Response of the Court to Major Substantive Comments Regarding the 2014 Proposed Local Rules and Local Forms

The Court appreciates the comments that were submitted by the bar and other interested parties regarding the proposed rules. In response to the comments, numerous changes were made to the proposed rules. Listed below are the most significant comments received by persons outside the Court and the response to those comments. As with any major change to the local rules, it is anticipated that future revisions may be necessary after the Court has an opportunity to evaluate how the rule changes work in practice.

- **Comment**: The Rights and Responsibilities Agreement ("R&R") is too long and too complex.

Response: The R&R *is* long and complex, but the Court believes that the form will help insure that before the case is filed, both debtors and their counsel understand their responsibilities to work together to obtain the relief debtors are seeking. It is especially important when a "presumptively reasonable fee" ("PRF") is being charged that both attorneys and their clients understand what services are being provided for the fee. During the comment period a group of attorneys submitted a list of additional tasks to add to the items already included in the R&R. These suggestions have been incorporated into the final draft.

- **Comment:** The R&R will require counsel to prosecute non-meritorious matters.

Response: The R&R does not require counsel to pursue any action that is initiated for an improper purpose or assert claims, defenses and other legal contentions not warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Attorneys continue to be subject to Fed. R. Bankr. P. 9011. Counsel should be prepared to explain to the client why any of the services described in the R&R are not justified in the client's case. A provision has been added to the R&R that states that "IN NO CASE SHALL YOUR ATTORNEY BE REQUIRED TO FILE A MOTION, PLAN, OBJECTION, OR ANSWER THAT IS NOT SUPPORTED BY CURRENT LAW."

- **Comment**: The R&R should not require counsel to provide loan modification assistance services.

Response: The Court agrees that the requirement in the proposed rule was overbroad. The provision in the R&R has been changed to state that an attorney will be required to provide assistance to a client to obtain a mortgage loan modification only if modification of the loan is necessary to obtain confirmation of the proposed plan.

- **Comment**: Attorneys should be permitted to continue to obtain a flat fee of $500 for preparing, filing and prosecuting the modification of a plan after confirmation.

Response: Based upon the numerous comments regarding the benefits of this practice, attorneys may charge a PRF of $500. The rule has been amended to reflect this change at L.B.R. 2016-2(f).

- **Comment:** Proposed L.B.R. 2016-2(e) should be changed to explicitly state the repercussions if an attorney fails to request payment through the plan no later than seven days before confirmation.

Response: Rule 2016-2(e), now renumbered as 2016-2(g), provides that the failure to timely file a Request for Payment may result in a delay of confirmation of the plan. It further provides that if the confirmation hearing is continued, and the Request for Payment has been filed, it does not need to be refiled if no additional fees are being requested. If additional fees are requested, a new Request for Payment must be filed no later than seven days before the continued confirmation hearing.

- **Comment:** Proposed L.B.R. 2016-2(a) and (c) seem to be in conflict. Must an R&R form be executed in all Chapter 13 cases?

Response: An R&R form must be executed by an attorney and his client in all Chapter 13 cases in which the debtor is represented by an attorney. Paragraph (c) has been rewritten to clarify this requirement.

- **Comment:** Proposed L.B.R. 2016-2 (d), now renumbered as 2016-2(e) may be abused by attorneys who render minimal services before confirmation and file a fee application for services proposed post-confirmation.

Response: No fee structure will eliminate all abuse. It will be incumbent upon the court and the Chapter 13 trustee to carefully review supplemental applications. It should be remembered that the court has authorized the use of a "presumptively" reasonable fee. That presumption may be rebutted and fees adjusted accordingly.

- **Comment:** The Chapter 13 Model Plan still uses the phrase "no look fee," which may be confusiong.

Response: Section 3(B)(2) has been amended to revise the provisions regarding attorneys fees so that the Model Plan incorporates the terminology and fee arrangements used in L.B.R. 2016-2.

- **Comment:** The proposed rules should allow attorneys to obtain approval for fees associated with motions to sell and motions to incur debt in the motion as is permitted under current practice.

Response: This recommendation has been partially incorporated in the R&R. It now provides that counsel will be allowed to charge additional legal fees for preparing, filing, and serving a motion to sell real or personal property without filing a separate fee application.

- **Comment**: Proposed L.B.R. 2002-1(c) unfairly requires Chapter 7 trustees to absorb the costs of all noticing of a sale without a commensurate increase in compensation.

Response: The change in the rule does not require the trustee to absorb the cost. It only applies when the trustee is pursuing assets. The trustee may be reimbursed from assets being liquidated by the trustee. The requirement that the trustee advance the costs may encourage a trustee to require secured creditors that are providing a "carve-out" for unsecured creditors to advance noticing costs when the trustee lacks other sources of funds.

- **Comment**: Proposed L.B.R. 2002-1(d)(3) should be amended to exempt the trustee from providing notices of rescheduled creditors' meeting due to circumstances beyond their control such as a death in the family or inclement weather.

Response: This provision has been modified to provide that if a creditors' meeting is rescheduled due to inclement weather, Acts of God, sudden illness, or the debtor's failure to file required documents, the clerk will provide notice of the rescheduled meeting.

- **Comment:** Several comments generally opposed the use of the PRF and advocated the current practice of using the Chapter 13 trustee's "no-look" fee.

Response: The current no-look fee practice provides no guidelines or rules for the services required to be performed for the fee. Some attorneys provide all services to a client in a case for the "no-look" fee, others provide "bare bones" representation, and most provide a level of service between those extremes. The use of the PRF for services through confirmation of a plan with the R&R provides a standard that is applicable to all attorneys who choose to use the PRF. Under the current practice, there is no specific procedure for the Court to approve Chapter 13 attorneys fees as required by 11 U.S.C. § 330(a)(4)(B) other than the confirmation order which presumably approves the payment of administrative expenses. The approval of a PRF at confirmation addresses this deficiency. The use of the PRF modifies the requirements under § 330 that a fee application be filed for an attorney to obtain compensation. It does not alter the requirement that the fee be approved by the Court. Whether this requires the appearance of the attorney when the trustee has reported the matter as ready for confirmation will be determined by the practices of each judge.

- **Comment**: Will the Chapter 13 fee provisions be applicable immediately upon adoption of the amendments to the rules?

Response: L.B.R. 2016-2 (Compensation of Debtors' Attorneys in Chapter 13 Cases) will apply to all Chapter 13 cases filed on or after October 1, 2014.