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Consumer Practice Extravaganza

Taking the Fear Out of Chapter 13

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TAKING THE FEAR OUT OF CHAPTER 13

By
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STATUTORY PROVISIONS

One key to removing the fear in chapter 13 is familiarity with relevant statutory and Federal Rule provisions. Among some of the pertinent provisions are the following:

Section 109(e)

Section 109(e) provides: only an individual with regular income who owes noncontingent, liquidated, unsecured debts of less than $465,275 and noncontingent, liquidated, secured debts of less than $1,395,875, or an individual with regular income and their spouse—excluding stockbrokers or commodity brokers—may be a debtor under chapter 13.[1]

Section 109(e) has been interpreted both broadly and narrowly.

A broad view of section 109 may provide greater opportunity and access to chapter 13. At the same time, if an individual has uncertain, unstable, or minimal income, he may have greater difficulty remaining in chapter 13 or completing a chapter 13 plan.

Section 521

Section 521 sets out the duties of a debtor. In a chapter 13 case, the debtor's duties are listed in subsections (a)(1) and (3), (b), (c), (e), (f), (g), and (h).

If section 521(a)(1), dealing with the required statements and schedules as well as pay advices, is not met within 45 days of the petition date, the court will dismiss the case pursuant to section 521(i).

By contrast, if section is 521(e)(2)(A), dealing with providing tax returns, is not met, a court may dismiss a case pursuant to section 521(e)(2)(B) unless the failure to comply is due to circumstances beyond the control of the debtor. Because the

[1] These amounts are subject to adjustment. 11 U.S. C. § 104.

court shall consider if the failure to comply is beyond the control of the debtor, dismissal under section 521(e)(2)(B) must be after notice and opportunity for hearing.

Section 1302

Section 1302 iterates the duties of the chapter 13 trustee. These include performing tasks specified in sections 704(a)(2)-(7) and 704(a)(9), such as managing funds received, ensuring debtor compliance with payment schedules, advising debtors on non-legal matters, and assisting the debtor in performance under the plan.

The chapter 13 trustee must also attend hearings on property value, plan confirmation and modifications, and, in cases involving domestic support obligations, provide required notices to claimholders and state child support enforcement agencies.

Absent from the statutory duties is the duty of section 704(a)(1) to collect property of the estate or reduce to money property of the estate. The chapter 13 trustee has no standing or authority to collect, or liquidate, property of the estate. The chapter 13 trustee has no powers or authority under section 363 (a chapter 13 trustee cannot use, sell, or lease estate property).

Section 1303

Section 1303 lists the rights and powers of the debtor in chapter 13. These include rights and powers under sections 363(b), 363(d), 363(e), 363(f), and 363(l).

- Section 363(b) allows the debtor to use, sell, or lease estate property outside the ordinary course of business, with court approval.
- Section 363(d) ensures any actions taken comply with nonbankruptcy laws for non-commercial corporate or trust debtors.
- Section 363(e) allows an interested party to request the court to limit or condition the trustee's use, sale, or lease of property to protect their interest.
- Section 363(f) allows the debtor to sell property free of other parties' interests if allowed by nonbankruptcy law, if the party consents, if liens total less than the sale price, if the interest is disputed, or if the party could be legally forced to accept monetary compensation, and
- Section 363(l) enables the debtor to use, sell, or lease property despite any contract, lease, or law triggered by the debtor's insolvency, case filing, or trustee appointment that would alter or terminate the debtor's property interest.

Notably, only the chapter 13 debtor has the powers of section 363 (to use, sell, or lease property of the estate). It is also notable that the chapter 13 debtor has only the powers contained in 363(b), (d), (e), (f), and (l). The chapter 13 debtor does not

have express statutory authority to compel a sale of a co-owner's interest under section 363(h).

Section 1307

Section 1307 describes when a case may be dismissed or converted. A party other than the debtor may seek to dismiss a case, but only after notice and hearing and showing grounds. One of the grounds to dismiss a chapter 13 case is the failure to file tax returns as required by section 1308 of the Bankruptcy Code.

Section 1321

Section 1321 succinctly states "The debtor shall file a plan." The section contains no other language. Hence, only the debtor may file the plan. *But see* Section 1329(a), providing that "after confirmation of the plan . . . the plan may be modified upon request of the debtor, the trustee, or the holder of an allowed unsecured claim . . ."

Section 1322

Section 1322(a) states which provisions *must* be included in a chapter 13 plan. These provisions require: (1) submitting future earnings or income to the trustee as needed for execution of the plan, (2) full payment in deferred cash for all priority claims under section 507 unless otherwise agreed, (3) equal treatment of claims within the same classification, and (4) at least partial payment of certain priority claims if all projected disposable income for the first five years of the plan is applied to payments.

Section 1322(b) states which provisions *may* be included in a chapter 13 plan. These are provisions to: (1) designate classes of unsecured claims without unfair discrimination; (2) modify rights of secured or unsecured claim holders (excluding those secured by the debtor's principal residence); (3) cure or waive defaults; (4) allow concurrent payments on unsecured and secured claims; (5) cure defaults while maintaining payments on unsecured or secured claims during the term of the plan, when the last payment on those claims is due after the final payment under the plan; (6) pay postpetition claims under section 1305; (7) assume or reject executory contracts or leases; (8) pay claims from the debtor's or estate's property; (9) vest property in the debtor or another entity upon confirmation or at a later time; (10) pay interest on nondischargeable unsecured claims to the extent of available disposable income; and (11) include any other provisions consistent with the Bankruptcy Code.

Section 1325

Section 1325(a) provides that a court "shall confirm a plan if –" certain requirements are met. These requirements include compliance with provisions of chapter 13 and relevant provisions of Title 11, paying any required pre-confirmation fees, proposing the plan in good faith, and filing the petition in good faith. Additionally, the plan must ensure that the value of property distributed for each unsecured claim meets or exceeds what amounts the holder of the unsecured claim would receive in a chapter 7 liquidation.

The confirmation requirements for secured claims include the below. For secured claims,

(1) the claim holder has accepted the plan; or

(2) the plan provides that the claim holder retains the lien securing the claim until the earlier of the payment of the debt or the discharge occurs, the value as of the effective date of the plan of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim, the property is to be distributed pursuant to section 1325 is in equal monthly amounts, and for claims secured by personal property, the amount of the payments shall be sufficient to provide adequate protection to the holder; or

(3) the debtor surrenders the property securing such claim to the holder.

In addition, the debtor must have demonstrated the ability to make all payments and comply with the plan, be current with postpetition domestic support obligations, and have filed all necessary tax returns.

Section 1325(b)(1) provides "if the trustee or holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan –

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan."

The court has no statutory authority to deny confirmation of a plan on disposable income grounds absent an objection from the trustee or an unsecured creditor holding an allowed claim.

FEDERAL RULES OF BANKRUPTCY PROCEDURE

Certain Federal Bankruptcy Rules will apply to all chapter 13 cases. Familiarity with the Rules will help absolve the fear of chapter 13.

Rule 1007:

This Rule is intended to outline the procedure to meet the requirements of section 521. It sets forth the items to file and their time periods within which to file them. These include what specific forms must be filed to initiate the voluntary bankruptcy case and how to obtain an extension of time for the same, plus the additional statements and schedules that must be filed. The Rule also addresses in subsection (c) the time limits for all required official forms in the case, including the filing of the certification (formerly the statement) of completion of a postpetition financial management education. The Rule includes a requirement in subsection (f) for submitting a verified statement that sets out the debtor's social security number. A careful reading of (and compliance with) Rule 1007 can help avoid traps which may turn what could be an easy case into a difficult case.

Rule 1016:

This Rule addresses the death or incompetency of a debtor. It is helpful to understand that death does not mandate a dismissal of a chapter 13 case; the case may proceed if further administration is possible and in the best interest of the parties.

Rule 1017:

This Rule addresses the dismissal or conversion of a case. This Rule explains the timing, mechanism, and procedure for dismissals by the court or those sought by a party. Understanding the terms of this Rule is one of the most effective ways to take the fear out of chapter 13.

Rule 2002:

This Rule is the key to understanding when to set a hearing. The Rule also addresses who requires notice of that hearing, notice of the action set for that hearing, and notice of the time period to object to that action. Certain provisions to note include:

(a) (4): the Rule does not require any particular number of days' notice for a motion to dismiss a chapter 13 case, regardless of who filed the motion.

(b) At least 28 days' notice must be given by mail to the debtor, trustee, creditors, and indenture trustees of deadlines and hearings for objections and plan confirmations in chapter 13 as well as for disclosure statement approvals.

Rule 3004:

This Rule contains an option that may be helpful to a debtor.

Within 30 days of the deadline to file a proof of claim, if a creditor did not timely file a proof of claim, the debtor or trustee may file a proof of claim for that creditor.

Rule 3015:

This Rule addresses the filing the plan, objections to confirmation, and modification of the plan.

Rule 3015 is one of the important chapter 13 federal rules to read in its entirety. Under subdivision (b) the Rule provides when the plan must be filed. Under subdivision (c) the Rule directs the use of a form and which form may be used. subdivision (d) describes when the debtor must serve the plan on all creditors, and subdivision (f) states an objection to confirmation must be filed 21 days prior to the hearing on confirmation of the plan. Subdivision (h) describes the process for modification of the plan. The debtor may be required to serve the plan, plus serve notice of the hearing on confirmation of the plan and the deadline to object to confirmation of the plan.

Rule 4002:

Rule 4002 sets forth certain requirements in addition to the statutory duties of sections 521, 341, and 343. These include subdivision (a) submitting to an examination and providing information to the trustee, and subdivision (b) providing proof of identification and certain documents to the trustee.

CASELAW

Staying informed of court opinions is essential to mastering chapter 13. Some noteworthy opinions regarding chapter 13 include the following.

***United Student Aid Funds, Inc. v. Espinosa*,** 559 U.S. 260, 275-78 (2010).

A confirmation order will bind the parties to it, even if the order confirms a plan that contains a provision contrary to the Bankruptcy Code if the affected party had notice of the provision but failed to object to it. Yet, the Bankruptcy Judge is not compelled to confirm the plan simply because no party objected; the Bankruptcy Judge must confirm the plan only if the Judge finds the plan complies with the requirements of section 1325(a).

Johnson v. Home State Bank, 501 U.S. 78, 83-88 (1991).

A debtor whose personal liability has been discharged in a chapter 7 but whose property is subject to a lien may use chapter 13 to address the claim against his property (even if he is not seeking a discharge of the personal liability).

Trantham v. Tate, 112 F.4th 223, 235-36 (4th Cir. 2024).

A form, even if required by Rule, may dictate *how* a debtor proposes her plan but not *what* she proposes in her plan. A court may not deny confirmation of a plan that complies with the requirements of the Bankruptcy Code although it may deviate from a local required form (nor may a court compel a debtor to justify plan provisions that comply with section 1322 of the Code).

COMMUNICATION

Effective, proactive, and responsive communication can make a difficult case easy. By contrast, ineffective, nonresponsive, or unclear communication can make an easy case difficult.

Some tips for effective communication in chapter 13 cases include the following:

- Actually take the time to communicate. Some aspects of communication have been inadvertently abandoned as a result of remote meetings of creditors and other hearings, which makes effective communication attempts that much more important. Don't be afraid to pick up the telephone.

- If you're emailing, have appropriate follow ups in place to know whether your email communication was actually effective. If you didn't receive a response to your email, try again – or pick up the telephone. Maybe try again with copying or blind copying others on the email in an attempt to elicit a response.

- Know your contacts at your Chapter 13 Office(s). Offices are of varying sizes, and positions within each office likewise vary depending upon caseload. For instance:
    - Does the Case Administrator handle pre-confirmation matters, or is it the Paralegal or Staff Attorney?
    - Who has ultimate settlement authority over confirmation issues – is it only the Trustee, or is the Staff Attorney or someone else able to resolve outstanding matters?
    - Who handles post-confirmation matters such as modifications or requests for suspension / offline disbursements?

- Know where your Trustee wants proposed Agreed Orders sent, and know if there is a preferred format for signature blocks on those orders.

- Build a rapport with your local stakeholders and keep the lines of communication open because actual intent cannot always be inferred from a party's actions. For instance, a debtor may file a motion to incur specifically to get a denial; or a trustee may not sign off on a proposed agreed order, but actually not have an opposition to the terms of that order.

- Understand that patience, respect, and professionalism go a long way.

DOCUMENTATION

The Code and Federal Rules require certain documentation to be filed or provided. Failure to file timely, or to seek an extension or waiver, may be fatal to a case.

In addition to the documentation required by the Code and Federal Rules, some chapter 13 trustees and some courts may require chapter 13 debtors to submit additional documentation. Examples of the additional documentation may include:

- Recent pay stubs
- Recent bank or other financial account statements
- Homeowners' insurance declarations
- Evidence of vehicle insurance
- 401k loan information, such as end dates

Cases involving a debtor who owns a business will require additional documentation, such as:

- Monthly ledgers showing gross receipts and expenses
- List of business assets with values
- List of business liabilities, including amounts
- Business Insurance
- Business tax returns and other tax documents
- Business financial account statements

REDACT! Trustees take differing positions relative to redaction of personally identifiable information (PII). Some Trustees will not accept documents that have not been redacted because of the potential liability of having PII sitting on their computer server.

On the Edge

By Caleb Chaplain and Vincent J. Roldan

Rules Are Made to Be Broken ... if in Conflict with the Code

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In the business bankruptcy context, bankruptcy courts and academics celebrate debtors' creativity to propose plans that are confirmable and crafted through creditor collaboration. Although sometimes such carefully crafted plans are not as successful before the highest court of the nation,[1] bankruptcy courts at the local level leave the chapter 11 business debtor to drive the case and to propose a reorganization plan that best fits the needs of the debtor and parties-in-interest. This freedom permeates the Bankruptcy Code and makes bankruptcy a dynamic and rewarding area of practice. Bankruptcy courts that allow a debtor flexibility when proposing a plan in chapter 11 are welcoming and attractive venues. Unbridled by burdensome (possibly dogmatic) local rules and practice concerning chapter 11 plans, chapter 11 debtors may propose (and ultimately confirm) a successful reorganization plan, albeit within the confines of §§ 1123 and 1129.

In contrast, there seems to be special "protection" (to put it nicely) provided to and imposed on debtors in consumer cases under chapter 13. Bankruptcy courts clearly do not intend to make life harder for their debtors beyond what is already mandated by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. However, some local rules appear intended to save chapter 13 debtors from themselves, in the way a parent may keep their toddler safe on a leash at the county fair. Other local rules are ancient relics of a bygone era, yet are enforced by judges and trustees without memories of their origins.[2]

The additional impositions may, at times, be at odds with the consumer debtors' desires and, more importantly, their rights under the Code. A recent case in point is in *Trantham v. Tate*,[3] where the Fourth Circuit confronted a conflict between a local form and a chapter 13 debtor's statutory options when proposing a chapter 13 plan. The opinion underscores the need to allow debtors to make their own choices and exercise their rights under the Code, even if a bankruptcy judge or chapter 13 trustee would advise otherwise.

Statutorily Unremarkable Choice Challenged by Local Practice

Sheila Ann Trantham filed a chapter 13 petition in the Western District of North Carolina.[4] She proposed a chapter 13 plan providing that property of the estate would vest in her at confirmation.[5] Statutorily, this act was nothing of note.

Quite simply, the Bankruptcy Code provides that the "debtor shall file a plan,"[6] which Trantham did. A chapter 13 plan "may ... provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity."[7] Trantham's plan provided that property of the estate vested in her at confirmation. With vesting at confirmation, she would retain ownership and control over her property,[8] but would be able to use or sell her property outside the ordinary course of business as she saw fit.[9] Trantham would not have to file a motion, notice a hearing, pay a filing fee, pay her attorney or ultimately obtain court approval.[10] Based on a plain reading of the statute and a review of the plan, the proposed vesting provision merited little controversy under the Code. It appears that Congress specifically protected her choice to vest the property of the estate in herself at confirmation.[11]

However, the chapter 13 trustee objected to the plan because the local form chapter 13 plan required vesting at the entry of the final decree.[12] Significantly, the form plan did not even provide space to make an election under § 1322(b)(9) — it simply contained boilerplate language that "[a]ll property of the Debtor remains vested in the estate and will vest in the Debtor upon entry of the final decree."[13] Trantham merely struck through the form language, and asserted her option to propose a plan

1 *See, e.g., Harrington v. Purdue Pharma LP*, 144 S. Ct. 2071 (2024). As a side note, ABI held a webinar shortly after the Supreme Court issued its decision in this case, *available at* abi.org/newsroom/videos. ABI also published a digital book, *The Purdue Papers*, *available at* store.abi.org.

2 Courts amend their local rules, proactively adapting for the changing times. *See, e.g.*, General Order Governing Complex Chapter 11 Case Procedures, Bankr. D.N.J. Aug. 1, 2024 (enacted by New Jersey bankruptcy court "to implement procedures to better serve the bench, bar and public"); *see also* Proposed Change to Bankr. S.D.N.Y. Local Rule 1007-1, Comments (noting that Rule 1007-1(c)(1) was amended in 2024 to remove CDs as an acceptable electronic format).

3 *Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024).

4 *Id.* at 229.

5 *Id.*

6 11 U.S.C. § 1321.

7 11 U.S.C. § 1322(b)(9).

8 *See Trantham*, 112 F.4th at 232.

9 *See id.*

10 *See id.*

11 *See* 11 U.S.C. § 1327(b) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.").

12 *Trantham*, 112 F.4th at 230.

13 *Id.*

that vested property of the estate in her at confirmation.[14] The bankruptcy court sustained the trustee's objection, finding that while Trantham's proposed vesting was not contrary to the Bankruptcy Code, it contradicted the court's "long-standing policy" in the local form plan.[15] In support of its ruling, the bankruptcy court "explained that default provisions are essential for 'efficiency and consistency.'"[16]

To get a plan confirmed, Trantham was compelled to acquiesce and amend her plan to vest in conformity with local practice.[17] The bankruptcy court confirmed her amended plan, and she appealed. The district court affirmed the lower court's local practice, pointing to "risks and practical problems [that] would arise" if chapter 13 debtors were to propose one of the options explicitly provided for in § 1322(b)(9).[18] More specifically, allowing for property of the estate to vest at confirmation would leave the debtor's property "vulnerable to creditors and the trustee would lack sufficient oversight."[19] According to the district court, plans proposed in conformance with the Code but that contradict the local form "cannot be confirmed."[20]

Trantham appealed to the Fourth Circuit, which reversed the lower courts' imposition of local practice. The Fourth Circuit held that the bankruptcy court erred in two ways: by (1) requiring Trantham to justify her proposed vesting provision; and (2) rejecting the plan solely because it deviated from the local form plan. The court emphasized that it is the debtor's exclusive right to propose a plan and that the bankruptcy court's authority to reject plan provisions is limited by the Bankruptcy Code.[21]

The Fourth Circuit noted that while bankruptcy courts may use default vesting provisions in local form plans, they cannot make such provisions mandatory or reject a debtor's proposed vesting provision simply because it differs from the local form. The case was remanded for the bankruptcy court to assess whether Trantham's proposed vesting provision should be confirmed or rejected for a reason permitted by the Code.

Interestingly, the *Trantham* court deviated from an existing Seventh Circuit decision on the same topic. Section 1327(b) of the Bankruptcy Code provides that "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."

In *In re Cherry*,[22] a bankruptcy court within the Seventh Circuit had a form plan that contained a checkbox option for debtors to elect to retain property in the estate for the plan's duration. The Seventh Circuit ultimately held that debtors needed to provide justification for deviation departing from the "norm" that property vests in the debtor at confirmation.

The *Trantham* court disagreed, noting that "[c]hapter 13, when read in its entirety, affords priority to the debtor's proposed provisions."[23] In *Trantham*, the court considered that the grounds under which a court can reject a plan are limited, and concluded that § 1327(b) preserved a debtor's right to propose her own vesting provision *without having to justify it*.

Rule 9029: A Reminder to Review

When proposing local rules and local forms, courts and the bar must remain vigilant that the added requirements remain consistent with statutory rights and nationally applicable rules and procedures. Rule 9029(a)(1) of the Federal Rules of Bankruptcy Procedure permits district courts to authorize bankruptcy judges "to make and amend rules of practice and procedure which are consistent with — but not duplicative of — Acts of Congress and" the other Bankruptcy Rules.[24]

Of course, local forms serve a valid purpose of efficiency for both debtors and creditors (and their counsel) in drafting filings. This is particularly beneficial in routine consumer matters in which debtors may not have sufficient resources for counsel to reinvent the wheel. It also is distinctly true of a local form chapter 13 plan. A local form aids debtors' counsel in proposing a plan and enables creditors familiar with the local form to review their treatment more quickly.

As the Fourth Circuit emphasized, a local "form plan can dictate *how* a debtor proposes her plan, but not *what* she proposes in it."[25] The Bankruptcy Code provides what a debtor's plan "shall" do and what it "may" do.[26] The timing of vesting of property of the estate is something a plan "may" do but need not do.[27] Even if optional, a local form plan by design cannot eliminate or restrict the debtor's options under the statute. The local chapter 13 form plan at issue in *Trantham* clearly was inconsistent with the flexibility afforded debtors under § 1322(b)(9).

By comparison, the "national" chapter 13 form plan (Official Form 113) provides the flexibility for a debtor to propose his/her own vesting provision. Part 7 of Official Form 113 provides checkboxes for when vesting of property of the estate occurs. A debtor in a jurisdiction using the Official Form chapter 13 plan may simply check a box for vesting to occur at plan confirmation, entry of discharge or at some other time by filling in the blank line reserved for that purpose.

Compared to local forms, national official forms and federal rules have the added benefit of a more robust review at the national level from many parties-in-interest. This thorough review endures a lengthy comment period, with ultimate review and approval passing through the hands of both the U.S. Supreme Court and Congress before going into effect. Even federal rules and forms require frequent amendments; likewise, it is imperative that bankruptcy courts continually review the appropriateness of their locally imposed requirements.

Collaboration of "Soldiers on the Ground"

Trantham and Bankruptcy Rule 9029(a) do not stand for the proposition that debtors have unfettered rights to propose anything in a chapter 13 plan, free from judicial review or

14 *Id.*
15 *Id.*
16 *Id.*
17 *See id.*
18 *Id.*
19 *Trantham v. Tate*, 647 B.R. 139, 145-46 (W.D.N.C. 2022) (reversed).
20 *Id.*
21 *Id.* at 235, 238.
22 *In re Cherry*, 963 F.3d 717, 718 (7th Cir. 2020).
23 *Trantham*, 112 F.4th at 238.
24 Fed. R. Bankr. P. 9029(a)(1).
25 *Trantham*, 112 F.4th at 235.
26 *Compare* 11 U.S.C. § 1322(a), *with* 11 U.S.C. § 1322(b).
27 11 U.S.C. § 1322(b)(9).

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objections from parties-in-interest. The insightful concurrence penned by Hon. J. Harvie Wilkinson III punctuates the importance of negotiation and collaboration in all aspects of the bankruptcy process.[28]

Trantham, the chapter 13 trustee and the lower courts took extreme positions. As Judge Wilkinson pointed out, "[t]he truth, as it so often does, lies somewhere in the middle."[29] She had "suggest[ed] that the broad choice-of-plan provisions allowed [to] her under § 1322(b) is subject only to the narrowest scope of review under § 1325(a)."[30] Trantham's position was too restrictive, suggesting that courts have minimal review power over plan provisions and that this leaves little for the courts, trustees and creditors to do; "[t]hey might as well not even be there."[31] Courts must still have discretion to review the plan and any objections thereto.

The district court's decision "swung too far in the other" direction.[32] The lower courts' views were too broad, suggesting that courts may reject any plan that alters the local form plan by including "a contradicting nonstandard provision."[33] Rejecting this broad view as "plenary and arbitrary," Judge Wilkinson emphasized a balance that allows continued oversight by the bankruptcy court to "reject for good reason proposed plan provisions on 'case-by-case' grounds."[34] Congress's word is definitive, yet there remains a role for "soldiers on the ground" (the various parties involved in bankruptcy proceedings) to work together in implementing and giving meaning to congressional decrees.[35]

Conclusion

Debtors make mistakes, and their mistakes often lead to bankruptcy petitions. Sometimes, later mistakes result in a dismissal or an inability to complete a confirmed plan, but debtors sometimes know what is best for them and their circumstances. Allowing autonomous control in proposing a plan in conformance with § 1322, free from unnecessarily burdensome local rules or local practice, allows a debtor the freedom to select the (seemingly) best path toward rehabilitation and a fresh start.

The *Trantham* decision brings to the consumer debtor main stage a battle that often arises among local forms, local practice and judge-specific requirements on the one hand, and the Bankruptcy Code and Federal Rules on the other. When in conflict, the latter should emerge victorious.

While Bankruptcy Rule 9029 gives courts some flexibility and discretion to make local rules to govern proceedings in their jurisdictions, courts must be careful not to abridge debtors' substantive rights in applying these additional restrictions. The time is always right to review (and re-review) local rules and local practice for consistency with the Code and Rules. Such vigilance and collaboration by the bankruptcy court, the trustees and the bar — both in the business and consumer contexts — ensures the freedom to exercise all parties' rights under the Bankruptcy Code. abi

28 *Id.* at 239-40.
29 *Id.* at 239.
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.*
34 *Id.* at 240.
35 *Id.*

Faculty

Edward C. Boltz is the managing partner of the Law Offices of John T. Orcutt, P.C. in Durham, N.C., where he represents clients in not only chapter 13 and 7 bankruptcies, but also in related consumer rights litigation, including fighting abusive mortgage practices and developing solutions for student loans. Mr. Boltz served as the president of the National Association of Consumer Bankruptcy Attorneys (NACBA) from 2013-16 and remains on its board of directors, co-chairing its Legislative Committee. He served on ABI's Consumer Bankruptcy Commission from 2017-19 and on the Bankruptcy Council for the North Carolina Bar Association, for which he co-chaired the committee that created a mortgage-modification program for the North Carolina bankruptcy courts. Mr. Boltz is a frequent speaker on bankruptcy issues at both national and local seminars, including at NACBA conventions and workshops, past NCLC workshops and the North Carolina Bankruptcy Institute. In June 2019, he testified on behalf of NACBA in Congress regarding the need for changes to the Bankruptcy Code to make student loans dischargeable and to the means test for disabled veterans. In 2008, he testified before Congress to similarly protect those in the National Guard and reservists, which was enacted as the National Guard and Reservists Debt Relief Act. For the spring 2020 semester, Mr. Boltz served as an adjunct professor at the University of North Carolina School of Law, assisting clients in the Consumer Financial Transactions clinic with student loans. He is a member of the North Carolina State Bar, which certified him as a specialist in consumer bankruptcy law, and he is admitted to practice before the districts courts in both the Eastern and Middle Districts of North Carolina. Mr. Boltz received his B.A. from Washington University in St. Louis in 1993 and his J.D. from George Washington University in 1996.

Hon. Rebecca B. Connelly is a U.S. Bankruptcy Judge for the Western District of Virginia in Harrisonburg, appointed in July 2012. Before joining the bench, she was the Standing Chapter 13 Trustee and Chapter 12 Trustee for the Western District of Virginia, and prior to that was in private practice in Virginia and in Washington, D.C. Judge Connelly is chair of the Judicial Conference Advisory Committee on the Federal Rules of Bankruptcy Procedure. As a member of the National Conference of Bankruptcy Judges, she formerly chaired the NCBJ Federal Rules Advisory Committee. Judge Connelly is an adjunct professor of law at Washington and Lee University School of Law (teaching bankruptcy). She also is a conferee in the National Bankruptcy Conference and a frequent speaker for Virginia CLE, an author of two chapters of Bankruptcy Practice in Virginia (2004, reprinted 2008, and revised and reprinted 2016), and an active member of ABI since 1994. Judge Connelly has served as a contributing editor and a features author for the *ABI Journal*, and she has been a member of ABI's Consumer Bankruptcy Committee, as well as a speaker at its Annual Spring Meeting, Winter Leadership Conference, and regional conferences, including Views from the Bench. She also serves on the advisory board and volunteers for Credit Abuse Resistance Education. Judge Connelly formerly served on the board and as a volunteer for Rockbridge Area Hospice. She received her B.A. in 1985 from the University of Maryland and her J.D. in 1988 from Washington & Lee University School of Law.

Krista M. Preuss is the standing chapter 13 trustee for the Eastern District of New York in Jericho, appointed on Oct. 1, 2021. Prior to that, she was the chapter 13 standing trustee for the Southern District of New York from Feb. 1, 2018, through May 31, 2023. Prior to her 2018 appointment, she

was the staff attorney for Chapter 13 Trustee Marianne DeRosa for more than 12 years. Ms. Preuss has lectured on chapter 13 bankruptcy issues at numerous law school classes and seminars. She is a member of the Hudson Valley, Nassau County, Suffolk County and Westchester County Bar Associations, and ABI. Ms. Preuss serves on the Consumer Lawyers Advisory Committee for both Brooklyn and Central Islip for the Eastern District of New York. She also is a board member of the National Association of Chapter 13 Trustees, for which she also serves on its Public Relations Committee and Mortgage Committee. Ms. Preuss received her J.D. from Albany Law School, where she was president of its tax law society.

Dynele L. Schinker-Kuharich is the Standing Chapter 13 Trustee for the Northern District of Ohio in Canton. Prior to her appointment in 2018, shewas a member of the panel of chapter 7 trustees for the Northern District of Ohio and was also an attorney in private practice, where she had concentrated her client representation on bankruptcy and consumer law issues for more than 19 years. Ms. Schinker-Kuharich was an adjunct professor at The University of Akron School of Law, and she has frequently spoken at seminars both locally and nationally on topics related to bankruptcy and consumer law. She also has been published in the *Norton Bankruptcy Law Adviser*, *NACTT Quarterly* magazine and ConsiderChapter13.org. Ms. Schinker-Kuharich is a member of the National Association of Chapter Thirteen Trustees, for which she currently serves as an at large board member. She also co-chairs its Inclusion and Acceptance Committee and is an active member of the editorial board for the *NACTT Quarterl*y magazine. Ms. Schinker-Kuharich is a member of ABI and a former member of the National Association of Bankruptcy Trustees, the National Association of Consumer Bankruptcy Attorneys, the Portage County Bar Association, the Stark County Bar Association and the Akron Bar Association, for which she previously served as chair of its Commercial Law Section.