

Utah Bankruptcy Lawyers Forum
December 8, 2009

Bankruptcy Update

Hon. William T. Thurman
Chief Judge, U.S. Bankruptcy Court, District of Utah

Hon. Judith A. Boulden
Judge, U.S. Bankruptcy Court, District of Utah

Hon. R. Kimball Mosier
Judge, U.S. Bankruptcy Court, District of Utah

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A. Supreme Court bankruptcy decisions:

N.C.P. Marketing Group, Inc. v. BG Star Productions, Inc., 129 S. Ct. 1577 (2009). Justices Kennedy and Breyer issued a joint statement regarding the Court's denial of certiorari, in which they discuss the need for resolution of a split among the Circuits as to the meaning of § 365(c)(1), but reluctantly agree that the case before the Court was not an appropriate one in which to address that "significant question." The referenced split involves the majority "hypothetical" position that a debtor-in-possession cannot assume an executory contract unless it could, hypothetically, assign the contract to a third party, versus the "actual test," in which the DIP may assume an executory contract as long as it has no actual intent to assign it to a third party. The two justices briefly discuss the positive and negative aspects of the two positions.

Travelers Indemnity Co. v. Bailey, 129 S. Ct. 2195 (2009). Travelers was the primary insurer of Johns-Manville, which filed a petition for bankruptcy in 1982 due to the potential of overwhelming liability for asbestos-related claims. In 1986, Manville and its insurers reached a settlement pursuant to which the insurers would provide most of the funds for a trust that was created to pay all asbestos claims against Manville. In connection with the settlement, the bankruptcy court entered an order enjoining "all persons" from pursuing the insurance companies for "policy claims," which it defined as those "arising out of or relating to" Manville's insurance coverage. The 1986 order was affirmed by both the district court and the Second Circuit. In 2002, Travelers sought the bankruptcy court's enforcement of its 1986 order, requesting that the court enjoin 26 state court lawsuits that were pending against it. The claims included both derivative liability for Manville's conduct and direct liability for Travelers' own conduct. The bankruptcy court found that all such claims were precluded by its 1986 order, in that all such claims either "arose out of" or "related to" Travelers' insurance relationship with Manville. The district court affirmed, but the Second Circuit reversed, on the ground that actions against non-debtors for their own conduct are beyond the bankruptcy court's jurisdiction to enjoin. The Supreme Court reversed, holding that the bankruptcy court's jurisdiction was *res judicata* to all parties to the Manville bankruptcy and their privies, because the 1986 order became final on direct review and even subject matter jurisdiction could not be collaterally attacked. Both the Circuit and the Supreme Court agreed with the bankruptcy court's finding that both derivative and non-derivative claims against Travelers fell within the terms of the 1986 order.

B. Tenth Circuit Court of Appeals bankruptcy decisions:

Affordable Bail Bonds, Inc. v. Sandoval (In re Sandoval), 541 F.3d 997 (10th Cir. 2008). On direct appeal under 28 U.S.C. § 158(d)(2), the Court affirmed the bankruptcy court's decision that debtor's agreement to indemnify professional bail bondsman on behalf of a third party criminal defendant was not a debt "to and for the benefit of a governmental unit," and therefore did not fall within the § 523(a)(7) exception to discharge.

In re Lanning, 545 F.3d 1269 (10th Cir. 2008). A Chapter 13 debtor's "projected disposable income" under § 1325(b)(1)(B) is presumed to be the debtor's "current monthly income," as defined in § 101(10A)(A)(i), but that figure may be altered by the bankruptcy court upon the debtor's showing of a "substantial change in circumstances."

Mosier v. Callister, Nebeker & McCullough, 546 F.3d 1271 (10th Cir. 2008). Chapter 11 trustee is precluded from asserting claims against third parties for their participation in or facilitation of debtor's wrongful conduct, by the doctrine of *in pari delicto*, which is based on the premise that courts should not involve themselves in disputes between wrongdoers. Moreover, the conduct of the directors of the corporate debtor was properly imputed to the debtor in reaching the conclusion that *in pari delicto* applied.

Parks v. FIA Card Servs., N.A. (In re Marshall), 550 F.3d 1251 (10th Cir. 2008). Debtors' use of one credit card company's offer to transfer balances to pay off another credit card company's cards within 90 days of their petition were preferential payments under § 547(b), because the funds used to pay-off their credit card debt were, for at least an instant, property of the debtors and, even though debtors never possessed the funds, they exercised "dominion or control" over them by directing their distribution.

In re Southwest Food Distributors, LLC, 561 F.3d 1106 (10th Cir. 2009). Unsecured creditors committee sought to employ both a national law firm and a regional/local law firm to represent it in the bankruptcy case. Both firms satisfied § 1103 and Fed. R. Bankr. P. 2014, but the request was denied by the bankruptcy court on the grounds that there was nothing about the case that was so complex that it required a national law firm that charged twice the amount per hour as the local firm, there was no evidence presented regarding the Committee's need for more than one law firm, and the two largest unsecured creditors objected to the employment of the national firm. The district court affirmed, and the Committee appealed, arguing that the bankruptcy court erred as a matter of law and was required to appoint counsel that have met the requirements of § 1103 and R. 2014. The court disagreed, holding that the bankruptcy court's consideration of future fees was not an abuse of its broad discretion over the appointment of professionals.

C and M Properties, L.L.C. v. Burbidge (In re C and M Properties L.L.C.), 563 F.3d 1156 (10th Cir. 2009). Witty decision by Judge Gorsuch directing district court to vacate all orders entered by it and the bankruptcy court after this removed malpractice action was remanded to Utah state court in 2004, on the ground that the federal courts were without jurisdiction once the district court had issued the remand order.

Hamilton v. Washington Mutual Bank FA (In re Colon), 563 F.3d 1171 (10th Cir. 2009). Trustee was not entitled to avoid a mortgage on the debtors' residence under § 544(a) on the basis that the mortgage, which contained the property's correct street address and parcel identification number, misstated the property's lot number. Under Kansas law, a purchaser has constructive notice of the contents of all documents in the seller's chain of title and, if a document in the chain of title suggests a problem, the purchaser is required to make reasonable inquiry. A reasonably prudent purchaser of debtors' property would make inquiry as to whether a mortgage from debtors that correctly listed the property's address and parcel number, but gave a different lot number, in fact encumbered the debtors' residence.

Olah v. Baird (In re Baird), 567 F.3d 1207 (10th Cir. 2009). Formally adopting the "Countryman" definition, the Court held that a contract is "executory" only if the remaining obligations of the parties to the contract are "significant," such that failure to perform them would be a breach that relieved the other party's performance. Under this definition, a liability insurance policy is not an executory contract if the policy period has expired and the insured has paid the premium for that period. All other obligations of the insured are not so significant that the failure to perform them would relieve the insurer of its obligation to defend and, possibly, pay damages. Furthermore, a policy's nonassignment clause is of no effect, under Utah law, once a "loss" has occurred, and loss occurs at the moment of the event that may ultimately trigger liability under the policy. Finally, an insured's contractual right to approve or disapprove a settlement transfers to the trustee upon the insured's filing of bankruptcy, thereby ceasing to be personal to the insured, and the trustee has authority to transfer that right to a third party.

In re Kirkland, 572 F.3d 838 (10th Cir. 2009). Creditor's proof of claim, that included neither supporting documentation nor an explanation for that failure, did not satisfy Fed. R Bankr. P. 3001 and Official Form 10, and was properly disallowed based on trustee's objection, despite the debtor's apparent inclusion of the debt in her schedules.

In re Ford, 574 F.3d 1279 (10th Cir. 2009). On direct appeal under 28 U.S.C. § 158(d)(2), the Court affirmed a bankruptcy court decision holding that the negative equity in debtors' trade-in vehicle, and other related fees and expenses, were incurred in connection with debtors' acquisition of rights in the new vehicle and, therefore, creditor's "purchase money security interest" under Kansas law included those expenses and was protected from bifurcation under § 1325(a)'s hanging paragraph.

Johnson v. Smith (In re Johnson), 575 F.3d 1079 (10th Cir. 2009). Dismissal of a Ch. 13 bankruptcy case during the pendency of creditor's appeal from a judgment granting debtors damages for creditor's willful violation of the automatic stay in an attached adversary proceeding did not divest the bankruptcy court of jurisdiction over the adversary proceeding, and its award of attorney's fees on remand was allowable.

Melnor, Inc. v. Corey (In re Corey), 583 F.3d 1249 (10th Cir. 2009). Creditor was entitled to summary judgment on its claim of non-dischargeability of a state court fraud judgment against Ch. 7 debtor, even though judgment was obtained by "default," because default was imposed as a sanction for debtor's litigation misconduct. The policies underlying issue preclusion are best served by precluding relitigation of issues that would have been decided on the merits but for the losing party's misconduct.

Beaumont v. Department of Veteran Affairs (In re Beaumont), __ F.3d __, 2009 WL 3299962 (10th Cir. 2009). Department was not precluded by either the automatic stay or the discharge injunction from recouping an overpayment of benefits it had made to debtor resulting from an inheritance received by him while receiving benefits, because the Department's payment obligation and the debtor's obligation to return payment arose from a "single transaction."

Johnson v. Riebesell (In re Riebesell), __ F.3d __, 2009 WL 3448743, (10th Cir. 2009). Client's claim against his former attorney was non-dischargeable in bankruptcy because attorney/debtor had borrowed money from his client without making specific disclosures required by state law, which constituted a "false representation" under § 523(a)(2)(A). In addition to declaring a debt non-dischargeable, bankruptcy courts have jurisdiction to liquidate those debts and to enter monetary judgments against debtors.

Search Market Direct, Inc. v. Jubber (In re Paige), 584 F.3d 1327 (10th Cir. 2009). District court's dismissal of appeal on mootness grounds was reversed, the Circuit finding that the parties seeking to have an appeal declared moot, who bear the burden of proof on that issue, had failed to establish mootness. Notably, the Circuit adopted the equitable mootness doctrine and specified six factors to be considered in determinations of equitable mootness. In addition, the Circuit clarified that determinations of equitable mootness are reviewed on appeal for abuse of discretion.

I. Tenth Circuit BAP decisions:

Melquiades v. Hill (In re Hill), 390 B.R. 407 (10th Cir. BAP 2008) (Clark, J.) (Before McFeeley, C.J., and Clark & Nugent, JJ.) (Appeal from the United States Bankruptcy Court for the Western District of Oklahoma). A bankruptcy court's judgment denying claim of non-dischargeability was **AFFIRMED**, since plaintiff's judgment for damages against debtors resulting from a work-related injury did not involve a "willful and malicious injury" under § 523(a)(6), where the debtors' conduct, failure to provide workers' compensation insurance, did not cause the plaintiff's physical injury. The

bankruptcy court's determination that the debtors' alleged misappropriation of proceeds from the sale of their wholly-owned corporation did not constitute either "fraud while acting in a fiduciary capacity" or "embezzlement," pursuant to § 523(a)(4), with respect to plaintiff, an employee and creditor of the corporation, was also affirmed.

Schlueter v. State Farm Mut. Ins. Co. (In re Schlueter), 391 B.R. 112 (10th Cir. BAP 2008) (McFeeley, C.J.) (Before McFeeley, C.J., and Nugent & Clark, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court's grant of summary judgment was **AFFIRMED** in part and **REVERSED** in part. The bankruptcy court's holding that § 523(a)(3)(A) precludes the discharge of a debt if the creditor had no actual knowledge of a debtor's bankruptcy prior to the claims bar date is affirmed. Thus, the decision rejects the position taken by some bankruptcy courts that actual knowledge of a bankruptcy, and thus an ability to file a claim under § 726(a)(2)(C) prior to the distribution of property of the estate, imposes a duty on creditors that overrides the plain language of § 523(a)(3)(A). However, the bankruptcy court's finding that debtor had provided no evidence in support of her assertion that she had no knowledge of the creditor's claim was reversed on the grounds that there was evidence in the record that made that an issue of fact.

In re Pearson, 390 B.R. 706 (10th Cir. BAP 2008) (McFeeley, C.J.) **Opinion Vacated by In re Pearson**, 309 Fed. Appx. 216 (10th Cir. Jan 22, 2009) (not selected for publication in the Federal Reporter, NO. 08-8060). (Thurman, J., concurring) (before McFeeley, C.J., and Bohanon & Thurman, JJ.) (Appeal from the United States Bankruptcy Court for the District of Wyoming). A bankruptcy court's judgment confirming a debtor's plan is **REVERSED** and **REMANDED**. A debtor who has successfully confirmed a plan has standing as a person aggrieved to appeal an interlocutory order that has merged into the final order when the debtor is pecuniarily affected by being obligated to amend the plan in order to obtain confirmation with provisions that the debtor believes are erroneous. The means test delineated in § 707(b)(2)(A)(ii)(I) allows a debtor to take the full vehicle ownership/lease expense deduction even when the debtor's vehicle is unencumbered by lease or secured payments at the time of the bankruptcy filing.

Melnor, Inc. v. Corey (In re Corey), 394 B.R. 519 (10th Cir. BAP 2008) (Rasure, J.) (before Thurman, Rasure, & McNiff, JJ.) (Appeal from the United States Bankruptcy Court for the District of New Mexico). A bankruptcy court's determination that the debtor was precluded in a Section 523(a)(2) proceeding from denying that a creditor's claim was procured by fraud because a federal district court had already entered a judgment by default against the debtor on the fraud claim was **AFFIRMED**. The default judgment was given collateral estoppel effect even though the issue of fraud was not "actually litigated" to its conclusion because the judgment was entered as a sanction for obstreperous litigation tactics rather than for simply failing to appear and defend.

In re Graves, 396 B.R. 70 (10th Cir. BAP 2008) (Thurman, J.) (before Bohanon, Michael, & Thurman, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court order denying Chapter 7 trustee's motion to compel turnover, pursuant to § 542(a), of debtors' tax refund that they applied, prepetition, to pre-payment of their next year's federal income tax liability was **AFFIRMED**. Turnover is appropriate only where the target has, during the case, "possession custody, or control" of estate property, and that property is something that the trustee can "use, sell, or lease." Turnover may not ordinarily be used to compel debtors to produce something in which they hold only a contingent, reversionary interest.

In re Rogers, 401 B.R. 490 (10th Cir. BAP 2009) (McFeeley, C.J.) (before McFeeley, C.J., and Nugent & Thurman, JJ.) (Appeal from the United States Bankruptcy Court for the Northern District of Oklahoma). A bankruptcy court's award of attorney's fees and costs, wherein the court reduced the amount of attorney's fees and costs under § 330, was **AFFIRMED** on the grounds that the bankruptcy court used the appropriate standard of review and made factual findings regarding the entries and expenses contained in the debtors' fee application. The filing of a fee application precludes the award of a presumptive or standard fee.

In re Smith, 401 B.R. 487 (10th Cir. BAP 2009) (McFeeley, C.J.) (before McFeeley, C.J., and Nugent & McNiff, JJ.) (Appeal from the United States Bankruptcy Court for the District of Utah). A bankruptcy court's disallowance of debtor's claim of exemption in tax refunds representing overpayment of taxes on otherwise exempt income was **REVERSED** based on the Utah Supreme Court's interpretation of Utah Code Ann. § 78B-5-507 (2008) that the funds could be reasonably traced.

In re Stephens, 402 B.R. 1 (10th Cir. BAP 2009) (Karlin, J.) (before Brown, Thurman, & Karlin, JJ.) (Appeal from the United States Bankruptcy Court for the Western District of Oklahoma). Bankruptcy court judgment finding that Iowa homestead law could not be applied to property outside of the state of Iowa, and therefore was not applicable to proceeds from the sale of debtor's Iowa homestead that were currently in debtor's new state of residence, Oklahoma, was **REVERSED** because Iowa's current homestead statute has not been restricted to in-state property. The decision adopts the view that, in the absence of either statutory or case law limits on territoriality, state exemption statutes apply extraterritorially, and rejects the view that § 522(b)(3) is a federal choice of law provision that preempts state territorial limitations. The case was **REMANDED** for consideration of the availability of Iowa's homestead exemption to the debtor's proceeds.

In re Picht, 403 B.R. 707 (10th Cir. BAP 2009) (Michael, J.) (before Michael, Brown, & Starzynski, JJ.) (Appeal from the United States Bankruptcy Court for the District of Kansas). The bankruptcy court's order confirming a Chapter 13 plan was **REVERSED** and **REMANDED** so that findings of fact and conclusions of law could be entered in accordance with Fed. R. Civ. P. 52, because a bankruptcy court does not have

jurisdiction to enter a memorandum opinion explaining a ruling that has already been appealed.

Wilson v. United States (In re Wilson), 407 B.R. 405 (10th Cir. BAP 2009) (Nugent, J.) (before Nugent, Thurman, & Karlin, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). The opinion **REVERSES** the bankruptcy court's summary judgment order holding that tax penalties assessed against the debtor for filing frivolous returns under 26 U.S.C. § 6702 are dischargeable under § 523(a)(7)(B). The act of filing the frivolous return constitutes the event or transaction under § 523(a)(7)(B), rather than the failure to file timely returns. Thus, tax penalties for frivolous filings within 3 years of the petition date for tax years beyond the lookback period are nondischargeable.

In re Bryan, 407 B.R. 410, (10th Cir. BAP 2009) (Thurman, J.) (before Nugent, Thurman, & Karlin, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court order denying debtor's objection to a claim was **AFFIRMED** because the bankruptcy court properly held that debtor was not entitled to direct creditor's application of funds to a particular debt, both because debtor owed only one debt to creditor, although his wholly-owned corporation owed two, and because the funds were proceeds of a settlement with third-party interest holders in the corporation's property, rather than a voluntary payment by the debtor. Therefore, pursuant to Colorado law, equity requires that the proceeds be applied in such a way as to maximize creditor's return, which in this case was to a debt owed solely by the corporation, rather than to a debt owed jointly by debtor and the corporation.

Rodriguez v. DaimlerChrysler Fin. Servs. Americas LLC, 408 B.R. 355 (10th Cir. BAP 2009) (Nugent, J.) (before Nugent, Thurman, & Karlin, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court order denying the trustee's demands for money judgments for the value of motor vehicle liens he avoided under § 550(a) was **AFFIRMED**. The BAP rejected the trustee's argument that he was entitled to recover the value of the liens pursuant to *In re Haberman*, 516 F.3d 1207 (10th Cir. 2008), concluding that the bankruptcy court neither erred as a matter of law, nor abused its discretion, in denying the trustee's claim.

In re Sun 'n Fun Waterpark LLC, 408 B.R. 361 (10th Cir. BAP 2009) (Brown, J.) (before Brown, Rasure, & Romero, JJ.) (Appeal from the United States Bankruptcy Court for the Western District of Oklahoma). A bankruptcy court order disallowing an oversecured creditor's claim for post-petition attorney's fee, costs, and expenses under § 506(b) was **REVERSED** because, under Oklahoma law, a creditor that had obtained a pre-petition foreclosure decree, but had not yet sold the collateral at a sheriff's sale, did not lose its contractual right to recover post-petition fees, costs, and expenses, and thus may recover those amounts to the extent that the other requirements of § 506(b) are met. In addition, Fed. R. Bankr. P. 2016(a) is inapplicable to the creditor's request for

prepetition fees that were awarded by state court judgment, and the state court judgment is entitled to full faith and credit.

In re Dittmar, 410 B.R. 71 (10th Cir. BAP 2009) (Bohanon, J.) (Brown, J. dissenting) (before Bohanon, Brown, & Weaver, JJ.) (Appeal from the United States Bankruptcy Court for the District of Kansas). A bankruptcy court summary judgment ruling that postpetition bonus distributions were not part of the bankruptcy estate because debtors had no pre-petition contingent interest in the distributions, merely an expectancy that did not rise to the level of a legal or equitable interest, was **AFFIRMED**.

In re Padgett, 408 B.R. 374 (10th Cir. BAP 2009) (Michael, J.) (Starzynski, J. concurring) (before Michael, Brown, & Starzynski, JJ.) (Appeal from the United States Bankruptcy Court for the District of Kansas). A bankruptcy court order allowing the debtors to bifurcate the "negative equity" portion of a creditor's claim, pursuant to § 506, was **REVERSED** because inclusion of the debtors' negative equity in their trade-in vehicle as part of their purchase of another vehicle made it a "purchase money obligation" and, therefore, creditor's claim was entirely a "purchase money security interest," which is protected from bifurcation by the "hanging paragraph" in § 1325(a).

In re Shattuck, ___ B.R. ___, 2009 WL 2252326 (10th Cir. BAP 2009). (Rasure, J.) (before Cornish, C.J., and Bohanon & Rasure, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court order granting a motion to dismiss filed by a state court-appointed receiver was **REVERSED** because the motion was filed, and evidence and argument presented, by a non-attorney and, pursuant to 28 U.S.C. § 1654, although non-attorneys may appear and represent themselves *pro se*, they may not represent the interests of others, including an artificial entity such as an estate. Accordingly, the receiver's motion should have been stricken.

Rafter Seven Ranches L.P. v. WNL Investments L.L.C. (In re Rafter Seven Ranches L.P.), ___ B.R. ___, 2009 WL 161317 (10th Cir. BAP 2009). (Brown, J.) (before Brown, Thurman & Romero, JJ.) (Appeal from the United States Bankruptcy Court for the District of Colorado). A bankruptcy court's determination that debtor, a general partnership, was not an "individual" entitled to seek damages for alleged violations of the automatic stay under § 362(h) (now renumbered at § 362(k)) was **AFFIRMED**. The bankruptcy court's refusal to award damages for the same alleged stay violations under § 105 was also affirmed. In the alternative, the bankruptcy court correctly construed the settlement agreement between the parties and determined that no stay violation had occurred. Finally, Debtor's appeal of a second bankruptcy court order enforcing one provision of the parties' settlement agreement was dismissed as moot.

United States Trustee v. Garland (In re Garland), ___ B.R. ___, 2009 WL ____ (10th Cir. BAP 2009) (Thurman, J.) (before Brown, Thurman & Romero, JJ.) (Appeal from the United States Bankruptcy Court for the Eastern District of Oklahoma). A bankruptcy court judgment denying debtor's discharge pursuant to the "false oath" exception set forth in § 727(a)(4)(A) was **AFFIRMED** because the debtor, an experienced class-action

lawyer, failed to disclose a beneficial interest in real property that was titled to one of his sons, as well as his ownership/directorship of various businesses within six years of his filing, and his signatory authority on a number of active bank accounts. The bankruptcy court's determination that the debtor's statements in his bankruptcy filings were either truthful nor mere mistakes, as he claimed, but were instead fraudulent misstatements of material fact, was not clearly erroneous.

Utah Bankruptcy Lawyers Forum

Hon. R. Kimball Mosier

RULE 9013-1

MOTION PRACTICE - SET HEARING

- (a) **Scope of Rule.** This rule applies to motions in bankruptcy cases and adversary proceedings. The term “motion” means application, request, objection to claim, or other proceeding in the nature of a motion or contested matter in which a party in interest seeks an order from or determination by the court. The term “motion” does not refer to a summons, complaint, appeal, or an ex parte motion.
- (b) **Applicability.** In bankruptcy cases and adversary proceedings, whenever the movant seeks an order from or determination by the court and the movant believes the motion will be opposed, the procedures set forth in this rule should be used.
- (c) **Motions.** The movant must file the motion with the clerk within any applicable time limitation, including the time limitations of these Local Rules, unless the court orders otherwise. A motion must set forth succinctly, without argument, the specific relief sought.
- (d) **Notice of Motion and Hearing.** The movant shall obtain and set an appropriate hearing date with the court scheduling clerk. A Notice of Motion and Notice of Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Hearing shall:
- (1) be in substantial conformity with Local Form 9013-1, Notice of Motion and Notice of Hearing with alterations as may be appropriate to comply with these Local Rules;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the intended action or relief requested or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006-1(b), as appropriate;

(4) include a statement that the hearing may be stricken and relief requested may be granted without a hearing unless an objection is timely filed.

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection.

(6) be given by the movant to all parties in interest at their addresses of record, and to such other parties as the Federal Rules of Bankruptcy Procedure may specify or the court may direct.

(e) **Response to Motions.** A party responding to a motion must file a response by the date identified in the notice.

(f) **Granting Relief Without a Hearing.** The court may, but is not required to, strike the hearing and grant the relief requested in a motion without a hearing if the movant has filed a declaration of non-opposition stating that:

(1) there has been no opposition to the motion filed or served on the movant; and

(2) the notice of hearing served by the movant included a statement as set forth in subsection (c) that the hearing may be stricken and the relief may be granted without a hearing.

(g) **Time for Striking Hearings.** A request to strike a hearing should be made at least two days prior to the hearing.

(h) **Memorandum of Authorities.** A motion or a response to a motion may be supported by a memorandum of legal authorities subject to the following requirements.

(1) **Concise Memorandum.** A memorandum must concisely state each basis supporting the motion or response with citations to applicable and controlling legal authority.

(2) **Length of Memorandum.** A memorandum, other than for summary judgment, must not exceed 15 pages, exclusive of face sheet, table of contents, statements of issues and facts, and exhibits. The procedure for filing an overlength memorandum is set forth in subsection (f) of this rule.

(3) **Citations of Unpublished Decisions.** A memorandum may cite an unpublished decision from this district, but only if the decision is furnished to the court and parties when the memorandum is filed. Unpublished opinions from other districts may not be cited as authority. Unpublished decisions of this court should be cited as follows: *Smith v. Jones (In re Smith)*, Ch. 7 Case No. 93B-02404, Adv. No. 94PC-2302, slip op. at 10 (Bankr. D. Ut. March 1, 1995). The clerk maintains an index and copies of selected, unpublished opinions from this district.

(4) **Citations of Supplemental Authority.** When pertinent and significant authorities come to the attention of a party after a memorandum has been filed, or after oral argument but before the court renders a decision, a party may advise the court by letter, with a copy to all parties, setting forth the citations. The letter must, without argument, state the reason for the supplemental citations and include a reference either to

the page of the memorandum or to a point argued orally to which the citations pertain. Any response must be promptly made and similarly limited.

(5) **Reply Memorandum.** A reply memorandum is limited to rebuttal of matters raised in the response responsive memorandum.

(6) **Limitation on Memoranda Considered.** Unless otherwise ordered, the court will consider only memoranda filed with motions, responsive memoranda filed by parties in interest, and reply memoranda filed by the movant(s).

(i) **Overlength Memoranda.** An order of the court must be obtained to file a memorandum that exceeds the page limitations set forth in subsection (d) of this rule. Such a motion may be made to the court ex parte, and must include a statement of why additional pages are needed and the number of pages. The court will approve the request only for good cause shown. Authorized, overlength memoranda must contain the following:

- (1) a table of contents, with page references, setting forth the titles or headings of each section and subsection;
- (2) a statement of the issues related to the precise relief sought;
- (3) a concise statement of facts, with appropriate references to the record, relevant to the issues concerning the precise relief sought;
- (4) argument, preceded by a summary, containing the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on; and
- (5) a short conclusion stating the precise relief sought.

(j) **Certificate of Service.** Unless otherwise ordered, a party must file a certificate of service of a motion or other paper required to be served on other parties. The certificate must be

filed with the motion or paper, endorsed upon the motion or paper, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The certificate must show the date, place and manner of service, and the names and addresses of the parties receiving the service.

(k) **Service of Documents by Electronic Means.** A Filing User who electronically files a pleading or other document must transmit a "Notice of Electronic Filing" to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and these Local Rules. The "Notice of Electronic Filing" must be transmitted by e-mail, hand, facsimile, contract carrier, or by first class mail postage prepaid. Electronic transmission of the "Notice of Electronic Filing" constitutes service or notice of the filed document. A Filing User may use the court's Electronic Filing System to effectuate service on those parties who have consented to electronic service. Parties who are not Filing Users are entitled to receive a paper copy of any electronically filed pleading or other document. Service or notice must be made according to the Federal Rules of Bankruptcy Procedure and these Local Rules.

RULE 9013 -2

MOTION PRACTICE - OPPORTUNITY FOR HEARING

(a) **Scope of Rule.** This rule applies to motions in bankruptcy cases. The term “motion” means application, request, objection to claim, or other proceeding in the nature of a motion in which a party in interest seeks an order from or determination by the court. The term “motion” does not refer to a summons, complaint, appeal, or an ex parte motion.

(b) **Applicability:** Except as set forth herein, whenever the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure provide that an order may be entered or an action may be taken after "notice and a hearing," or a similar phrase, if the movant believes there will be no objections to the motion, the following procedure should be used. This rule does not apply:

- (1) whenever the court directs otherwise;
- (2) to any pleadings, motions, or notices in adversary proceedings under Part VII of the Fed. R. Bankr. P.;
- (3) to hearings set under 11 U.S.C. § 1125;
- (4) to hearings on confirmation of a plan pursuant to chapter 9, 11 or 12;
- (5) applications for compensation that exceed \$5,000.00;
- (6) as otherwise provided by these Local Rules or the Fed. R. Bankr. P.

(c) **Motions.** The movant must file the motion with the clerk within any applicable time limitation, including the time limitations of these Local Rules, unless the court orders otherwise. A motion must set forth succinctly, without argument, the specific relief sought.

(d) **Notice of Motion and Notice of Opportunity for Hearing:** The movant may reserve a time for, but not set, a hearing on the court’s calendar. A Notice of Motion and and Notice of Opportunity for Hearing shall be filed in original form only together with a certificate

of service evidencing compliance with the applicable service requirements. A Notice of Motion and Notice of Opportunity for Hearing shall:

(1) be in substantial conformity with L.B.F. 9013 - 2, Notice of Motion and Opportunity for Hearing;

(2) contain a specific statement of the relief requested or action intended in sufficient detail to meaningfully inform the parties of the relief requested or intended action or, if the motion is served with the notice, refer to the motion to describe the relief requested;

(3) set the last date on which an interested party may file an objection to the motion and request for hearing on the motion. The identified date must be based on the time period fixed by the Federal Rules of Bankruptcy Procedure or by Local Rule 9006- 1(b), as appropriate;

(4) include a statement that the relief requested may be granted without a hearing unless an objection is timely filed;

(5) include a statement that the objecting party must attend the hearing and that failure to attend the hearing will be deemed a waiver or the objection;

(6) be given by the movant to all parties in interest at their addresses of record, and to such other parties as the Federal Rules of Bankruptcy Procedure may specify or the court may direct;

(e) **Objection and Request for Hearing**: Any party opposing the motion must file an Objection and Request for Hearing before the deadline stated in the Notice of Motion and Notice of Opportunity for Hearing. The Objection and Requests for Hearing shall be filed with the court in original form only, and a copy thereof shall be served upon counsel for the movant on or before the date set forth in the notice. Service may be by mail and shall be complete upon

mailing. Objections and requests for hearing shall clearly specify the grounds upon which they are based. General objections will not be considered. Failure of a party to timely file written opposition will be deemed a waiver of any opposition to granting of the motion.

(f) **Court Action on Motions:**

(1) **Contested Matters:** Motions for which opposition has been filed shall be set for hearing at the time, date and place set forth in the Notice of Motion and Opportunity for Hearing. No further notice of the date, time and place of hearing is required to be given.

(2) **Non-Contested Matters:** Motions with no opposition shall be submitted to the Judge for further action. The party submitting an order on a non-contested matter must submit an application or declaration with the order stating that there has been no objection to the motion filed or served on the movant. The Court may, but is not required to, grant the relief requested in the motion without a hearing.

(3) **Defective or Deficient Motions:** The Court may deny, **sua sponte**, any defective or deficient motion, or a motion, the notice of which is subject to the provisions of this Rule and which notice does not comply with this Rule. Any such denial shall be without prejudice.

(4) **Non-Prosecuted Motions:** At the time the bankruptcy case is closed pursuant to 350, 707, 930, 1112, 1208, or 1307 of title 11, all pending motions which have not been presented to the Court for disposition shall be deemed abandoned for want of prosecution and the Clerk shall enter an order denying said motions. Any such denial shall be without prejudice.

(g) **Applicable provisions of Local Rule 9013-1:** Paragraphs (h) through (k) of Local Rule 9013-1 are also applicable to this rule.

RULE 9013 -3

(a) **Applicability:** Whenever the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure provide that an action may be taken after “notice” or after “notice and a hearing,” or a similar phrase, and a proposed action does not require a motion or affirmative approval by the court, the entity proposing to act, in lieu of proceeding by motion, may use the following noticing procedure.

(b) **Notice of Opportunity for Hearing:** A Notice of Opportunity for Hearing shall be filed in original form only together with a certificate of service evidencing compliance with the applicable service requirements. The Notice of Opportunity for Hearing shall:

- (1) be in substantial conformity with L.B.F. 9029-1, Notice of Opportunity for Hearing;
- (2) contain a specific statement of the action intended in sufficient detail to meaningfully inform the parties of the intended action;
- (3) state the date and time the proposed action will be taken;
- (4) state the last date on which an interested party may file an objection and request for hearing on the intended action;
- (5) Be served in accordance with the Federal Rules of Bankruptcy Procedure or as the court may direct.

(c) **Opposition and Request for Hearing:** An objection and request for hearing shall be filed with the court in original form only, and a copy thereof shall be served upon counsel for the entity proposing to act, on or before the date set forth in the Notice of Opportunity for Hearing. Service may be by mail and shall be complete upon mailing. Objections and requests

for hearing shall clearly specify the grounds upon which they are based. General objections will not be considered. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the proposed action.

(d) **Hearing and Oral Argument:**

(1) **Contested Matters:** If an objection to the proposed action is filed the entity proposing to act shall promptly set the matter for hearing. Notice of the date, time and place of hearing shall be mailed by the entity proposing to act to the objecting parties at their addresses or their attorneys' addresses of record and to such other parties as the court may designate.

(2) **Non-Contested Matters:** If no objection to the proposed action is filed the action may go forward without court action.

(e) **Certificate of Service.** Unless otherwise ordered, a party must file a certificate of service of a motion or other paper required to be served on other parties. The certificate must be filed with the motion or paper, endorsed upon the motion or paper, or filed separately as soon as possible and in any event before any action based upon the service is requested or taken by the court. The certificate must show the date, place and manner of service, and the names and addresses of the parties receiving the service.

(f) **Service of Documents by Electronic Means.** A Filing User who electronically files a pleading or other document must transmit a "Notice of Electronic Filing" to parties entitled to service or notice under the Federal Rules of Bankruptcy Procedure and these Local Rules. The "Notice of Electronic Filing" must be transmitted by e-mail, hand, facsimile, contract carrier, or by first class mail postage prepaid. Electronic transmission of the "Notice of Electronic Filing" constitutes service or notice of the filed document. A Filing User may use the court's Electronic

Filing System to effectuate service on those parties who have consented to electronic service. Parties who are not Filing Users are entitled to receive a paper copy of any electronically filed pleading or other document. Service or notice must be made according to the Federal Rules of Bankruptcy Procedure and these Local Rules.

(g) **This Rule Shall Not Apply:**

(1) to any pleadings, motions, or notices in adversary proceedings under Part VII of the Federal Rules of Bankruptcy Procedure;

D R A F T

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number:
Debtor(s).	Chapter

**NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM]
AND NOTICE OF HEARING**

(Objection Deadline: _____)
(Hearing Date: _____)

PLEASE TAKE NOTICE that [movant's name] has filed with the United States Bankruptcy Court for the District of Utah, [title of pleading] (the Motion/Application/Objection).

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

[Insert a specific statement of the relief requested, action intended or claim, including the amount of fees to be paid pursuant to Fed.R.B.P. 2002(c)(2), if applicable; amount of debt to be incurred; amount of payment to be made; the basic terms and provisions of a settlement or compromise; or, with respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale, all sufficient to meaningfully inform the parties of the intended action or claim.]

If you do not want the Court to grant the relief requested in the [Motion/Application/ Objection] then:

(1) on or before [objection deadline] you or your lawyer must file with the Bankruptcy Court a written objection to the [Motion/Application/ Objection] explaining your position, at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing you must mail it early enough so that the Court will **receive** it on or before [objection deadline]. You must also mail a copy to the undersigned counsel at [name and address of movants attorney].

(2) attend the hearing on the [Motion/Application/ Objection] which is set for [(date) at (time) in Courtroom ____, United States Bankruptcy Court, (address)]. Failure to attend the hearing will be deemed a waiver of your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you do not oppose the relief sought in the [Motion/Application/ Objection] and may enter an order granting that relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to strike the hearing enter an order approving the [Motion/Application/ Objection] without hearing.

Dated this ____ Day of _____, 20__.

/s/
Signature of Individual

Printed Name of Individual

CERTIFICATE OF MAILING

I hereby certify that on _____ (date), I mailed a copy of this foregoing Application and all attachments to the following:

Date

Signature of Individual

Printed name of Individual

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Local Form 9013-2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number:
Debtor(s).	Chapter

NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM]
AND NOTICE OF OPPORTUNITY FOR HEARING

(Objection Deadline: _____)

PLEASE TAKE NOTICE that [movant's name] has filed with the United States Bankruptcy Court for the District of Utah, [title of pleading] (the Motion/Application/Objection).

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

[Insert a specific statement of the relief requested, action intended or claim, including the amount of fees to be paid pursuant to Fed.R.B.P. 2002(c)(2), if applicable; amount of debt to be incurred; amount of payment to be made; the basic terms and provisions of a settlement or compromise; or, with respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale, all sufficient to meaningfully inform the parties of the intended action or claim.]

NO HEARING WILL BE CONDUCTED ON THIS [MOTION/APPLICATION/OBJECTION] UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE OBJECTION DEADLINE SET FORTH BELOW.

If you do not want the Court to grant the relief requested in the [Motion/Application/ Objection] then you or your attorney must:

(1) on or before [objection deadline] file with the Bankruptcy Court a written Objection and Request for Hearing, explaining your position, at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing you must mail it early enough so that the Court will **receive** it on or before [objection deadline]. You must also mail a copy to the undersigned counsel at [name and address of movants attorney].

(2) attend a hearing on [(date) at (time) in Courtroom ____, United States Bankruptcy Court, (address).] **There will be no further notice of the hearing** and failure to attend the hearing will be deemed a waiver if your objection.

If you or your attorney do not take these steps, the Bankruptcy Court may decide that you do not oppose the relief sought in the [Motion/Application/ Objection] and may enter an order granting that relief. In the absence of a timely filed objection, the undersigned counsel may and will ask the Court to enter an order approving the [Motion/Application/ Objection] without hearing.

Dated this ___ Day of _____, 20__.

Signature of Individual

CERTIFICATE OF MAILING

I hereby certify that on _____ (date), I mailed a copy of this foregoing Application and all attachments to the following:

Date

Signature of Individual

Printed name of individual

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Local Form 9013-3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy Number:
Debtor(s).	Chapter

NOTICE OF [PROPOSED ACTION] AND OPPORTUNITY FOR HEARING

(Objection Deadline: _____)

PLEASE TAKE NOTICE that [party's name] has filed with the United States Bankruptcy Court for the District of Utah, [title of pleading].

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

[Insert a specific statement to meaningfully inform the parties of the action intended.

With respect to a proposed sale of property, a description of the property, the time and place of any public sale, and the terms and conditions of any private sale.]

NO HEARING ON THE [PROPOSED ACTION] WILL BE CONDUCTED UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE COURT ON OR BEFORE THE OBJECTION DEADLINE SET FORTH BELOW.

If you object to the [proposed action] then on or before [objection deadline] you or your lawyer

must file with the Bankruptcy Court a written objection to the [proposed action] explaining your position, at:

United States Bankruptcy Court
350 South Main Street, Room 301
Salt Lake City, UT 84101

If you mail your objection to the Bankruptcy Court for filing you must mail it early enough so that the Court will **receive** it on or before _____. You must also mail a copy to the undersigned counsel at [name and address of movant's attorney.]

If you or your attorney do not take these steps, [the noticing party] will proceed with the [proposed action].

Dated this ____ Day of _____, 20__.

Signature of Individual

Printed name of Individual

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CERTIFICATE OF MAILING

I hereby certify that on _____ (date), I mailed a copy of this foregoing Application and all attachments to the following:

Date

Signature of Individual

Printed name of Individual

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PROPOSED PROCEDURES FOR NOTICING AND OPPORTUNITY FOR HEARING

The proposed procedures for "notice and an opportunity for hearing" are intended to promote efficiency and economy and provide a framework for resolving issues without a need for setting and conducting hearings. The proposed procedures do not significantly change current practices and procedures. The proposed procedures will also result in more consistent noticing practices and have the potential to minimize the amount of time between a motion and determination by the Court.

The proposed procedures will benefit attorneys because they will reduce the time attorneys are required to spend monitoring and striking hearings. The proposed procedures will also minimize the risk of failing to appear at schedule hearings, and will reduce the need to appear at scheduled hearings.

The proposed procedures will benefit the Court because the Court will be spending less time preparing for hearings that are eventually stricken from the Court's calendar.

The proposed procedures are also consistent with 11 U.S.C. § 102(a) which defines "after notice and a hearing" and authorizes an action without an actual hearing. Section 102 changed the procedures that had been used under the Bankruptcy Act. "This is a significant change from present law, which requires the affirmative approval of the bankruptcy judge for almost every action. The change will permit the bankruptcy judge to stay removed from the administration of the bankruptcy reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection." [*House Report No. 95-595, 95th Cong., 1st Sess. 315 (1977); Senate Report No. 95-989, 95th Cong., 2^d Sess. 27 (1978).*]

EXPLANATION OF THE PROPOSED PROCEDURE FOR "NOTICE AND OPPORTUNITY FOR HEARING"

Whenever there is a routine matter which would typically be set on the Court's law and motion calendar or if counsel believes the matter will be uncontested the following procedure should be used:

1. **Reserve a Hearing Date and Time with the Court.** The procedure for reserving a hearing date and time with the Court will essentially be the same as the current practice for setting a hearing. Counsel will still have the opportunity to use the Court's preset calendar or contact the Court's scheduling clerk to reserve a hearing time. The difference will simply be that the hearing date and time is only reserved and the actual hearing is not set on the Court's calendar.
2. **Send Notice to All Affected Parties Using Local Form 9013-2.** The Form is intended to clearly advise parties of (i) the relief being sought, (ii) the date objections are due, and (iii) that a hearing on the motion will not be set unless an objection and a request for hearing is filed.
3. **Post-Noticing Procedures**
 - **If no objection is filed.** If there is no objection to the proposed motion, submit a proposed order and application for entry of the order to the Court.
 - **If a timely objection and request for hearing is filed.** If a timely objection and request for hearing is filed the matter will then be set on the Court's active calendar. The clerk's office will attempt to set all objections and requests for hearing on the Court's calendar. The movant is responsible for ensuring the hearing is set once they receive notice of the objection.

- **Chapter 13 Trustee Response.** In addition to being able to file an objection and request for hearing, the Chapter 13 Trustee will also be able to file a response to the motion or a conditional objection. The Chapter 13 Trustee response will simply be informational and will be provided to the Court if the Chapter 13 Office believes the information will be beneficial to the Court in making its determination. The Chapter 13 Trustee's conditional objection will not set the matter for hearing, but will prevent entry of an order until the objection has been resolved. It is expected that this type of objection would be used by the Chapter 13 Trustee if the Chapter 13 Trustee does not oppose the relief requested, provided certain conditions are met. The burden will be upon the movant to contact the Chapter 13 Trustee's Office to see if an agreed order can be achieved. If movant believes the agreed order cannot be achieved the movant may request that the hearing on the motion be set for the reserved time.

ANTICIPATED QUESTIONS

1. **How does this procedure differ from the current procedures?** The procedure is not much different than the current practice.

(a) There will be three alternative procedures for satisfying the requirement of "notice and a hearing":

- (I) setting a hearing and providing "notice of a motion and a set hearing" date (Local Rule 9013-1). The procedure for setting a hearing date on matters that are not routine or are not set on the law and motion calendar is unchanged.
- (ii) reserving a hearing and providing "notice of a motion and an opportunity for hearing" (Local Rule 9013-2). The procedure for reserving a hearing date will essentially be the same as the current procedure for setting a hearing date on the law and motion calendar. Matters on the pre-set/law and motion calendar will automatically be "hearing reserved" matters and noticing must comply with Local Rule 9013-2; and
- (iii) simply providing "notice of a proposed action and an opportunity for hearing" (Local Rule 9013-3.) Notice with only an opportunity for hearing is not a new procedure. The new Local Rule 9013-3 only clarifies the current practice.

(B) Noticing procedures will be more consistent using standardized local forms but there will be distinctions between the three types of notice: “Notice of Motion and Notice of Hearing” (Local Form 9013-1), “Notice of Motion and Opportunity for Hearing” (Local Rule 9013-2) and, “Notice of [Proposed Action] and Opportunity for Hearing” (Local Rule 9013-3).

2. How does one determine which procedure should be used? Non-routine or contested matters should always have a “hearing set”. Unless chambers directs otherwise, the “hearing reserved” procedures may be used for all routine matters that would typically be set on the Court’s pre-set/law and motion calendar. An action does not require court action or determination to proceed, the “notice only” procedure may be used or the party may proceed by motion.

It should be emphasized that selecting a procedure should not be problematic in most cases. There is no penalty for using a hearing set procedure if the rules suggest another procedure. If a hearing is set on a routine matter or uncontested matter when the “hearing reserved” procedure is suggested, the hearing may be stricken if there is no objection or the hearing may go forward if it is not stricken. If a contested matter is noticed with only a hearing date reserved, an objection will set the matter for hearing.

3. When Should an Order be Submitted? The time reserved for a hearing should allow sufficient time to comply with the applicable notice requirements and the Local Rule 9006-1. Local Rule 9006-1(b) requires that the hearing be at least four days after all objections and replies are filed. If a moving party wants to preserve their right to file a reply to an objection, these time limitations should be taken into account.

After the objection deadline has run, if no objections have been filed, the moving party should promptly file a proposed order and application for entry of the order pursuant to Local Rule 9013-1(c). If the application and proposed order are not promptly filed the Court may be unable to act on the order prior to the date reserved for hearing.

It should be noted that this result is not significantly different than the current practice. Presently, a moving party strikes a hearing because no objections have been filed and fails to promptly submit an application and order, the Court is unable to act on the order prior to the hearing date.

4. What if the motion or notice are defective? A defective motion or notice is defective under the current procedures or the proposed procedures. Having a hearing scheduled does correct a defective motion or notice.

5. **How are matters resolved if the Chapter 13 Trustee files a conditional objection?** If the moving party does not understand the chapter 13 trustee's objection, the moving party should contact the chapter trustee's 13 office and clarify the issues. If the issues are clear, or after clarifying the issues, the moving party will prepare a proposed order which, if it addresses the chapter 13 trustee's issues, the chapter 13 trustee will endorse. If the issues can not be resolved the moving party may request the matter be set at the reserved hearing date. If the reserved hearing date is passed, a hearing be promptly be set on the next law and motion calendar with only notice to the chapter 13 trustee's office.
6. **Who will receive a notice of hearing if an objection is filed?** No further notice of hearing will be sent if an objection is filed. The objecting party and the movant are aware of the objection, that the objection sets a hearing at the reserved time and of the need to appear at the hearing. Electronic filers will receive electronic notice of the hearing.
7. **Can the court set a hearing at the reserved time even if the matter is uncontested?** Yes. If the court has issues with the motion, notice or proposed order a hearing may be set at the reserved time. Electronic filers will receive electronic notice. The option for the court to set a hearing does not require the court to set a hearing or sign an order if a hearing is not set. Like the current practice, if the moving party's motion or notice are defective the court may decline to enter an order

**Utah Bankruptcy Lawyers Forum
Hon. Judith A. Boulden**

SUMMARY OF CHANGES TO TIME PERIODS IN STANDING ORDER NUMBER 6
Effective December 1, 2009

<u>Time Periods Under the Local Rules of Practice of the United States Bankruptcy Court for the District of Utah</u>	<u>Old Time Period (Prior to 12/1/09)</u>	<u>New Time Period (Effective 12/1/09)</u>
<u>1007-2(a)(1) objection to dismissal after service of the Section 341 Meeting Report</u>	<u>20 days</u>	<u>21 days</u>
<u>1007-2(b) notice mailed in § 704(c)(1)(C) after debtor is granted a discharge</u>	<u>20 days</u>	<u>21 days</u>
<u>2002-1(e) file an application for compensation and expenses in a chapter 7 case</u>	<u>10 days</u>	<u>14 days</u>
<u>2003-1(a) objection to dismissal after service of notice of failure to comply</u>	<u>20 days</u>	<u>21 days</u>
<u>2003-1(b) motion for telephonic appearance at meeting of creditors</u>	<u>10 days</u>	<u>14 days</u>
<u>2003-1(d) produce materials after a written request by the trustee of United States trustee</u>	<u>10 days</u>	<u>14 days</u>
<u>2004-1 minimum time to receive written notice of 2004 examination</u>	<u>15 days</u>	<u>14 days</u>
<u>2081-1(a) initial financial report for non-small business chapter 11 debtors</u>	<u>20 days</u>	<u>21 days</u>
<u>2081-1(b) monthly financial reports due</u>	<u>15 days</u>	<u>14 days</u>
<u>2082-1(b) objection to Chapter 12 trustee's notice debtors failure to file a plan</u>	<u>20 days</u>	<u>21 days</u>
<u>2083-1(d) objection to Chapter 13 trustee's failure make first payment or provide documents</u>	<u>20 days</u>	<u>21 days</u>
<u>2083-1(f) motion to dismiss Chapter 13 case under § 109(e)</u>	<u>10 days</u>	<u>7 days</u>
<u>2083-1(h) objection to Chapter 13 confirmation</u>	<u>10 days</u>	<u>7 days</u>
<u>2083-1(i) objection to Chapter 13 debtors Verification and Request for discharge</u>	<u>20 days</u>	<u>21 days</u>
<u>2091-1(e) unrepresented party's notification of appointment of another attorney or decision to appear without an attorney</u>	<u>20 days</u>	<u>21 days</u>
<u>3022-1(a) Chapter 11 reorganized debtor to file and serve upon parties and set for hearing a motion for a final decree</u>	<u>30 days</u>	<u>28 days</u>
<u>3002-1(b) individual Chapter 11 final decree</u>	<u>30 days</u>	<u>28 days</u>
<u>4001-1(a) statement of when objections to relief from automatic stay motions must be filed</u>	<u>15 days</u>	<u>14 days</u>
<u>4001-1(b) when objections to relief from automatic stay motions must be filed</u>	<u>15 days</u>	<u>14 days</u>
<u>4001-2(c) final hearing following the organizational meeting of the Chapter 11 creditors' committee</u>	<u>10 days</u>	<u>14 days</u>
<u>5005-1(b)(1) objection to dismissal after service of the Section 341 Meeting Report</u>	<u>20 days</u>	<u>21 days</u>
<u>5080-1(c) denial of application for waiver of Chapter 7 filing fee</u>	<u>10 days</u>	<u>14 days</u>

