

Selected Service & Notice Issues

Chapter 13 Plans & Claim Objections

*Hon. Cynthia A. Norton
W.D. Missouri
Kansas City, MO*



Why Care?

- Order/Judgment void
- VOID orders/judgments may be set aside under [Rule 50\(b\)\(4\) \(Bankr. R. 9024\)](#)



Service of Chapter 13 Plans

- **Rule 3015(d).** “Debtor shall serve the plan on the trustee and all creditors”
- **L.R. 3083-1.B.1.** “Debtor shall serve the original plan on all creditors when the plan is filed with the court. Debtor shall file a certificate of service reflecting service on all creditors **pursuant to all applicable federal and local rules** within three days after the plan is filed with the court”
- **L.R. 3083-1.B.2.** “Debtor shall serve an amended plan on all creditors affected by the amendment when the plan is filed with the court” + COS within three days
- **L.R. 3083-1.B.3.** “No plan will be considered for confirmation unless it is served when it is filed with the court and a certificate of service is filed within three days thereafter”

The “Other Applicable Rules”

- **Rule 2002(b).** 28 days’ notice by mail of hearing on confirmation
- **Rule 3012(b).** Request for determination of secured and priority claims in a plan “shall be served . . . in the manner provided for service of a summons and complaint by Rule 7004”
- **Rule 3015.1(c)(3).** Lien avoidances may be in plan
- **Rule 4003(d).** When in a plan, lien avoidance served on the affected creditors “in the manner provided for service of a summons and complaint by Rule 7004”
- **Rule 9014(b).** Contested matters to be served “in the manner provided for service of a summons and complaint by Rule 7004”
- **L.R. 3083-1.B.4.** “The plan shall be served on the US Attorney and the appropriate agency when the United States is a party in interest.” See Appendix 1-9.

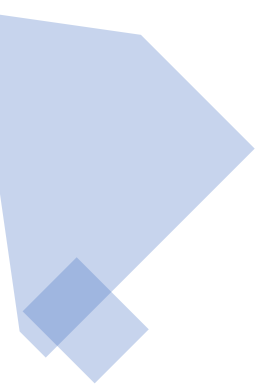
Highlights of Rule 7004 Service

- (b)(1): **Individual:** to dwelling house, usual place of abode, or to the place where the individual regularly conducts a business or profession
- (b)(2): **Infant or incompetent:** pursuant to applicable state law
- (b)(3): **Corporation:** “to attention of an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . .”
- (b)(4)/(5): **United States:** civil process clerk of the US Attorney in the W.D. Missouri + A.G. of the US + sometimes the agency/employee
- (g): **To the debtor,** also on the debtor’s attorney
- (h): **Insured Depository Institution:** certified first class mail sent to an officer of the institution



Pop Quiz

- § 522(f)(1)(B) non-pmsi lien avoidance against local \$ lender?
- § 506 cramdown valuation against Big Commercial Bank, N.A.?
- § 522(f)(1)(A) judgment lien avoidance against Credit Union?
- Cramdown valuation against IRS?



*Rule
3007(a)(2)
Claim
Objections*

(A): First class mail to address for notice on the POC

(A)(i): US, its officers or agencies – per Rule 7004(b)(4) or (5)

(A)(ii): Insured Depository Institution – per Rule 7004(h)



Motion to Avoid Lien Formula

§ 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance	Treatment of remaining secured claim
Name of creditor: <i>Creditor name</i>	a. Amount of lien: \$ Amount	Amount of secured claim after avoidance (line a minus line f)
Collateral: <i>Collateral</i>	b. Amount of all other liens: \$ Amount	\$ Amount
Lien identification (such as judgment date, date of lien recording, book & page number): Lien ID	c. Value of claimed exemptions: + \$ Amount	Interest rate (if applicable):
	d. Total of adding lines a, b, and c: \$ Amount	Ch13 Rate
	e. Value of debtor's interest in property: - \$ Amount	Equal monthly amount ("EMA") to be disbursed by the trustee
	f. Subtract line e from line d: \$ Amount	\$ Amount
	Extent of exemption impairment (check applicable box):	
	<input type="checkbox"/> Line f is equal to or greater than line a.	
	The entire lien is avoided. <i>(Do not complete the next column.)</i>	
	<input type="checkbox"/> Line f is less than line a	
	A portion of the lien is avoided. <i>(Complete the next column.)</i>	



LR 2016 Highlights

- 3 separate rules
- Chapter 7/13: Presume RRA + not exceeding “no look”
- + Postconfirmation fee menu in Chapter 13s
- Otherwise “promptly” file a motion to approve
- Hourly: fees awards are interim under § 331
- Final fee app due “no later than the deadline for the trustee’s final report.”



*Standing
Order No. 3*