A PANORAMIC VIEW OF P.R.-LBR 3015-2

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I- INTRODUCTION

May 16, 2013 is the effective date of the Puerto Rico Local Bankruptcy Rules.[1] These Rules supersede those which were promulgated on September 14, 2007 with an effective date of October 1, 2007.[2]

The current Rules "…*shall apply to all bankruptcy cases and proceedings then or thereafter* [May 16, 2013] *pending…insofar as is just and practicable*."[3] They "… *will govern procedure in all cases and proceedings under title 11…in the District of Puerto Rico"*.[4] Rule 2004-1(a) makes an exception as it relates to PENDING adversary proceedings and contested matters regarding the provisions for examination.[5]

The Rules speak of their scope but not of their purpose. We submit they should be viewed with the same purpose as the rules of civil procedure: "… *construed and administered to secure the just, speedy and inexpensive determination of every action and proceeding*".[6] The general tone of the Rules and, 3015-2 in particular, is of diligence[7] and timeliness.[8]

Rule 1001-1(f) is a tool available to to the court to achieve such a purpose. Parties are warned that failure to comply with the Rules may allow the Court, now *sua sponte*, (absent from prior Rule 1001-1(f)) to impose sanctions. Interestingly, among the examples of sanctions, conversion of the petition to another chapter is not mentioned. In its listing however, caveat is made that the court is not limited thereby.

II- RULE 3015-2 CHAPTER 13 PLAN REQUIREMENTS AND CONFIRMATION

A- GENERALLY

The first thing to note is that, just like in the prior rules, there is no Rule 3015-1.

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[1] See General Order Adopting Local Bankruptcy Rules and Forms. May 2, 2013. Hereinafter referred to as Adopting Order.
[2] Not just the prior rules but general orders, administrative orders and local forms are superseded. Rule 1001-1(g) reiterates the language of the Adopting Order, but left out the local forms.
[3] Adopting Order.
[4] Rule 1001-1(a).
[5]The words of James Thurber, writer and cartoonist (1894-1961) are worth reproducing here: "There is no exception to the rule that every rule has an exception."
[6] Rule 1 of the Fed. R. of Civ. P.
[7] Persistent and hard-working effort in doing something; the care or attention expected by the law in doing something.
[8] Happening or done at the right time or an appropriate time

Federal Rule of Bankruptcy Procedure 3015- **Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case**- consists of seven (7) paragraphs. On the other hand, the local rule consumes four and a half (4 ½) pages; has eleven (11) subsections ("a" thru "k") and therein has, twenty three (23) paragraphs and sixteen (16) subparagraphs.[9] It is quite a treat!

The national rule has subsection (a) devoted to Chapter 12 and subsection (b) to Chapter 13. The remaining subsections (c) thru (g) of the national rule apply equally to Chapter 12 and 13. P.R.-LBR 3015-2, however deals exclusively with Chapter 13. As a matter of fact, the local rules do not have any rule devoted to Chapter 12. This is potentially a growth area for the local rules.

We see P.R.-LBR 3015-2 as having eight (8) areas under its umbrella:

- service of plans
- objections (oral and written)
- responses
- amendments
- first confirmation hearing (FCH. Dare we say, "formerly known as fast track hearings")
- contested confirmation hearings (CCH)
- dismissal and,
- discharge

P.R.-LBR 3015-2 does not manage the practice related to post confirmation modified plans (PCM's). They are briefly mentioned in subsection (k), but not to set out a procedure for their consideration. This may be another area of future development of the rule.

B- REVIEW OF THE RULE

Subsection (a) Applicability

Its application is to "…*all chapter 13 cases filed in all divisions*" of the USBC. When this applicability pronouncement is coupled to the previously mentioned statements that they "…*shall apply to all bankruptcy cases and proceedings then or thereafter pending…insofar as is*

[9] In re Meek 2007 Bankr., Lexis 2140 Using the hierarchical scheme from legislative drafting manuals, as explained in *Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60-61, 125 S. Ct. 460, 160 L. Ed. 2d 389 (2004)*, statutes are identified by section and then subdivided in the following order: subsections, starting with (a); paragraphs, starting with (1); subparagraphs, starting with (A); and clauses, starting with (i). Those manuals continue the subdivision with subclauses, starting with (I); then items, starting with (aa); and subitems (AA).

just and practicable" and "*… will govern procedure in all cases and proceedings under title 11…in the District of Puerto Rico"* we can then see that Rule 3015-2 will apply, henceforward, in any matter arising in cases confirmed prior to the adoption of the Rule. So will be the case with P.R..- LBR 2016-1, particularly subsections (e) and (f) as they relate to Chapter 13 exclusively.

Subsection (b) Service and Notice of Plan.

"The debtor shall serve a copy of the chapter 13 plan… at the time it is filed with the court". Note that this rule does not state WHEN the plan is to be filed. Fed. R. of Bankr. P. 3015(b) **Chapter 13 plan** provides that the debtor may file a Chapter 13 plan with the petition. As we all know, *may* is permissive. The national rule confirms this since it states that if the plan is not filed with the petition, then it *shall* be filed within fourteen (14) days thereafter. Here we have a switch of gears to the mandatory. Reinforced by the prescription in the national rule that, "*…such time may not be further extended except for cause shown and on notice as the court may direct."* A similar recipe is to be had in case the petition is converted from another chapter to Chapter 13. So it may be argued that the local rule did not have to specify when the plan has to be filed.

The timing, however, in filing the Chapter 13 plan has its importance when we look at the next subsection.

Subsection (c) Objections to Plan Filed Prior to Meeting of Creditors.

(1) Term to Object.

"*Objections to the confirmation of a chapter 13 plan that is timely filed and noticed prior to the § 341 meeting of creditors must be filed not later than seven (7) days after the date of the § 341 meeting of creditors.."*.Our underscore. Here is where either Subsection (b) or (c) of rule 3015-2 could have defined "timely" or provided a parameter therefor. But in any event, we see that to comply with the timeliness component of this process, creditors, parties in interest and the trustee must act diligently.

It is conceivable that a debtor will file a Chapter 13 plan very close to the date in which the meeting of creditors is to be held. This can be on account of particular complexities of the case (a business debtor for example, whose books and records, if not in complete disarray, are close to non-existent) who obtains from the court an extension of time beyond the "automatic extension" of national rule 3015(b). If we use the token of seven (7) days after the date of the § 341 meeting of creditors that creditors have to file objections to the plan, one can conclude that the filing of a plan, 7 days prior to the meeting is timely. We so submit.

An example to explain the point: Meeting scheduled for June 21, 2013. Plan filed on June 14, considered timely (7 days prior). Plan filed on June 15 considered untimely (6 days prior). We count the days

starting on the day before the scheduled date, and going back. In other words the day before the scheduled date is the first of the seven that we would consider for timeliness purposes.

We believe that the filing of a plan inside a 7 day window, of the date set for the meeting of creditors does not allow for a meaningful opportunity for creditors and the trustee to review the document and prepare for the meeting. Consideration must be taken for snail mail, intervening weekends, holidays, debtor file location, review, and referral, either to inside or outside resources.

When seeking extensions of time to file plans, debtors should include in their averments; the date of the meeting of creditors, and what amount of time is being allowed for between that date and the expected date of the plan filing. The court is encouraged to consider this as one element when exercising its discretion to grant the motion and for what period of time.

(2) Written Objection.

"*An objection to the confirmation of a chapter 13 plan shall be made by motion setting forth the facts and legal arguments that give rise to the objection in sufficient detail to allow the debtor to file a reply or an amended plan that addresses the objection*."

This is the general norm. It incorporates the basic principles of national rule 9013: "*A request for an order,…shall be by written motion…shall state with particularity the grounds therefor, and shall set forth the relief or order sought."* Examining this paragraph (2) of rule 3015-2 we see that it does not require a notice for a response period to the objection itself. The notice for a response period is also absent from national rule 9013. We do find such a period of time in P.R.-LBR 9013-1 (c) ***Required Response Time Language Must be included on All Papers.*** The usual time is 14 days.

We advance the proposition that the *written objection* to confirmation of this paragraph (2) of rule 3015-2(c) *should not have* a notice period to object. We so submit on the basis that paragraph 6 of the rule constitutes the notice (regulatory notice) and identifies the period of time that debtor(s) have to respond; seven (7) days.

In the alternative, should a notice period be required for every individual instance in which an objection to the confirmation of a plan is made in writing, it should be limited to seven (7) days. That period of time would place the debtor in equal footing with the objecting party that has seven days (7) from the meeting date to file the objection.

Throughout P.R.-LBR 3015-2 we find reference to the "*facts and legal argument*". In this body of Rules we have others that make reference to "*factual and legal grounds*". See P.R. LBR 3007-1(a). For the sake of uniformity a future revision of the rules might prefer, *"legal grounds"* over "*legal argument"*.[10]

[10]**Argument**: A statement that attempts to persuade; esp., the remarks of counsel in analyzing and pointing out or repudiating a desired inference, for the assistance of a decision maker. **Ground**: To provide a basis for (something, such as a legal claim or argument). Black's Law Dictionary, Ninth Edition.

(3) Trustee's objection in Minutes of Meeting of Creditors.

"The chapter 13 trustee may elect to object to the confirmation of a chapter 13 plan in the minutes of the …meeting of creditors…"

This is the recognition of a practice, long-time- in-existence- by Trustees who include in their reports of the meeting of creditors the grounds they have for not favoring the confirmation of the proposed plan. Such practice expedites the processing of the case. Experience has shown that the Trustees are explicit and specific on the grounds for objection and these are, in the majority of the cases, understood by counsel and debtors, who routinely address them, without the need of a separate motion thereon.

(4) Oral Objection.

"An oral objection may be made on the record at the… meeting of creditors by any party in interest, and shall be included in the minutes of the meeting… The oral objection …may substitute the separate motion of objection… However, if the oral objection is not resolved to the satisfaction of the objecting party, the objecting party must file a separate… motion of objection reiterating the oral objection no later than seven (7) days prior to the first confirmation hearing in order to preserve its objection." Here again the 7 day period shows the intent of the drafters of the rule to require diligence on the part of creditors.

This objection mechanism is new to the 2013 rule. It offers flexibility to the objecting party, reduces costs and promptly advises debtor of the grounds for objecting; in turn allowing debtor to work promptly on the matter.

The text of this paragraph four (4) does not give or impose specifically on the debtor the duty to respond thereto. It is however strongly implied when it states: "*if the oral objection is not resolved…"* Moreover, the text of paragraph six (6) *Response to Objection,* is naturally applicable to the oral objection which is filed as part of the Trustee's report after the meeting of creditors.

Having debtor worked on the matter, but not to the satisfaction of the objecting party then, the latter is required to act diligently by reiterating its objection in writing at least seven (7) days ahead of the First Confirmation Hearing (FCH).

(5)Service of Objection

Very much straightforward instructions to file the objection with the court and serve it on the chapter 13 trustee, the debtor, and the debtor's attorney.

We submit that in the event where the trustee is substituting his report on the meeting for the written objection or where the trustee incorporates to the report, an oral objection by a creditor, the trustee will serve the objection on counsel for debtor by way of the notice given through CM/ECF and mail a copy to debtor(s).

(6) Response to Objection

In the presence of an objection to the confirmation of a plan, this paragraph grants the debtor(s) seven (7) days to execute either corrective action or reply thereto. The corrective action is by filing "…*an amended plan that addresses each objection…"* If a reply is filed, then it must set:

- ✓ "… *forth the facts and legal arguments that give rise to the reply in sufficient detail to,*
- ✓ *allow each objector, if possible, to reconsider and withdraw its objection."*

Subsection (d) Amendments to Plan Between Meeting of Creditors and First Confirmation Hearing.

P.R. LBR 3015-2 is conceived with two confirmation hearings; and the spirit that the majority of the cases see their plans confirmed at the First Confirmation Hearing (hereinafter referred to as the "FCH").

The optimal scenario where this will happen is when a plan, timely filed before the meeting of creditors is unopposed.

Then we have the setting where the plan was objected yet, debtor(s)' reply sets *forth the facts and legal arguments that give rise to the reply in sufficient detail to allow each objector, to reconsider and withdraw its objection,* and the objector, effectively withdraws it.

The third setting would be where, reacting to the objection, the debtor amends the plan. It could be confirmed at the FCH if the amended plan was received by the chapter 13 trustee and filed with the court at least fourteen (14) days before the date of the FCH. We impress upon you that the rule uses the imperative" *must"* regarding the element of receipt by the Trustee: *"… the amended plan must be received by the chapter 13 trustee and filed with the court at least fourteen (14) days before the first confirmation hearing."*

At first blush, it would appear that the crucial matter would be the filing of the plan 14 days before the FCH and receipt by the Trustee. However, bear in mind subsection (b) ante, ***Service and Notice of Plan.*** *The debtor shall serve a copy of the chapter 13 plan on all creditors, the chapter 13 trustee, and other parties in interest at the time it is filed with the court. A certificate of service setting forth the date and manner of service and the names and addresses".* So, while subdivision (d) states that the Trustee *must receive the plan* this by no means excludes service of the amended plan on the other parties to the case.

Now, regarding that amended plan, filed after the meeting of creditors, a written objection can be made, and if so has to be done

> *"…no later than fourteen (14) days from the date the amended plan is filed or seven (7) days before the date set for the first confirmation hearing, whichever is earlier…*
>
> *by motion setting forth the facts and legal arguments…in sufficient detail to*
>
> *allow the debtor to*
>
> *file a reply or*
>
> *another amended plan that addresses the objection."P.R.-LBR 3015-2(d)(1)*

The phrase "*whichever is earlier*" is troublesome, in our view, since of the two time periods mentioned therein. One (14 days) must be computed after an act takes place (the filing of the amended plan), while the other term (7 days) is computed before a scheduled event (FCH), yet to take place. We will have to see how this plays out in practice.

The rule in paragraph 2 allows the trustee to file an objection to the amended plan. Just like any other party in interest, the trustee is required to file the objection no later than 14 days after the filing of the amended plan. Whereas under paragraph (d)(1) parties in interest may also file the objection in 7 days prior to the confirmation hearing, under (d)(2) the trustee is allowed to do so 5 days before the confirmation hearing..

Just like under (d)(1) the trustee under (d)(2) has the 14 or 5 days regulated by the conditioning phrase "…*whichever is earlier"* . Thus, we too will have to wait to see how this conundrum plays out in practice.

(e) First Chapter 13 Confirmation Hearings.[11]

The salient feature of this hearing is that it "…*will be a non evidentiary… hearing*" This has practical benefits for the debtors and their counsel.

At this FCH a plan (be it the originally filed or a subsequently amended plan) may be confirmed if three general premises are met at the time:

- ✓ no objection is pending - Rule 3015-2(e)(1)(A)

[11] Just to the extent that history and monikers can bring perspective to the understanding of newly minted concepts, we can mention here "Fast Track Hearing". With these 2013 Rules that designation is put to rest and now our daily bankruptcy "language" welcomes First Confirmation Hearing (FCH).

- ✓ Applicable Chapter 13 and Title 11 provisions have been met Rule 3015-2(e)(1)(B)
- ✓ No motions to dismiss, convert or abstain are pending. Rule 3015-2(e)(1)(C)

The text of the second premise above mentioned is found in Rule 3015-2(e)(1)(B) and we quote:

"*…all requirements for confirmation under §§ 1322 and 1325 as well as all other applicable provisions of the Bankruptcy Code are satisfied"*

The reader is cautioned to the fact that that the text of section 1325 of the Code has a compliance coverage wider than that of the rule. We refer to section 1325(a)(1) that states:

"*the plan complies with the provisions of this chapter* [meaning Chapter 13] *and with the applicable provisions of this title".*

Of course the argument may be made that by incorporating section 1325 to the rule, and therefore subsection (a)(1), compliance with "*the provisions of this chapter"* is also covered and required by the Rule. We make the comment for the sake of awareness.

We all want to confirm the Chapter 13 plan at this FCH. When that goal is not met, then the FCH will be rescheduled and morph into a Contested Confirmation Hearing (CCH). This will happen if of the following three circumstances are present; Rule 3015-2(e)(2)(A)(B)& (C):

- ✓ at the time of the FCH there is an objection to confirmation pending
- ✓ at the time of the FCH the meeting of creditors has not been held and closed
- ✓ an amended plan was filed less than fourteen (14) days prior to the FCH

Here the Rule in paragraph 3 provides a bright, amber-blinking-lights, traffic warning sign. It tells us that if the plan is not confirmed at the FCH and it is continued to CCH,

"*…the court may consider the dismissal or conversion to chapter 7 for cause at the contested confirmation hearing".*

We submit that this means that a debtor who is going to a CCH may face, as the first order of business when the case is called, the burden of showing cause why the case should not be dismissed or converted to Chapter 7. That task may prove to be indeed a heavy burden, if in turn by that CCH, the prospects for confirmation appear to be bleak.

(f) Amended Plan Filed Less Than 14 Days Before First Confirmation Hearing or After the First Confirmation Hearing

This subsection of Rule 3015-2 prescribes the period of time that an objecting party has, 14 days, under the circumstances of its title. Regarding a plan that is filed less than 14 days before the FCH, for which a party has 14 days after the plan is filed to object, contrast this latter time period with the 14 and 7 or 5 days mentioned in subsection (d)(1) and (2).

The standard that the motion objecting confirmation must follow is one seen already in the rule. It must set "forth the facts and legal arguments that give rise to the objection in sufficient detail to allow the debtor to file a reply or an amended plan that addresses the objection.

The rule allows for the amended plan to be confirmed before the date of the CCH if no objection is filed to it within 14 days from the date the amended plan was filed. This a good provision for the process itself, as it expedites the confirmation. This also incorporates to the rule the current practice, as tailored by the now superseded General Order that dealt with Confirmation of Chapter 13 plans.

We submit that the amended plan can also be confirmed under the scenario where it received an objection, but the debtor addressed it, and the objecting party in view thereof, withdraws the objection.

Subsection (f) does not indicate at what time prior to the CCH the Court will confirm the amended plan. If current practice is to give any indication, it will happen a few days before or on the eve of the CCH. We have seen some attorneys move the court to confirm a plan when on the docket there is no longer an objection pending. In so doing the attorneys provide a valuable follow-up task for the court, which can then review the docket and verify that indeed the plan is ripe for confirmation. Although from the court's side this may be viewed as a piecemeal approach to confirmation, it nonetheless filters out cases from the rush-hour traffic in the couple of days prior to the CCH. In an era where the court faces "sequestration" and budget cuts that translate into a reduction in workforce, this follow-up by the attorneys may have a new significance.

Subsection (g) Response to Objections Filed Before Contested Confirmation Hearing

The response methodology in subsection (g)(1), for when an amended plan is filed less than 14 days before the FCH, is similar to when it is filed prior to, at, or after the meeting of creditors (Rule 3015-2(c)(6). Debtor must, within 7 days after service of the objection file either:

- ✓ an amended plan that addresses each objection; or

- ✓ a reply following the standards we already know of setting forth the factual and legal arguments in sufficient detail to allow each objector, if possible, to withdraw the objection. Rule 3015-2(g)(1)(A)&(B).

Here again, we see the relatively short period of time, seven (7) days, that debtor is given to respond to an objection. This stresses the point that, under this new iteration of Rule 3015, diligence and timeliness are the engines powering this process.

And like before, in this Rule 3015, there is another persuasive/coercive tool to fire the engine of diligence and timeliness. Under subsection (g)(2) we have that if seven (7) days prior to the CCH the debtor has not filed an amended plan or response to the objection, the court may (permissive action, but really, watch out!) impose sanctions, including but not limited to:

- ✓ reduction of attorney's fees
- ✓ disgorgement of attorney's fees
- ✓ denial of confirmation or,
- ✓ dismissal of the petition

The above are quite a motivating set of remedies! Preferably to be avoided.

The first comment we have is that we do not see, under the premise of the rule (an objection not addressed by the debtor, either by an amended plan or response) that denial of confirmation constitutes a sanction. Denial of confirmation would be the natural result of the posture that the case finds itself. Sanctions are a reaction to an act or omission contrary to the diligence or timeliness required by the rules for the prosecution of a bankruptcy case and, in Chapter 13 particularly, for the inability to confirm the plan. In other words, the denial of confirmation is not a sanction mechanism, because if it were, standing alone, then it would be penalizing creditors unjustly.

Dismissal is a sanction that hurts the debtor directly. The protections afforded by the bankruptcy code are lost. The opportunity to reorganize is lost (at least this time around), money is lost by the debtor (attorney and filing fees, etc); hope is lost or diminished.

Reduction or disgorgement in attorney's fees also hurts, even for those attorneys who are risk prone and factor such an event in their business/service delivery model.

We note that in the enumeration of sanctions dismissal is an option mentioned, but not so conversion. We alert not to be confident in the omission. Do not disregard a conversion to Chapter 13 as a sanction under this rule. Remember that back in Rule 1001-1(f) **Failure to Comply with Local Rules, t**he court, *sua sponte,* may impose sanctions for failure to comply with the rules. Conversion to Chapter 7 is indeed mentioned as an option when at the CCH the plan is not confirmed (Rule 3015-2(h)(3).

Moreover, under 11 U.S.C. §1307(c) a balancing test the court must always make when deciding to convert or dismiss a petition is what is in the best interests of creditors and the estate. So, in our opinion, conversion is a threat under subsection (g) (2), even if it is not specifically mentioned therein. The future might as well see an inclusion to this paragraph of conversion to Chapter 7 as an option.

Our last comment on this subject of subsection (g)(2), which applies equally to the text of subsection (h)(3) is related to due process.

Do not rest on any safe harbor preceding sanctions under Subsections (g) and (h) of Rule 3015-2. Notice of the intended action has been provided in the rules themselves, and more than once. That notice could be referred to as Regulatory Notice (a notice contained in the Rules) similar to legal notice, like the one we have in 11 U.S.C. 521(i) whereby, if a debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition. In the case of Sepulveda-Soto v. Doral bank (In re Sepulveda) 2013 WL 1909037 the dismissal was impugned by a debtor and the 1st. Cir BAP upheld the dismissal in spite of the alleged lack of notice.

(h) Contested Confirmation Hearings.

Here is now the debtor(s) who was unable to confirm the plan at the FCH, or thereafter, for whatever reason. Remember that the first order of business at this CCH may be a showing of cause against the conversion or dismissal of the petition (Rule 3015-2(e)(3)).

Subsection (h) does not prescribe in much detail the procedure on how the confirmation hearing is to be conducted. Going back to subdivision (e), there we were told that the FCH was a non

evidentiary hearing. Subdivision (h) does not have a counter qualifier dropping the pre-fix "non" and state that the CCH is an evidentiary hearing. Subdivision (h) in its title and text does say that this is a "contested" hearing. Consequently the debtor and objecting party should be prepared to conduct themselves during the hearing as if it is indeed set for the presentation of evidence. Subdivision (h) does tell us that at the commencement thereof the Court may call and confirm those cases in which the plan:

- ✓ stands unobjected
- ✓ complies with all requirements for confirmation under §§ 1322 and 1325 and all other applicable provisions of the Bankruptcy Code; and
- ✓ there is no motion to dismiss, convert, or abstain pending in the case.

Subdivision (h) tells us that any creditor who objects to confirmation of the plan (and we add; any party in interest) whose objection is not resolved or withdrawn prior to the hearing, shall attend the contested confirmation hearing. In other words, YOU OBJECT, YOU ATTEND.

The consequence of a creditor or party in interest objecting and not appearing is that the court may overrule the objection for failure to prosecute. Rule 3015-2(h)(2).

Debtor's attorneys should have ever present the dictates of Rule 3015-2(h)(3).

> IF THE COURT DENIES CONFIRMATION OF A PLAN AT A CONTESTED CONFIRMATION HEARING, THE OURT MAY ENTER AN ORDER DISMISSING OR CONVERTING THE CASE TO CHAPTER 7 FOR CAUSE WITHOUT FURTHER NOTICE OR HEARING.

It might well be that the CCH is indeed a contested hearing, yet one not necessarily involving the presentation of evidence. This can happen for example, where the facts/documents have been stipulated by the parties or the issue is one of interpreting the law. It might also happen that on that day the court does not have the time to hear the evidentiary/contested hearing and it is re-scheduled. In any event, because of the hanging Damocles Sword of Rule 3015-2(h)(3) it is better to be prepared. Don't rely on a belief that in your case, the court won't have time to hear

it. "Professionalism is largely a matter of thwarting Murphy's law: if something can go wrong, it will." [12]

Prepare, attend prepared. "Even though preparation is expensive, it is far more cost-effective than ignorance-and less embarrassing."[13]

Moving on, in Rule 3015-2(h)(4) we have that the court may continue a contested confirmation hearing by announcement thereat of the continued date and time without further written notice.

Subsection (i) Dismissal of Case upon Denial of Confirmation.

If the court denies confirmation of the plan, it may issue an order dismissing the case unless, within fourteen (14) days after denial of confirmation the debtor:

- ✓ files a new plan
- ✓ moves to convert the case to another chapter
- ✓ files a motion for relief from the application of this subsection; or
- ✓ the court otherwise orders.

This subsection (i) is similar to former Rule 3015-2(h). We note that from the 2007 Rules, as well as in this version of 2013, conversion to another Chapter, such as Chapter 7, is not listed as an option by the court in the event the debtor does execute one of the three alternate courses of action within his or her province. Having applied this Rule 3015-2(h) to a given debtor, it may prove to be more difficult than in other scenarios discussed in this paper for the court to subsequently, convert to Chapter 7, if in the intervening time of 14 days, no development has been placed on the docket.

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[12] MAKING YOUR CASE The Art of Persuading Judges. Antonin Scalia and Bryan A. Garner. Thomson West 2008.

[13] Avoiding Judicial Wrath: The Ten Commandments for Bankruptcy Practitioners. Nancy B. Rapaport Journal of Bankruptcy Law and Practice Vol 5, p. 617.

And, even though the Rule does not enumerate it as an alternative for the debtor, he or she could move for a voluntary dismissal. Such voluntary dismissal could have strategic value in the bankruptcy, in any outside-bankruptcy forum or, in a subsequent bankruptcy.

Subsection (j) Discharge Upon Completion of Plan.

The grand prize for the debtor is within reach. Plan payments have been completed and the discharge is in sight. Since 2005 a new "exit pass" is required of the debtor as a corollary of the Domestic Support Obligation concept.[14]. This "exit pass" is tied into the notice duties of the trustee.

Upon completion of payments the Trustee's Report of Plan Completion shall state:

- ✓ that there were no DSO due to be paid by the debtor;
- ✓ debt that there were DSO due to be paid by the debtor and that the debtor has certified that those obligations are current;
- ✓ that there were DSO owed by the debtor, that the trustee is unable to determine if they are current, and the debtor has not applied for a waiver under applicable statute.

In view of the fact that a DSO is defined as a debt that accrues before, on, or after the date of the order for relief in a case under title 11, the information to be conveyed by the debtor would also include whether the debtor is current in this type of obligations that first came into existence at a date AFTER that in which the petition was filed.

And then, if the trustee informs the court in writing that he is unable to determine if the debtor is current with domestic support obligations, the court shall issue a notice of intent to close the case without a discharge unless, within fourteen (14) days, the debtor files a certification with the court, under penalty of perjury, stating that all post-petition DSO are current.

What all this translates into is that, there must be effective communication among the debtor and trustee towards the end of the case. A significant number of that communication will be initiated by the trustee because when a case is identified by the debtor as having a DSO, we flag our case management system. However, in the cases where the DSO accrues for the first time post petition (meaning with this that is established post petition) it then behooves the debtor to keep his or her counsel updated, as well as the Trustee.

[14] 11 U.S.C. §101(14A)

For all DSO debtors the duty to cooperate with the Trustee in the administration of the case would include the update of any change in debtor's address; change in employer and/or of the employer's address. See 1302(d)(1)(C)(ii) & (iii).

Subsection (k) Full Force and Effect.

An order confirming a chapter 13 plan remains in full force and effect until a subsequently modified post-confirmation chapter 13 plan is approved by the court. This is quite a straightforward statement. In practice it might prove troublesome for debtors. According to this effectiveness clause, when a debtor moves for modification, say to reduce the monthly installment, he or she is bound to continue with the installment amount of the prior confirmed plan, until such time as the modified plan is approved. Consider the consequences if the modification process takes, let's say three months. The rule shows some welcome flexibility in its second sentence.

The second sentence of this rule states: *"Upon filing of a request for modification which proposes discontinuance of further distributions on a particular claim or claims, the trustee is authorized to hold such funds in reserve until the request is resolved by the court"*. The trustee or one, welcomes this provision of the rule and hopes that it will save time and effort to all. On the other hand if indeed the first sentence of the rule has the effect that we see above when a modified plan is filed for that purpose, maybe what is contemplated in the second sentence, if crafted well in the modified plan, could eliminate or ameliorate the effects thereof.

III FINAL COMMENT

In his book, THE LAST LECTURE, Randy Pausch, speaks of lessons for life, many of which were learned from others. One lesson came from his football coach. "…you've got to get the fundamentals down, because otherwise the fancy stuff is not going to work." [15] All of us need to go back to, the now new, Puerto Rico Local Bankruptcy Rules and READ them. We have to read them with an eye towards the goal they pursue and bearing in mind that what is expected of all of us is diligence and timeliness.

No doubt that the better a debtor allows his or her attorney to prepare the case per-filing, the smoother the travel trough the bankruptcy process will be, if coupled with the assertive activity of counsel. We must be aware that once the debtor has a green light to proceed in bankruptcy, the local rules now require that he do so at a steady speed. Detours and bottleneck traffic, it seems, will not be met with regulatory leniency .

[15] Hyperion 2008.p.36.

An anonymous author once said: “If you do not know where you are going, any road will take you there.” Or in the words of Yogi Berra: "You've got to be very careful if you don't know where you're going, because you might not get there."

By understanding and adhering to these rules we will be able to take the right road; the road that will take is to where we want to go.

And remember, the joy is in the journey.