



Chief Judge Russ Kendig

United States Bankruptcy Court, Northern District of Ohio
Ralph Regula Federal Building and U.S. Courthouse
401 McKinley Ave., S.W.
Canton, Ohio 44702
(330) 458-2440

DATE: September 5, 2018
TO: Attorneys practicing in the Youngstown court
FROM: Judge Kendig
RE: Chapter 13 national form plan Sections 3.2 and 3.4

The national form plan changed the procedure for valuing secured claims and lien avoidance, covered by Sections 3.2 and 3.4 of the plan. These provisions are what is called embedded motions. Inclusion of information in Sections 3.2 and 3.4 is deemed to be a motion and confirmation of the plan acts as granting the motion.

To obtain the relief on the embedded motions, the plan must be properly served. Counsel must provide proof of service of the plan on the creditors that are affected by these sections of the plan. A separate certificate of service is necessary because BNC service does not always meet the Rule 7004 requirements. The Clerk's office checks for a certificate of service and will issue a deficiency if not filed. Please consult Federal Rules of Bankruptcy Procedure 3012(b), 4003(d), 7004 and General Order 17-1 for direction on service. General Order 17-1 is available on the Court's website under the Judges' Info tab, then the drop box General Orders. Rule 7004 provides detail on the methods of service that must be used for specific types of creditors such as corporations, insured depository institutions, and federal and state government. It is like service of an adversary but without a summons.

Once properly served, the plan's treatment of secured claims in these sections generally controls over non-governmental proofs of claim. Consequently, properly served plans will generally eliminate the need to file objections to claims covered by Sections 3.2 and 3.4 except as to amount.

Much confusion has arisen in this area, especially considering the Rules mention other procedural options, including motions and claim objections. Counsel must recognize that the Rules also govern courts that did not adopt the national form plan and therefore need to rely on the alternatives. This court adopted the national form plan, relies on the provisions it contains, and expects counsel to do the same.

The court will consider comfort motions but the nature of a comfort order is that it is technically unnecessary. A comfort motion is not a substitute for a properly served plan.