

**United States Bankruptcy Court  
Western District of Missouri**



**NOTICE OF PROPOSED REVISIONS TO LOCAL RULES OF PRACTICE  
9011-4, 9060-1C, AND 3095-1 AND NOTICE OF PUBLIC COMMENT PERIOD**

The Court is considering local rule changes based on a recent Attorney Advisory Group meeting. The affected local rules are provided below. Additions to an existing rule are in **red text** while deletions are denoted using a ~~strike through~~ feature. If you have comments or concerns regarding these changes, please submit them as directed below.

**Comments will be accepted through October 28, 2015**

*Please email questions or comments to:*

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**Proposed Local Rules of Practice Revisions:**

**1. Rule 9011-4. Signatures.**

Pleadings filed by an attorney shall bear the attorney's name, bar number, firm name, address, **monitored** telephone number, fax number, and **monitored** email address, and the name of the client if required by the pleading filed. The attorney's use of the login and password issued for ECF shall constitute the signature of the attorney ~~and clients(s)~~ for all purposes including Fed. R. Bankr. P. 9011.

**2. Rule 9060-1C. Continuance of Hearings.**

If a hearing continuance is desired, a motion must be filed no later than two **business** days prior to the scheduled hearing, except for cause arising within that two day period. If the motion is filed **late**, ~~on the day before or the day of the scheduled hearing~~, the movant must also contact the assigned courtroom deputy by e-mail or telephone. Any motion for continuance shall state, in addition to the reasons for such continuance, whether opposing counsel consents to such motion. A movant who is not aware of opposing counsel's position on the continuance should also state the efforts made to contact such counsel, including the date on which movant first attempted such contact.

**Proposed New Local Rule 3095-1 with Explanatory Comments:**

**1. Rule 3095-1 Chapter 13 Plan and Plan Amendments - Attorney Certification**

A Chapter 13 plan and any plan amendment signed by an attorney for the debtor pursuant to Local Rule 9011-1 shall constitute a certification that (a) such attorney has obtained the prior consent of the debtor to the filing of the Chapter 13 plan or plan amendment which consent shall be in a writing signed by the debtor; and (b) that the attorney has explained the proposed Chapter 13 plan or plan amendment to the debtor. For purposes of this Local Rule 3095-1, the term "signed" or "signature" means an original signature, image of an original signature, image with the debtor's signature captured electronically, or any other electronic symbol or process attached to or logically associated with a record and executed or

adopted by a person with the intent to sign the record. The writing memorializing the consent of the debtor as contemplated by this Local Rule 3095-1 shall be maintained in the attorney's files and shall be available for inspection by the Court, the Chapter 13 trustee or the Office of the United States Trustee upon request.

**Comment:** Proposed Local Rule 3095-1 was promulgated to address certain debtor complaints that Chapter 13 plans or plan amendments were filed without their knowledge or consent. The Attorney Advisory Group subcommittee considered amendments to Local Rule 9011-1 and the Local Form Chapter 13 Plan to require that any plan or plan amendment be signed by the applicable debtor. The subcommittee reviewed the practice in a number of other jurisdictions to determine whether a debtor's signature on Chapter 13 plans or plan amendment was the norm, and it also reviewed the proposed national form plan. It appeared to the subcommittee that there is a split in approaches to having a debtor sign the Chapter 13 plan, but the trend as reflected in the national form plan is against debtor's signature on the plan and plan amendments. Additional concerns were voiced regarding changes to the form plan and potential additional administrative delay and costs on debtor's counsel to obtain signatures on Chapter 13 plan amendments. With respect to potential amendments to Local Rule 9011-1 which, among other things, permits an attorney to sign for a client, the subcommittee elected not propose an amendment to that rule to delete the language on signature for a client because the Local Rule has applicability outside the context of Chapter 13 plans and plan amendments, including, without limitation, the filing of proofs of claims, settlement agreements, affidavits and a variety of additional pleadings. As such, the subcommittee believed that amendment to Local Rule 9011-1 may result in unforeseen consequences and may trigger additional rule revisions wherever the term "signature" is used in the Local Rules.

As a result, this alternative rule was proposed. The subcommittee focused on the concepts of prior informed client consent which consent can be easily proven by the attorney if challenged by the attorney's client. The subcommittee believes that the proposed rule balances the certainty for debtors and their attorneys that the Chapter 13 plan and any amendment is an authorized filing supported by readily proven consent with the need to maintain flexibility in debtor practice to timely file Chapter 13 plan amendments. The writing requirement of this rule is intended to conform to federal and state electronic signature laws and provide attorneys representing Chapter 13 debtors with the flexibility in use of technology. Non-exclusive examples of writings that may qualify under this proposed Rule include, formal physical signature, scanned copies of physical signature, e-mail approval from an authentic debtor e-mail address, text confirmation on an authenticated debtor phone number, voice data recordings and like electronic media. While the definition of "signature" in this proposed Local Rule is limited to this Local Rule, some members of the subcommittee suggest that a broader review of the meaning of "signature" should be considered by the full committee to determine whether federal or state laws on electronic signatures should be used in the Local Rules.