not be used, as 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.[9] **The passive hearing notice should not be used, as service on the entire mailing matrix is not required.**

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[8] 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.

[9] 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.

***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.

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.[10] **The passive hearing notice should not be used, as service on the entire mailing matrix is not required.** 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, 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))

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[10] 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.

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.

***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.[11] **The passive hearing notice should not be used, as service on the entire mailing matrix is not required.**

***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.[12] **The passive hearing notice should not be used, as service on the entire mailing matrix is not required.** 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, as such employment by the debtor is not subject to 11 U.S.C. §§ 327 or 328, or Fed. R. Bankr. P. 2014(a). *See In re Boyd*, 618 B.R. 133, 173–75 (Bankr. D.S.C. 2020). Unless compensation has been preapproved by a court order, attorneys for the debtor must disclose any compensation agreement and/or payment for representing a debtor in a bankruptcy case or in connection with a bankruptcy case pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016(b), regardless of the source of payment. Attorneys for the debtor should file Form B2030 with a copy of the compensation agreement. Disclosure is not required for attorneys who represent the debtor on a standard contingency basis in tort (personal/property injury) matters, who provide services to the debtor that fall with the domestic support obligation exceptions to the automatic stay or domestic matters for which relief from stay has been granted (unless it is to be paid as an administrative expense in the bankruptcy case), and who represent the debtor in criminal proceedings.

***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

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[11] 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.

[12] 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.

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. Judge Waites' form motion for waiver of financial management and proposed order should be used. 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.

GUIDELINES APPLICABLE TO CHAPTER 13 CASES

The following procedures[13] for chapter 13 matters apply to cases assigned to Judge Waites.[14]

I. Deadline to Object to Confirmation

The deadline to object to the confirmation of a chapter 13 plan is no later than 21 days after the date of service of the plan as computed under Fed. R. Bankr. P. 9006(a). *See* Operating Order 18-04. Debtors shall use the form notices provided in Operating Order 18-04 when serving an original or modified chapter 13 plan.

II. Conduit Procedure

Operating Order 20-13 (CONDUIT MORTGAGE PAYMENTS IN CASES ASSIGNED TO JUDGE WAITES) adopts a conduit procedure in the chapter 13 cases assigned to Judge Waites.

III. Scheduling of Matters in Chapter 13 Cases

Chapter 13 matters are scheduled on different dockets depending on the nature of the matter. Matters related to the automatic stay are generally scheduled on the "362 13" docket, while matters related to confirmation and the general administration of a chapter 13 case are scheduled on the "Chapter 13" docket. The list of matters for scheduling in chapter 13 cases is included here.

IV. Chapter 13 Matters Where Court Approval is Not Required[15]

(1) Post Confirmation Motions to Incur Debt

Section 364 applies to trustees and not chapter 13 debtors. Fed. R. Bank. P. 4001(c)(4) says motion, service, notice and hearing requirements ***do not apply*** in a chapter 13 case. ***Since service on the entire mailing matrix is not required, the debtor is not required to use the Form Notice and Motion provided in the Local Rules***. The debtor should ensure that his or her ability to pay any new debt does not impair the debtor's ability to perform under the confirmed plan. However, to the extent a debtor seeks court approval of incurring debt, the debtor ***may*** seek a court order approving the incurrence of debt by the filing of a motion and proposed order which also provides service on the trustee.[16]

Refinance transactions. In particular, the debtor may refinance secured debt, pay off any current lienholder in full, and seek lower interest rates or payments on long term debt without court approval. ***Since***

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[13] These procedures **do not** govern the hearing of motions for relief from the automatic stay.

[14] The goal of these procedures is to reduce unnecessary attendance and wait time at hearings for the bar and parties, allow compliance with Fed. R. Bankr. P. 9014(e), provide parties with further opportunity to settle matters or prepare arguments, and assist the Judge in preparing for significant issues not highlighted by the pleadings through research and review.

[15] To the extent that any of the following procedures vary from the requirements for notice to parties in interest set forth in Fed. R. Bankr. P. 2002, the Court is directing alternative notice as authorized by that Rule.

[16] **As provided by Fed. R. Bankr. P. 9036, the debtor may rely on notice via electronic service upon filing the document on CM/ECF.**

service on the entire mailing matrix is not required, the debtor is not required to use the Form Notice and Motion provided in the Local Rules. If an order is desired and the lienholder is to be fully paid, the debtor may file a motion and proposed order which also provides service on the trustee.[17]

(2) Post Confirmation Settlements of Pre-Petition and Post-Petition Lawsuits

Approval of post confirmation settlements by a chapter 13 debtor is not required by FRBP 9019(a), as this rule is only applicable to trustees. *In re Williams,* C/A No. 18-01639-JW, 2021 WL 4061104 (Bankr. D.S.C. Sept. 1, 2021) (holding that court approval of the settlement of a post confirmation worker's compensation claim was not required); *In re Revels,* 616 B.R. 675, 679-81 (Bankr. E.D.N.C. 2020) (finding that a chapter 13 debtor does not have the duty to file a motion to approve compromise or settlement under FRBP 9019). The chapter 13 debtor is in possession of property of the estate post confirmation and has standing to prosecute and defend causes of action exclusive of the trustee, in any court, and without court approval. *In re Williams,* C/A No. 18-01639-JW, 2021 WL 4061104 (Bankr. D.S.C. Sept. 1, 2021); *In re Boyd,* 618 B.R. 133, 174 (Bankr. D.S.C. 2020); *Wilson v. Dollar General Corp.,* 717 F.3d 337, 343-44 (4th Cir. 2013) (finding that absent a provision in the confirmed plan or other order, a chapter 13 debtor shall remain in possession of all property of the estate and is explicitly given the authority, exclusive of the trustee to use, sell, or lease property of the estate, including the right to suit in his own name). Nevertheless, orders approving the settlement **may** be sought by the debtor by the filing of a motion with a copy of the prior settlement agreement/order or disbursement sheet and proposed order, which also provides service on the trustee.[18]

To the extent any settlement results in a net amount of $25,000 or more payable to the debtor, it must be disclosed to the trustee by filing a report of settlement within 10 days of any distribution of proceeds.

Since a hearing to approve a settlement by a chapter 13 debtor is not required under Fed. R. Bankr. P. 9019(a), the chapter 13 debtor does not need to serve all creditors in the case with notice of the settlement.

Pre-petition lawsuits or other contingent assets should be disclosed in schedules and any applicable exemption claimed. For a lawsuit arising post petition that was not previously listed in the schedules and claimed as exempt, the debtor should amend schedules and claim exemption on Schedule C as soon as the lawsuit is identified. Where the proceeds from a lawsuit are exemptible under state law (e.g., a personal injury lawsuit) and the value is unknown, the chapter 13 debtor should declare the lawsuit exempt in Schedule C by selecting the box "100% of the fair market value, up to any applicable statutory limit" and in Schedule B declare the value of the lawsuit as "unknown." If exempt, proceeds are no longer property of the estate and are not subject to bankruptcy court oversight or consideration.

(3) Post Confirmation, Use, Sale or Lease of Property of the Estate

Under the vesting provisions of the South Carolina form chapter 13 plan, the possession, use and responsibility for post confirmation property of the estate is placed with the debtor and not with the chapter 13 trustee in bankruptcy cases in South Carolina. In re Boyd, 618 B.R. 133, 153 (Bankr. D.S.C. 2020); see also 11 U.S.C. § 1327. Without plan modification, only the property and earnings committed according to the confirmed plan are subject to being paid to creditors. In re Goldston, C/A No. 09-06305-JW, slip op. at *16 (Bankr. D.S.C. Apr. 15, 2021). The confirmed plan contemplates that debtor will use and gain

[17] The payment or adjustment of any mortgage claim paid by the trustee in a conduit plan may require the modification of the plan or the consent of the trustee.

[18] The Local Rule Form, Hearing Notice (Application for Settlement and Compromise), should not be used by chapter 13 debtors.

property of the estate post confirmation without the additional permission of the chapter 13 trustee or the Court. In re Williams, C/A No. 18-01639-JW, 2021 WL 4061104 (Bankr. D.S.C. Sept. 1, 2021). Property of the estate may be used for the living expenses of a debtor within the ordinary course, including the payment of post confirmation expenses and purchases that often arise over the course of several years covered by the plan, such as purchases of personal and real property and payments for services. Absent a voluntary decision by the debtor, the proper means to provide for post confirmation property to be used to increase payments to prepetition creditors is through modification of the confirmed plan, which requires a demonstration of a substantial and unanticipated change in financial circumstances. Id.; see also In re Murphy, 474 F.3d 143 (4th Cir. 2007); In re Arnold, 869 F.2d 240, 244-45 (4th Cir. 1989).

The debtor is authorized to use property of the estate pursuant to 11 U.S.C. § 363 and § 1303, subject to notice requirements under FRBP 2002(a)(2) if the use is other than in the ordinary course of business. Depending on the proposed use of the property of the estate, the debtor may be subject to these notice requirements. To the degree a situation might be argued to fall "outside the ordinary course of business," the Court has delineated the following instances where it will consider approval of the debtor's use, sale or lease of property of the estate on an expedited basis upon the filing of a motion and proposed order which also provides service on the trustee, if all affected lienholders are to be paid in full, relying on these guidelines as the method of giving notice under FRBP 2002(a)(2). However, the Court may require further notice and/or a hearing in its discretion:

i. The debtor may collect and use hazard or liability insurance proceeds after payment of any lien, without notice and Court order, except in the instance that the debtor seeks to substitute collateral. If the debtor is not substituting collateral and desires an order, he or she may file a motion and submit a proposed order, which provides service on the trustee. To the extent the debtor seeks to substitute collateral by transferring any lien to new collateral, notice and a hearing is required as provided in SC LBR 9013-4. The debtor should use Judge Waites' Form Order Granting Motion to Substitute Collateral or Use Insurance Proceeds.

ii. In the instance of a wreck of a vehicle, the debtor may collect and use insurance proceeds derived therefrom to pay off any lienholder, sell, transfer or surrender title to the damaged vehicle to the lienholder, and incur debt or credit to purchase a replacement vehicle if necessary to plan performance by the filing of a motion with a proposed order, which also provides service on the trustee and the affected lienholder.

iii. Proceeds from the sale of property of the estate, including real or personal property, may be used, after payment in full of all lienholders and costs of sale, to purchase replacement property which has a lower cost or monthly payment upon the filing by the debtor of Judge Waites' Form Notice and Application for Sale of Property (Exhibit A) and Form Order Authorizing Sale (Exhibit B), which also provides service on the trustee. In the instance where the proceeds are to be used to pay debts provided for in the plan, including those paid by the trustee, the trustee must be timely notified to prevent duplicative payments through the plan and avoid overpayment. The debtor's acquisition of assets valued at more than $25,000 should be reported to the trustee.

V. Attorney's Fees for Debtor's Counsel in Chapter 13 Cases:

(1) Expedited Fee Amount (No-Look Fee)

The expedited fee ("no-look fee") amount for purposes of SC LBR 2016-1(b)(1) is **$4,000** for a consumer case and **$4,500** for a business case. To the extent that funds are available after deduction of the Trustee's commission and the Chapter 13 plan provides for such treatment, the Chapter 13 Trustee shall disburse up to **$1,500** of the expedited fee to debtor's counsel in the Trustee's Initial Disbursement under the Chapter 13 plan.

(2) LM/MM Attorney's Fees

Attorney's Fees for LM/MM via the Portal. Counsel assisting the Debtor(s) with LM/MM via the Portal shall be permitted to charge an attorney's fee for LM/MM related services. In Chapter 13 cases, a supplemental **$1,700** no-look fee shall be allowed (in addition to the no-look fee established under the Guidelines for compensation for professionals) for consumer cases. In self-employed/small business individual Chapter 13 cases, a no-look fee of up to **$2,000** may be allowed. The no-look fee may be paid directly by the Debtor from post-petition income or exempt assets or through the confirmed Plan. The manner of payment of the no-look fee for LM/MM must be addressed in the ***LM/MM Order***.[19]

As an alternative to the no-look fee, Debtor(s)' counsel and Debtor(s) may agree upon a different fee amount paid by the Debtor(s) directly to counsel upon the completion of the Application for Supplemental Fees procedures listed in SC LBR 2016-1(b)(2).

In addition to these fees, in extraordinary LM/MM review processes, Debtor(s)' counsel may seek additional fees for the portal LM/MM upon a showing of cause and filing a request for supplemental fees.

(3) Supplemental Fees for Student Loan Debt

A supplemental fee in the amounts set forth below shall be allowed for any of the following services upon request and as permitted by the court:

1) **Up to $1,500** - Contested confirmation hearings on a plan provision addressing student loan debt, including provisions to separately classify student loan debt under § 1322(b)(1), to provide for the curing or waiving of a default under § 1322(b)(3), to provide for the curing of a default and maintenance of payments under § 1322(b)(5), or to address student loan interest under § 1322(b)(10).

2) **$1,250** - Seeking plan confirmation providing for Debtor(s)' enrollment in/maintenance of an Income Driven Repayment Plan (IDR) (which includes ICR, IBR, PAYE, or REPAYE, etc. versions) with the U.S. Department of Education and/or any student loan servicer/guarantor

[19] The LM/MM Guidelines provide a list of the services contemplated for no-look fee. The LM/MM Guidelines are available here.

and which prohibit Debtor(s)' disqualification due to bankruptcy. (An additional fee of **$200** per year is allowable for necessary reenrollments during the term of the case.)

3) **$1,500** – Participation in court ordered mediation regarding student loan debt **in lieu of a contested hearing.**

To qualify for these fees: (1) for a contested hearing, the parties must file a (joint) statement of dispute, present testimony and other evidence, and/or, for issues of law only, file a separate memorandum of law, or (2) for a settlement before trial of a contested hearing, the settlement must occur after substantial preparation and readiness for trial. In the event of mediation, the fees may be requested upon the mediator's submission of a mediation report indicating that Debtor(s)' attorney actively participated in the mediation.

As an alternative to these fees, an application seeking additional compensation may also be submitted for expedited consideration.

(4) Payment of Attorney's Fees to Debtor's Counsel upon Conversion

Pursuant to SC LBR 3070-1, counsel for the debtor and the debtor may agree for the chapter 13 trustee to disburse the funds on hand to debtor's counsel for any remaining amounts due to the attorney upon conversion of the chapter 13 case. Debtor's counsel should file a consent agreement on the docket using the appropriate CM/ECF event and using the Chambers' form,[20] and upon the filing of a notice or motion of conversion, Debtor's counsel must file a proposed order using the Chambers' form.

(5) Statements of Compensation

In addition to Official Form B2030 ("Disclosure of Compensation of Attorney for Debtor(s)") filed at the commencement of the chapter 13 case, any counsel providing representation to the debtor(s) in the bankruptcy case or in connection with such case (e.g., representation of the debtor in an adversary proceeding)[21] must, in accordance with 11 U.S.C. § 329, file or amend the statement of compensation within 14 days upon:

1. The amendment of a previously disclosed fee agreement;
2. The entry of a new fee agreement that provides for compensation on a flat fee or contingency fee basis; and
3. The payment under a fee agreement that provides for compensation on an hourly fee basis, unless the payment is otherwise disclosed in an order approving settlement entered by the Court.

(6) Guidance on Requesting Supplemental Fees

When utilizing the Statement of Supplemental Chapter 13 Attorneys Fee event under SC LBR 2016-1, the following information must be included:

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[20] For conduit cases, debtor's counsel should use the CM/ECF event named "Consent Allowing Payment of Funds to Creditor/Debtor Attorney-Conduit." For non-conduit cases, debtor's counsel should use the CM/ECF event named "Consent Allowing Payment of Funds to Creditor/Debtor Attorney- Non Conduit."

[21] Disclosure of compensation for representation of the debtor in tort, domestic, or criminal matters may not be required. *See* Operating Order 21-04, at 6-7 (Oct. 28, 2021).

1. **Differentiating between Before and After Confirmation Supplemental Fees:** The relevant fact in determining whether the Statement is "Before Confirmation" or "After Confirmation" is when the services comprising the supplemental fee are rendered. Therefore, if the services were rendered pre-confirmation, but the Statement of Supplemental Chapter 13 Attorneys Fees is not filed until after confirmation, the attorney should select "Before Confirmation" when filing the CM/ECF event.

2. **Explanation for Supplemental Fees:** In the description of the Statement of Supplemental Chapter 13 Attorneys Fees, counsel should provide a brief explanation as to why the services were unanticipated for each component of the services rendered.

   Example: Supplemental Fees in this request: $500.00. Statement of Work: Assisting with the filing of a Motion for Moratorium *due to unexpected reduction in work hours.*

3. **Breakdown of Requests Involving Multiple Services:** For circumstances where the attorney is requesting approval of compensation for multiple services in a single request, the description should include a breakdown of the fees charged for each service completed.

   Example: Supplemental Fees in this request: $500.00. Statement of Work: Assist with the filing of Amending Schedules and Statements *($200.00)* and assist with the filing of Amended Plan *($300.00)* due to a decrease in Debtor's monthly income resulting from a change in employment.

4. **Approval of Services on an Hourly Fee Basis** Any services to be rendered and compensated on an hourly-fee basis, even as a supplemental fee, must be requested by application for compensation pursuant to Fed. R. Bankr. P. 2002(a)(6) and 2016(a), be set for a hearing, and be approved by the Court by written order before payment.

VI. Loss Mitigation/Mortgage Modification Guidelines

Judge Waites has adopted guidelines and procedures for Loss Mitigation/Mortgage Modification ("LM/MM") by a separate operating order. These Guidelines on LM/MM are available here and are hereby incorporated into the Chambers Guidelines.

VII. Valuation Dispute Mediation Program

Mediation shall be ordered in cases involving valuation of secured claims on real estate and large value personal property, such as manufactured homes, tractor trailers or RVs (but excluding automobiles).[22]

A. **Duty of Counsel.** Upon the filing of an objection involving the valuation of a secured claim on real estate or large value personal property, the objecting party, the debtor, and the Chapter 13 Trustee shall immediately notify Chambers of the valuation dispute by an email to the Law Clerks and Judicial Assistant with a copy to the Chapter 13 Trustee and opposing counsel. **Failure to timely advise chambers may result in the overruling of the objection or dismissal of request to value**

[22] A mediator is selected and appointed by Court Order to perform up to 2 hours of service in preparing for and conducting the mediation sessions. The mediator is compensated by a fee of $500, to be equally divided between the debtor(s) and creditor.

collateral or sanctions, and all counsel must appear at the originally scheduled confirmation hearing to show cause for the failure to timely advise chambers of the dispute.

B. **Exemption.** Parties may request an exemption from mediation under the Valuation Dispute Mediation Program upon the filing a separate correspondence requesting the exemption and detailing the cause for the exemption.

VIII. Practice Guides by Subject to Assist the Bar

Chambers has issued practice guides by subject to assist parties and counsel in addressing the following common issues:

- Payment of Post-Petition Arrearage and Fees, available here.
- Chapter 13 Discharge Procedures, available here.
- Objection to Claim Procedures, available here.
- Judicial Lien Avoidance, available here.
- Cases with Deceased Debtors, available here.

IX. Applicable Operating Orders

Judge Waites has signed the following operating orders which are relevant to the chapter 13 cases assigned to him:

- **Operating Order 21-14:** Streamlining Chapter 13 and Other Procedures in Judge Waites Cases
- **Operating Order 20-13**: Conduit Operating Order for Cases Assigned to Judge Waites
- **Operating Order 18-06**: Loss Mitigation-Mortgage Modification Guidelines – Cases Assigned to Judge Waites
- **Operating Order 18-04**: Chapter 13 Confirmation Procedures in Cases Assigned to Judge Waites
- **Operating Order 14-07**: Commencement of Chapter 13 Cases by Pro Se Debtors via Telefax and/or Electronic Mail (Charleston)
- **Operating Order 14-04**: Procedures Regarding Internal Revenue Service Claims in Chapter 13 Cases Assigned to Judge Waites

GUIDELINES APPLICABLE TO MATTERS INVOLVING § 362

I. Standard Form Orders Regarding Motions for Relief from the Automatic Stay in Chapter 13 Cases

The use of the following standard form orders relating to motions for relief from the automatic stay will allow for expedited consideration without a hearing. The Form Orders are available on the Court's local forms website, available here.

A. Presumptively Reasonable Cure Periods.

For expedited consideration without a hearing, parties should schedule the cure payments in a settlement order for a Motion for Relief under the following presumptively reasonable cure periods:

Number of Missed Post-Petition Payments	Length of Cure Period
0-6 Months	12-month cure
7-12 Months	18-month cure
More than 12 Months	24-month cure

B. Settlement Orders Containing Non-Standard Language (Hearing Required).

Parties may include non-standard language in the form Settlement Orders in the section entitled "Non-Standard Provisions." **Unless otherwise advised by Chambers, a hearing, attended by counsel for all parties to the settlement, will be required for approval of any non-standard form order or a settlement order containing non-standard language**.

To the extent the terms of the settlement order vary significantly from the terms provided in the Court's form Settlement Orders, the parties should draft a proposed settlement order without using the form language. Counsel should report the filing of the non-form settlement order to the Courtroom Deputy and Law Clerks by email.

III. Affidavit of Default filed pursuant to a Settlement Order.

Affidavits of Default filed pursuant to a settlement order should state the details of the default, including **indicating with specificity the payments** which have not been received since the entry of the settlement order, if applicable. The affidavit must also include an attachment which demonstrates the default, including but not limited to, a payment history documenting all direct payments made after the entry of the settlement order and their application or a LM/MM denial letter.

IV. Motions to Extend the Automatic Stay

For all motions to extend the automatic stay filed in cases before the Judge, an affidavit of the movant in support of the motion shall be filed with the motion, which provides the information necessary to determine whether the requirements of 11 U.S.C. § 362(c)(3) are met. The chapter 13 plan and all schedules must be filed by no later than five (5) business days prior to the scheduled hearing on the motion to extend the automatic stay. The failure to file the chapter 13 plan and all schedules and statements in time for proper

consideration may result in the denial of the motion. In the interest of judicial economy, the Court may extend the automatic stay in advance of a hearing temporarily to a continued hearing on the motion to a later date upon the consent of the Chapter 13 Trustee (subject to a hearing on timely objections) or permanently upon the consent of the Chapter 13 Trustee and no timely objections filed by a party in interest.

GUIDELINES APPLICABLE TO ADVERSARY PROCEEDINGS

I. Scheduling Orders

Once the issues are joined or upon order of the Court, after discussion and agreement, counsel are affirmatively required to report to Chambers by email the amount of time necessary to complete discovery. Scheduling orders are thereafter entered pursuant to Fed. R. Civ. P. 16(b). In its discretion or if requested by the parties, the Court may conduct an initial pretrial or status conference.

II. Modification of Scheduling Orders

If the parties wish to alter a deadline in a scheduling order and it does not require the rescheduling of a hearing before the Court, the request should be made to chambers and should indicate the proposed change and whether all parties agree to the modification. If the proposed amendment would necessitate rescheduling a matter already noticed for hearing, including the final pretrial hearing, or trial, the parties must file a motion seeking an amended scheduling order and indicate the reasons for amendment, whether all parties consent, and the status of discovery efforts. **An agreement to modify a deadline or a request to so modify is not effective absent entry of an amended scheduling order by the Court. Any modified scheduling order prepared by counsel should follow exactly the language of the original scheduling order without change, deletion or addition other than the proposed extended deadline unless otherwise approved by the Court in an actual hearing.**

III. Consent to Entry of Final Orders and Judgments

Any party objecting to the entry of final orders or judgments by this Court on any issue in the adversary proceeding, whether or not designated as "core" under 28 U.S.C. § 157(b), shall file a motion by the deadline specified in the scheduling order requesting that this Court determine whether the proceeding is subject to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THE SCHEDULING ORDER SHALL CONSTITUTE FINAL AND BINDING CONSENT BY SUCH PARTY TO THIS COURT ENTERING FINAL ORDERS AND JUDGMENTS IN THE PROCEEDING.**

IV. Requests for Continuances

A request to continue a hearing or trial in an adversary proceeding must be submitted as a motion filed on the Court's docket and served on the applicable parties. The motion should indicate the grounds for the continuance, the proposed date of the continued matter and if the opposing parties consent to the continuance request.

V. Availability of Court During Depositions

Absent advance notification, the Judge is not available to address discovery issues arising during a deposition. If parties anticipate the need for the Court's involvement, the issues should be raised in advance by motion or joint request.

VI. Settlements

Settlements of adversary proceedings may be reported by filing a consent order, or by filing a notice and application for settlement, if required under the Bankruptcy Rules. **The consent order must clearly indicate whether it resolves all issues in the adversary proceeding in order for the matter to be removed from the calendar.** Absent such a filing, counsel is expected to report the settlement and its terms at the scheduled hearing on the matter. Counsel are also encouraged to promptly report settlements of adversary proceedings to chambers by e-mail to the Law Clerks and Courtroom Deputy. To ensure removal from the calendar or to excuse counsel and parties from attendance, settlements must be reported **no later than three business days before the hearing or trial.**

The terms of any settlement resulting in the filing of a Stipulation of Dismissal must be provided to chambers for *in camera* review if any consideration is exchanged in return for the dismissal. In Chapter 13 cases, notice of any such settlement must be provided to the Chapter 13 Trustee so that the Trustee can advise chambers whether he/she consents to the settlement.

Any attorney's fees paid to debtor's counsel as part of a settlement agreement or for services provided in the adversary proceeding must be disclosed as part of a separate fee disclosure under 11 U.S.C. § 329 filed in the debtor's main bankruptcy case.

VII. Other Guidelines Applicable to Adversary Proceedings

Absent a more specific provision under the Bankruptcy Code or rules and unless otherwise ordered by the Court, the following guidelines are also applicable to matters in adversary proceedings:

- Exhibits in Contested Matters, available here.
- Requests for Emergency Relief, available here.
- Telephone/Video Conference Participation in Hearings, available here.