

JOYCE BRADLEY BABIN
CHAPTER 13 STANDING TRUSTEE
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Date: September 19, 2018

To: Attorneys for Chapter 13 Debtors in Batesville, Fayetteville,
Fort Smith, Harrison, Helena, Jonesboro and Little Rock (Babin and
McCarty) Divisions

From: Joyce Bradley Babin, Chapter 13 Standing Trustee
Mark McCarty, Chapter 13 Standing Trustee

**Re: Arkansas Plan – Local Form 13-1
Service of Plans and Creditors**

As you may be aware, Judge Barry recently issued Orders to Appear and Show Cause Why Orders Confirming Plans Should Not Be Set Aside. In the orders, Judge Barry asked debtors' attorneys and Trustees the reasons that the confirmation orders should not be set aside because the plans had not been served properly or proof of service had not been provided. The confirmation orders have been set aside or are being set aside with confirmation orders to be submitted again to court after appropriate service or proof of service of the plans. Additionally, Judge Jones ruled on September 13, 2018, that an amended plan should be filed and creditors properly served when an original plan had not been sent to creditors.

Moving forward, prior to submission of orders confirming plans to the Court, the appropriate service of plans will need to be verified. **Confirmation of plans will be delayed pending proofs of service.**

You should review your unconfirmed cases and make sure your plans have been served appropriately. As noted below, plans must be served on creditors at the time the plans are filed pursuant to Federal Rule of Bankruptcy Procedure 3015(d). Creditors that are treated under § 3.4 of the plan must be served pursuant to Federal Rules of Bankruptcy Procedure 3012(b) and 7004.

The following information and suggestions for service are provided. **Please note that the information below represents information from the Babin and McCarty Trustees offices and does not constitute any opinions of the United States Bankruptcy Court or the other Arkansas Trustees. Some “examples” and “suggestions” for serving plans are attached. Regardless of the form of the service, the service should demonstrate that the creditors were properly served and had notice of the 21-day opportunity to object.**

Service of Plans – Original and Amended Plans to All Creditors

The Federal Rules of Bankruptcy Procedure changed effective December 1, 2017. **Original plans, even if filed with the petition, and amended plans must be served on the assigned Trustee and creditors as required by Rule 3015(d).**

The Arkansas Plan – Local Form 13-1, effective December 1, 2017, as revised August 2, 2018, states, “Original plans and amended plans must have matrix(ces) attached or a separate certificate of service should be filed to reflect service in compliance Fed. R. Bankr. P. 2002.” *See* Fed. R. Bankr. P. 2002(a)(9) and 3015(d). Rule 3015(d) provides that the plan must be served “on the trustee and all creditors when it is filed with the court.”

How do I demonstrate service of an original plan?

An original plans should contain a certificate of service with matrix/matrices or a reference to the matrices indicating all creditors were served. If the certificate of service is not attached to the plan, the certificate should be filed separately. Do not forget that the “government entities” should be included – Department of Finance and Administration, Internal Revenue Service, Arkansas Department of Workforce Services and the applicable United States Attorney (Eastern District or Western District of Arkansas).

Note: If the plan contains creditors in § 3.4, the creditors in this section must receive service pursuant to Federal Rule of Bankruptcy Procedure 7004, as discussed further below. *See* Fed. R. Bankr. P. 3012(b).

If the plan was not served when the plan was originally filed, what process should be followed?

An amended plan should be filed and served that provides the correct notice and objection period (21 days). Because the notice provided in the original plan stated an objection period of 14 days from the 341(a) meeting, an amended plan should be filed. The following box should be checked:

- Amended plan:** Within 21 days after the filing of the plan.

The amended plan should include a certificate of service with matrix/matrices or a reference to the matrices indicating all creditors were served. If the certificate of service is not attached to the plan, the certificate should be filed separately. Do not forget that the “government entities” need to be included – Department of Finance and Administration, Internal Revenue Service, Arkansas Department of Workforce Services and the applicable United States Attorney (Eastern District or Western District of Arkansas).

Note (again): If the plan contains creditors in § 3.4, the creditors in this section must receive service pursuant to Federal Rule of Bankruptcy Procedure 7004, as discussed further below. *See* Fed. R. Bankr. P. 3012(b).

How do I demonstrate service of an amended plan?

The amended plan should contain a certificate of service with matrix/matrices or a reference to the matrices indicating all creditors were served. If the certificate of service is not attached to the plan, the certificate should be filed separately. Do not forget that the “government entities” need to be included – Department of Finance and Administration, Internal Revenue Service, Arkansas Department of Workforce Services and the applicable United States Attorney (Eastern District or Western District of Arkansas).

As a note, in Arkansas, amended plans have been required to be served on all creditors prior to December 1, 2017. Therefore, amended plans should have been served when filed. If the certificate of service is not included with the plan, a certificate of service with matrices or a reference to the matrices can be filed with the court to demonstrate service. You should indicate the plan was served with a 21-day notice of opportunity to object, along with the date the plan was served.

Service of Creditors Treated Under § 3.4 of the Arkansas Plan – Form 13-1

Additionally, effective December 1, 2017, **for creditors treated under § 3.4 of the Arkansas Plan – Form 13-1**, notice of the plan must be provided pursuant to Rule 3012(b). Section 3.4 provides for a request for valuation of a secured claim. Some requests for valuation will involve cramdown when the value is less than the claim amount. Some will not. Regardless of whether a cramdown is involved, at this time, the Trustees understand that if a creditor is listed in § 3.4, service pursuant to Rule 3012(b) is required. This means the creditors listed in § 3.4 have to be served as if a summons in an adversary proceeding has been issued.

Bankruptcy Rule 3012 was extensively revised and changed the requirements for noticing creditors for non-governmental and governmental entities when the valuation is changed. Creditors treated under § 3.4 include a “request for valuation” and the affected creditors must be served pursuant to Bankruptcy Rule 7004 and specific proof of service must be provided.

How do I serve a non-governmental creditor treated under § 3.4?

For a non-governmental creditor, valuation may be determined three ways - by motion, claim objection or through the plan. When the request for valuation is

made through a plan, then the plan must be served “on the holder of the claim and any other entity the court designates in the manner provided for service of a summons and complaint by Rule 7004.” Fed. R. Bankr. P. 3012(b). **This statement means you have to serve a creditor treated under § 3.4 like you would serve a summons and adversary proceeding.**

The Trustees interpret Rule 3012(b) to mean that service, and proof of service, to the claim holder must be provided. The first time that a creditor is treated under § 3.4, the certificate of service with creditors and notations of the methods of service must be included. If the request for valuation occurs in an amended plan, the certificate of service with creditors and notations of the methods of service must be included.

If a creditor is treated in an amended plan under § 3.4 and has never been properly served, the creditor should be served prior to confirmation. At the present time, the Trustees do not intend to object regarding service in subsequent amended plans if the treatment of the creditor does not change the value previously established for the claims listed in § 3.4. In other words, service under Rule 7004 needs to be accomplished once, not every time an amended plan is filed.

What if the non-governmental creditor is an individual and competent?

Serve by first class mail. Rule 7004(b)(1) allows for service by first class mail upon the individual “by mailing a copy of the [plan] . . . to the individual’s dwelling house or usual place of abode or the place where the individual regularly conducts a business or profession.”

The Trustees will be looking for a certificate of service to the creditor treated under § 3.4 with the address and method of service noted on the certificate or matrices.

What if the non-governmental creditor is a corporation?

Serve by first class mail to the attention of an officer, managing agent or general agent. State the name and position/capacity on the certificate of service. Rule 7004(b)(3) allows for service upon a domestic or foreign corporation or upon a partnership or other unincorporated association “by mailing a copy of the [plan] . . . to the attention of an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.”

A “live person” must be served. The Trustees will be looking for a certificate of service to the creditor treated under § 3.4 with the designation of the person authorized to accept service, the person’s position/capacity, the address and the method of service noted on the certificate of service or matrices.

What if the non-governmental creditor is an insured depository institution such as a bank or credit union?

Serve by a bank or credit union by certified mail in most instances. There are special rules for insured depository institutions. Rule 7004(h) provides that service must be made on a depository institution by **certified mail addressed to an officer of the institution unless the institution has appeared by its attorney and then the attorney can be served by first class mail**, or the court orders otherwise or the institution has waived its right for service by certified mail in writing. *See* Fed. R. Bankr. P. 7004(h)(1-3).

Banks are considered insured depository institutions. Although credit unions are not specifically insured as depository institutions, 11 U.S.C. § 101(35)(B) includes a credit union in the definition of a insured depository institution for bankruptcy purposes. The best practice would be to serve a credit union as an insured depository institution under Rule 7004(h).

The Trustees will be looking for a certificate of service to the creditor treated under § 3.4 with the designation of a person authorized to accept service, the person’s position/capacity, the address and the method of service (certified mail - return receipt requested) noted on the certificate or matrices.

If a creditor provided treatment under § 3.4 has already appeared in the case, does the creditor have to be served by certified mail?

Rule 7004(h) states when an attorney for a depository institution has appeared, the attorney can be served by first class mail. If the creditor has filed a motion or objection, consideration should be made regarding whether the creditor has appeared by its attorney for service purposes. If the creditor has appeared, service may be by first class mail on the attorney. At this time, the Trustees do not interpret the filing of a proof of claim as an appearance.

What if the creditor is a governmental creditor and the creditor is treated under § 3.4?

Based on Federal Rule of Bankruptcy Procedure 3012(c), a governmental creditor's claim valuation for cramdown purposes cannot be established in a plan. Arkansas Plan - Form 13-1 contains a change regarding valuation of governmental claims. "[A] request to determine the amount of a secured claim of a governmental unit may be **made only by motion or in a claim objection** after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired." Fed. R. Bankr. P. 3012(c). If you intend to value a governmental claim differently than the government's claim has valued, **a motion or objection will need to be filed. Under Rule 3012(c), it is no longer acceptable to provide a different value in a plan even if noticed appropriately.**

Changes to Attorney Fee Guidelines

The Guidelines for Compensation for Services Rendered and Reimbursement of Expenses in Chapter 13 Cases has been revised to include actual and necessary costs for serving the plan, including certified mail, with limitations of \$2.25 per creditor (regular mail) and \$9.00 (certified mail). The Application for Original Compensation may now include service costs.

1 - Suggested certificate of service for filing with plans – Rule 3015(b) and (d) and no creditors treated under § 3.4 (Rule 3012(b)) creditors.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Chapter 13 plan has been served by CM/ECF to Joyce Bradley Babin, Chapter 13 Standing Trustee; Charles W. Tucker, Assistant United States Trustee; and served by U.S. Mail, postage prepaid to the following on _____ [date]:

Department of Finance and Administration
Legal Division
P.O. Box 1272
Little Rock, AR 72203

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Arkansas Department of Workforce Services
Legal Division
P.O. Box 2981
Little Rock, AR 72203

U.S. Attorney, Eastern District
P.O. Box 1229
Little Rock, AR 72202

or
U.S. Attorney, Western District
P.O. Box 1524
Fort Smith, AR 72902

And to all creditors whose names and addresses are set forth on the following page(s) (matrices).

[or – select one]

And to all creditors whose names and addresses are set forth on the matrices filed in the case.

Favorite Law Offices
20815 Best Place Ever
Anytown State 12345
Tel: (479) 123-4567
Fax: (479) 123-4568

By: _____

Ura Favorite
State Bar No. _____

2 - Suggested certificate of service for filing with plans – Rule 3015(b) and (d) and creditors treated under § 3.4 (Rule 2015(b)) creditors.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Chapter 13 plan filed has been served by CM/ECF to Joyce Bradley Babin, Chapter 13 Standing Trustee; Charles W. Tucker, Assistant United States Trustee; and served by U.S. Mail, postage prepaid to the following on _____ [date of service]:

Department of Finance and Administration
Legal Division
P.O. Box 1272
Little Rock, AR 72203

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Department of Workforce Services
Legal Division
P.O. Box 2981
Little Rock, AR 72203

U.S. Attorney, Eastern District
P.O. Box 1229
Little Rock, AR 72202

or
U.S. Attorney, Western District
P.O. Box 1524
Fort Smith, AR 72902

And to all creditors whose names and address are set forth on the following page(s) (matrices).

[or – select one]

And to all creditors whose names and addresses are set forth on the matrices filed in the case.

The undersigned further certifies that a true and correct copy of the attached Chapter 13 Plan that requests a valuation determination pursuant to Section 3.4 was served by U.S. Mail, postage prepaid, to the following as noted:

Imma N. Demoney, President and CEO (*Depository Institution – Bank*)
First Eighth Bank, N.A.
123 Easy Avenue
Anytown, State 12345
(Certified Mail, Return Receipt Requested)

Gimme Kredit, President and Director (*Depository Institution – Credit Union*)
Best Ever Federal Credit Union
456 Main Street
Anytown, State 12345
(Certified Mail, Return Receipt Requested)

Mo Bill Home, President and Agent for Service (*Corporation*)
Sturdy Built Mobile Homes, Inc.
890 Trailer Avenue
Anytown, State 12345
(Regular Mail)

Favorite Law Offices
20815 Best Place Ever
Anytown, State 12345
Tel: (479) 123-4567
Fax: (479) 123-4568

By: _____

Ura Favorite
State Bar No. _____

3 - Suggested certificate of service for filing after plan filed - Rule 3015(d) service and no creditors treated under § 3.4 (Rule 3012(b)) creditors.

**IN THE UNITED STATES BANKRUPTCY COURT
Select District DISTRICT OF ARKANSAS
Select Division DIVISION**

IN RE:

**CASE NO:
CHAPTER 13**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the plan filed on _____ [date], Docket No. ____, has been served by CM/ECF to Joyce Bradley Babin, Chapter 13 Standing Trustee; Charles W. Tucker, Assistant United States Trustee; and served by regular U.S. Mail, postage prepaid to the following on _____ [date of service]:

Department of Finance and Administration
Legal Division
P.O. Box 1272
Little Rock, AR 72203

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Employment Security Division
Legal Division
P.O. Box 2981
Little Rock, AR 72203

U.S. Attorney, Eastern District
P.O. Box 1229
Little Rock, AR 72202
or

U.S. Attorney, Western District
P.O. Box 1524
Fort Smith, AR 72902

And to all creditors whose names and address are set forth on the following page(s) (matrices).

[or – select one]

And to all creditors whose names and addresses are set forth on the matrices filed in the case.

Date: _____

Favorite Law Offices
20815 Best Place Ever
Anytown, State 12345
Tel: (479) 123-4567
Fax: (479) 123-4568

By: _____
Ura Favorite
State Bar No. ____

4 - Suggested certificate of service for filing after plan filed – 3015(d) service and creditors treated under § 3.4 (Rule 3012(b)).

**IN THE UNITED STATES BANKRUPTCY COURT
Select District DISTRICT OF ARKANSAS
Select Division DIVISION**

IN RE:

**CASE NO:
CHAPTER 13**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the Chapter 13 plan filed _____ [date], Docket No. ____, has been served by CM/ECF to Joyce Bradley Babin, Chapter 13 Standing Trustee; Charles W. Tucker, Assistant United States Trustee; and served by regular U.S. Mail, postage prepaid, unless otherwise noted, to the following on _____ [date of service]:

Department of Finance and Administration
Legal Division
P.O. Box 1272
Little Rock, AR 72203

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

Employment Security Division
Legal Division
P.O. Box 2981
Little Rock, AR 72203

U.S. Attorney, Eastern District
P.O. Box 1229
Little Rock, AR 72202

or

U.S. Attorney, Western District
P.O. Box 1524
Fort Smith, AR 72902

Imma N. Demoney, President and CEO (*Depository Institution – Bank*)
First Eighth Bank, N.A.
123 Easy Avenue
Anytown, State 12345
(Certified Mail, Return Receipt Requested)

Gimme Kredit, President and Director (*Depository Institution – Credit Union*)
Best Ever Federal Credit Union
456 Main Street
Anytown, State 12345
(Certified Mail, Return Receipt Requested)

Moe Bill Home, President and Agent for Service (*Corporation*)
Sturdy Built Mobile Homes, Inc.
890 Trailer Avenue
Anytown, State 12345
(Regular Mail)

And to all creditors whose names and address are set forth on the following page(s) (matrices).

[or – select one]

And to all creditors whose names and addresses are set forth on the matrices filed in the case.

Date: _____

Favorite Law Offices
20815 Best Place Ever
Anytown, State 12345
Tel: (479) 123-4567
Fax: (479) 123-4568

By: _____

Ura Favorite
State Bar No.

5 - Suggested certificate of service for filing after plan filed – creditors treated under § 3.4 (Rule 3012(b)) only.

IN THE UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF ARKANSAS
_____ DIVISION

IN RE: _____
_____,
Debtors

CASE NO: _____
CHAPTER 13

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Chapter 13 Plan filed _____ [date] (Docket No. _____) was served by U.S. Mail, postage prepaid, to the following on _____ [date of service]:

1. Imma N. Demoney, President and CEO (*Depository Institution – Bank*)
First Eighth Bank, N.A.
123 Easy Avenue
Anytown, State 12345
(Certified Mail, Return Receipt Requested)
2. Gimme Kredit, President and Director (*Depository Institution – Credit Union*)
Best Ever Federal Credit Union
456 Main Street
Anytown, State 12345
(Certified Mail, Return Receipt Requested)
3. Mo Bill Home, President and Agent for Service (*Corporation*)
Sturdy Built Mobile Homes, Inc.
890 Trailer Avenue
Anytown, State 12345
(Regular Mail)

Date: _____

Favorite Law Offices
20815 Best Place Ever
Anytown, State 12345
Tel: (479) 123-4567
Fax: (479) 123-4568

By: _____
Ura Favorite
State Bar No. _____