

Chapter 13 Confirmation Procedures
FOR HONORABLE ELIZABETH E. BROWN
(current as of July, 2007)

INTRODUCTION

In response to the Bankruptcy Bar's request that procedures be harmonized among Chambers to the extent possible, Judge Brown has modified her chapter 13 plan confirmation procedures to comport more closely to those utilized by Judges Tallman and Romero. The following information is intended as a cursory guide to the chapter 13 process. Counsel should note that personal appearance at the confirmation hearing is *mandatory* if he/she fails to comply with the T.L.B.R. 3015-1 and/or fails to *timely* file the required documents therein.

Initial confirmation hearings are held approximately 20 days after the 341 meeting of creditors on Wednesday mornings beginning at 9:15 a.m. The hearings may be conducted by either Judge Brown or her Law Clerk. If a conflict should arise, upon the timely filing of a written request, the Court will reschedule the hearing approximately two weeks to the chapter 13 preliminary hearing docket, which is generally conducted on Tuesdays at 1:30 p.m. If the Debtor is represented by counsel, the Debtor's attendance is not required at the initial confirmation hearing (the date, time and location of which are located on the Notice of Chapter 13 Bankruptcy Case, meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan) or at any preliminary hearing, unless otherwise ordered. Debtors should consult with their attorney for specific advice.

PLAN FILING AND NOTICING

If the Debtor files a Chapter 13 Plan with the petition, the Court will mail it via first class mail to creditors listed on the Debtor's creditor's address matrix together with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, and Notice of Hearing on

Confirmation of Chapter 13 Plan (Notice to Creditors). The Debtor is responsible for complying with any additional service requirements under Bankruptcy Rules 9014 and 7004, and 11 U.S.C. § 324, and should file an appropriate certificate of service evidencing same with the Court (as applicable). To the extent that the Bankruptcy Rule 7004 service parties/addresses are included in the matrix and service by certified mail is not required, the Debtor need not send additional notice. The Debtor must also file a certificate of service evidencing compliance with T.L.B.R. 3015-1(b)(4) if any additional creditors are added subsequent to the filing of the case and service of the Plan.

If the Debtor *does not* file a Chapter 13 Plan with the Petition, it is the Debtor's responsibility to mail the Plan (*due to be filed within fifteen days of the petition*), together with a notice to all creditors and interested parties providing the date and time of the meeting of creditors, the date and time of the confirmation hearing, and the deadline (including the specific date) to object to confirmation. The Debtor may use either the Court's Notice to Creditors or a separate notice containing the required information. A suggested form of notice of confirmation hearing and deadline for objections, with specific instructions, is posted on the Courtroom F Website at www.cob.uscourts.gov/brown/forms. The Debtor must file a Certificate of Mailing verifying the mailing within three (3) days. The Court will deny confirmation of the plan if the Debtor does not properly file and serve the plan and notice, and/or file a certificate of mailing.

The Court will issue a notice of hearing on confirmation setting forth the specific hearing procedures for this Chambers. Parties are cautioned to read the notice of hearing carefully as it outlines parties' responsibilities and the manner in which they may, or are required to, appear for the initial confirmation hearing. If a Debtor is represented by counsel, Debtor may, but is not required, to appear personally or telephonically for the initial confirmation hearing.

CONFIRMATION PROCESS

1. Continuation of 341 Meeting and Confirmation Hearing

If the 341 Meeting is continued, the Debtor must file a notice of the continued 341 Meeting with the date agreed upon by the Chapter 13 Trustee and the Debtor. The notice must be sent to all creditors and all interested parties. If the 341 Meeting is rescheduled or continued to a date beyond the date set for the confirmation hearing, the Court will issue an amended confirmation hearing notice setting forth a new initial confirmation hearing date. Debtor is advised that the confirmation hearing may not be held less than twenty (20) days after the meeting of creditors is conducted unless the Court determines otherwise (11 U.S.C. § 1324(b)). If the Debtor wishes an earlier confirmation hearing date, Debtor must file a motion requesting an earlier hearing date with the notice of the continued 341 Meeting setting forth cause for the request to shorten time.

If the Debtor seeks a continuance of the confirmation hearing only, the motion should be filed after the deadline to object to confirmation has run but no later than the deadline to file a Certification pursuant to T.L.B.R. 3015-1(d)(3). Debtor shall mail the Motion to the Standing Chapter 13 Trustee, plan objectors and all entries of appearance. If the Plan is uncontested and no further amendments are necessary, Debtor may file a Verification of Confirmable Plan in lieu of filing a motion to continue the confirmation hearing.

2. No Objections Filed

If there are no objections to confirmation, the Debtor must, among other things, affirm that the service requirements of the applicable rules have been met and file a Verification of Confirmable Plan in compliance with T.L.B.R. 3015-1(f)(1). Upon the timely filing of Debtor's Verification, the Court may confirm the Debtor's Plan and vacate the confirmation hearing

without further notice or hearing; or, if the Court has questions, it may conduct the hearing by telephone. The Verification is considered timely if it is filed at least ten days after the 341 Meeting, but no less than three court days before the initial confirmation hearing. Parties should check the calendar on the Court's website at www.cob.uscourts.gov or call the Court's law clerk at 720-904-7348 the day before the hearing to ascertain whether or not the hearing is vacated.

3. Objections Filed

If objections to confirmation are filed, the Debtor must timely file (*within 14 days following the 341 meeting*) a Certificate Regarding Plan Objections. Please see Sections 4 and 5 regarding the recommended nature and substance of the Certificate. A suggested form of Certificate is located on the Courtroom F website at www.cob.uscourts.gov/brown/forms.

4. Plan Amendments (either in response to Objections or otherwise)

Every effort should be made to file an amended Plan prior to the confirmation hearing. Where the Debtor has filed an Amended Plan in response to objections prior to the confirmation hearing, Debtor must promptly mail or provide the Amended Plan to the objectors, the Standing Chapter 13 Trustee, and all entries of appearance; not to all creditors. The Court will determine what further notice is appropriate to creditors affected by the Amended Plan or to those against whom relief is sought at the hearing. Plan amendments filed prior to the initial confirmation hearing should not be submitted any sooner than the first day following the date the meeting of creditors is conducted and no later than thirteen (13) days following the meeting (T.L.B.R. 3015-1(e)(2)). The Debtor must also file a Certificate in accordance with T.L.B.R. 3015-1(d): (a) certifying the parties met and conferred; (b) identifying the objections the Debtor believes have been addressed by the amended plan; (c) describing the changes made in the amended plan and their impact on creditors; and, (d) if the Debtor still resists certain objections, specifying the

issues for which court determination is sought and estimating the court time necessary for a contested hearing. The filing of an amended plan *does not* relieve the Debtor of the obligation to timely file a T.L.B.R. 3015-1(d)(3) Certificate.

The Debtor may also file an Amended Plan prior to the confirmation hearing even though no objections were filed in order to correct an inadvertent error or omission, or as otherwise necessary to meet the Debtor's economic circumstances. The Debtor should provide a copy of the amended Plan to the Chapter 13 Trustee and parties who have entered an appearance and requested notice. The Debtor should also file a T.L.B.R. 3015-1(d)(3) Certificate *within fourteen days of the creditors Meeting* setting forth in detail what changes were made to the plan and the impact on creditors, if any. Impact on creditors includes a change in the amount and/or timing of payments and any change to the classification of a particular claim. The Certificate should contain sufficient detail to allow the Court to determine whether or not additional notice is needed. If the Court is able to determine from the Certificate that no additional notice is necessary, an Order to file a verification of confirmable plan will be issued and no hearing will be held. If the Court is unable to determine from the Certificate whether additional notice is necessary, or a timely Certificate is not filed, the Debtor and/or counsel shall appear at the initial confirmation hearing in person. The Court will determine what further notice is appropriate to creditors affected by the Amended Plan or to those against whom relief is sought at the hearing.

In virtually all cases the Court will conduct the initial confirmation hearing as scheduled, unless (a) an Amended Plan results in the written withdrawal of the confirmation objections; (b) the Court is able to determine from the Amended Plan, the T.L.B.R. 3015-1(d)(3) Certificate Regarding Plan Objections and the file that no further notice of the Amended Plan is required; (c) the Verification pursuant to T.L.B.R. 3015-1(f) is timely filed; and, (d) it is satisfactory to the

Court. The Debtor may check the Court's calendar on the website or contact the Court's law clerk at 720-904-7348 the day before the hearing to ascertain whether the confirmation hearing is vacated.

PLEASE NOTE: UNLESS OTHERWISE ORDERED, THIS DIVISION DOES NOT USE THE RULE 202 NOTICE PROCEDURE FOR AMENDED PLANS PRIOR TO THE INITIAL CONFIRMATION HEARING. Use of such notices for amended plans prior to the initial confirmation hearing will usually result in an Order striking the notice. The filing of a 202 Notice establishing an objection deadline beyond the confirmation hearing will NOT result in the initial confirmation hearing being vacated, will result in the Debtor having to re-notice the amended plan after the initial confirmation hearing, and may result in Debtor and/or counsel having to attend a subsequent hearing on confirmation.

If the initial confirmation hearing is held, the Court will consider the views of the Debtor, the Chapter 13 Trustee, plan objectors and/or other parties-in-interest regarding whether any further plan amendments are necessary, and what, if any, further noticing may be required. After hearing from the parties, the Court may set a deadline regarding service of the Amended Plan.

If the Court determines that notice and service of the Amended Plan is required, the Debtor shall provide a copy of the Amended Plan together with the Notice of Filing of Chapter 13 Plan, Hearing on Confirmation of Plan and Deadline for Objections to the Standing Chapter 13 Trustee, objecting parties, and other creditors and parties as the Court directs. A suggested form of Notice is located on the Courtroom F website at www.cob.uscourts.gov/brown/forms. This Notice must provide all the pre-hearing deadlines and hearing date as Ordered by the Court. Failure to do so may result in further delays confirming the Plan or denial of confirmation and

dismissal of the case without further notice. Objections to a Plan will be deemed withdrawn when the Court directs that Notice of an Amended Plan be provided to any objectors and other parties in interest as applicable pursuant to T.L.B.R. 3015-1(e)(4).

If no further objections to the Amended Plan are filed, the Debtor shall file a Verification prior to the date of the second confirmation hearing set by the Court, and the Court will vacate the hearing. If a Verification is not filed, Debtor/counsel shall appear for the hearing in person.

If objections to the Amended Plan are filed, the Debtor/counsel shall be prepared to inform the Court how he/she wishes to proceed at the second confirmation hearing. The Court will set an evidentiary hearing or set a deadline for filing and noticing a further amended plan at the time of the hearing. Unless otherwise ordered, amended plans filed after the second confirmation hearing will be required to be served on all parties directed by the Court along with a notice of amended plan and deadline for objections in compliance with Bankruptcy Rules 2002(b), 7004 and 9006. A suggested form of notice is located on the Courtroom F website at www.cob.uscourts.gov/brown/forms.

If objections are withdrawn in writing and the Debtor files a Verification 24 hours or more prior to the hearing, the Court will act on the plan without hearing. If objections are not withdrawn 24 hours prior to the hearing, the parties must appear.

5. No Plan Amendments - Resisting Objections

If objections to confirmation are filed, and the Debtor intends to resist the objections instead of filing an Amended Plan, then Debtor's Certificate (*due within 14 days following the 341 meeting*) shall conform to T.L.B.R. 3015-1(d)(ii) or (iii). The Certification shall: (a) state the date(s) the parties met and conferred; (b) succinctly describe the issue(s) in dispute; (c) advise the Court of the estimated court time necessary for a contested hearing; and, (d) explain

any other matter affecting plan confirmation. The scheduled confirmation hearing (*the date, time and location appearing on the section 341 notice*) which will be used as a status and scheduling conference upon the timely filing of Debtor's Certificate. Parties may appear by telephone at the status and scheduling conference if the Certificate is filed timely. Parties should check the calendar on the website or call chambers if there are questions. If the status and scheduling conference is conducted by the Law Clerk, a preliminary hearing will be scheduled with the Judge in approximately two weeks in order to meet the confirmation hearing deadlines imposed on the Court by the Bankruptcy Code. An evidentiary confirmation hearing and/or briefing schedule, as appropriate, will be set by the Court at the preliminary hearing.

6. Order

The Debtor must submit a proposed order in the form of T.L.B.F. 3015-2, 13 Order, with the following additional language:

This order binds those creditors and parties in interest that have been served in accordance with applicable rules.

7. Colorado Springs/Pueblo Cases

All procedures provided herein are applicable to Colorado Springs/Pueblo matters.

Debtors/counsel shall only be permitted to appear for the initial confirmation hearing telephonically if they timely file all documents required by T.L.B.R. 3015-1 as defined herein.

8. Post-Confirmation Modification

This division follows the procedure for post-confirmation modification contained in Local Bankruptcy Rule 319(c) and 202(a)(2). If the modification is requested after the claims bar date has expired, service of the Modified Chapter 13 Plan, Motion to Modify, and 202 Notice may be limited to the Chapter 13 Trustee, any party expressly affected by the modification, and upon those creditors who have filed proofs of claims.

Commentary

Parties are reminded that until the Chapter 13 Trustee waives service by mail, all documents must be sent to her office in paper, as opposed to electronic, form.

Debtors are reminded to file a certificate of service as required by T.L.B.R. 3015-1(b)(2) and (3) when they file the initial Plan following the commencement of (or conversion to) a chapter 13 case.

All Certificates of Service required under these guidelines must be filed with the Court within three days of the mailing.