

NOTICE TO COUNSEL RE SERVICE OF CHAPTER 13 PLANS

As an experiment, the Santa Rosa Clerk's office has been serving all Chapter 13 plans filed under the Bankruptcy Act. That experiment has proved unworkable. Effective immediately, the Clerk will serve the original plan ONLY, and it will be served ONLY on creditors on the original list. Responsibility for serving amended plans and the notice of any continued confirmation hearing on them will revert to the debtor, where it was under our old procedures. Debtors are also responsible for serving original plans and hearing notices on creditors added after the petition is filed.

Counsel are reminded that all creditors are entitled to be served with a copy of every plan and a notice of the confirmation hearing. At least 25 days notice must be given pursuant to FRBP 2002(b), unless the court has shortened time.

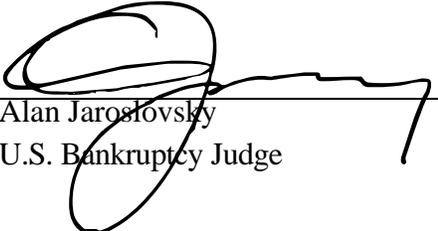
There are two recurring problems with noticing Chapter 13 plans. First, creditors are added after the original filing but are not served with the plan and notice of hearing. Second, an amended plan is filed but not served on all creditors, or it is served without notice of a hearing date, or it is served with less than 25 days notice. Counsel are reminded that a confirmed plan is not binding on anyone who did not receive proper notice.

It is fairly common for a debtor to make minor changes to meet a trustee objection or a valuation objection by secured creditor. Whether to give further notice and a copy of the amended plan to all creditors is a judgment call on your part, understanding that if a creditor is materially impacted by the amended plan and was not given proper notice then the amended plan may not bind that creditor.

Your attention is also called to case law in this circuit providing that whenever a plan contains an unusual provision, such as lien stripping or student loan modification, special notice must be given to the specially-affected creditors in the same manner as a summons and complaint. *In re Repp*, 307 B.R. 144 (9th Cir. BAP 2004). It is ALWAYS the responsibility of the debtor to give such special notice.

Proper service of Chapter 13 plans and notices of hearing is a vital responsibility of Chapter 13 counsel which must not be taken lightly.

Dated: March 7, 2006


Alan Jaroslovsky
U.S. Bankruptcy Judge