

Chapter 13 Procedure:
DEBTOR'S REPLY TO COMMENTS OF CHAPTER 13 TRUSTEE

LBR 3015-1(w)-(x) and 9013-1(g), (o)

Judge Zurzolo: **August 2019: New Procedure**

Judge Zurzolo has a solution to the procedural and docketing problems created when:

- (a) Debtor files a motion,
- (b) Trustee files Comments in which the trustee opposes the motion but does not request a hearing, and
- (c) Debtor files an “amended motion” without resolving the original motion.

More specifically, debtors file motions under **LBR 3015-1(w)-(x)** and **9013-1(o)** and give notice of the opportunity to file a response and request a hearing. LBR 3015-1(w)(3) requires the debtor to set the motion for hearing if Trustee Comments are filed in which a trustee opposes the motion and requests a hearing; but, LBR 3015-1(w) does not specify action to be taken if a trustee does not request a hearing.

Some debtors file a “supplement to motion” or a “supplemental declaration” in an attempt to cure defects raised in Trustee Comments to a motion. Other debtors invent an “amended motion” procedure that is not authorized in the FRBP or LBR and results in two motions that may seek the same relief. If (*on the docket*) the subsequently entered order is linked to the amended motion instead of the original motion, (1) CM/ECF does not record required statistical data, and (2) when closing the case, the court may need to ask the debtor to comply with **FRBP 7041**, **FRCP 41(a)** and **LBR 9013-1(k)** to dismiss the unresolved motion. An opposed motion is a contested matter under FRBP 9014; dismissal rules allow dismissal of an opposed motion by (a) filing a stipulation to dismiss the motion, or (b) obtaining a dismissal order.

Judge Zurzolo’s **solution is supported by Nancy Curry**, chapter 13 trustee for Judge Zurzolo’s cases. Judge Zurzolo’s solution has **two options**, both of which (a) eliminate the erroneous amended motion filing and (b) incorporate the “reply” procedure of **LBR 9013-1(g)** into the **LBR 9013-1(o)** procedure for having an opportunity to file a response and request a hearing. Both options involve the debtor filing the new form created by Judge Zurzolo, titled “**Debtor’s Reply to Comments of Chapter 13 Trustee**”.

Option #1 – Complete all 3 steps, which include **Definitely** setting a hearing:

- (1) Debtor files “**Debtor’s Reply to Comments of Chapter 13 Trustee**”,
- (2) Debtor files and serves a notice of hearing, and
- (3) Chapter 13 trustee has until **7 days before the hearing** to file **additional trustee comments**

Option #2 – Complete all 3 steps, which include **Possibly** setting a hearing:

- (1) Debtor files “**Debtor’s Reply to Comments of Chapter 13 Trustee**”,
- (2) Chapter 13 trustee has 14 days to file **additional trustee comments**, and
- (3) Debtor waits for the end of the 14-day response period and then the Debtor either:
 - A. **Files/Serves a notice of hearing** --- as trustee filed additional comments to indicate objections, or
 - B. **Files a declaration** to indicate no party requested a hearing --- as (1) the trustee did not file additional comments, or (2) trustee filed additional comments to recommend granting the motion.