

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK



April 12, 2006

CLERK'S NOTICE 06-06

Notice on 11 U.S.C. § 362(c)(3)(B) Motions for Continuation of the Automatic Stay

This notice outlines the procedures related to Motions for Continuation of the Automatic Stay.

Motion Required

Any party that seeks a continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) shall file a motion with the court.

Time for Filing

The motion shall be filed and served promptly upon the filing of a petition for relief under the Bankruptcy Code. It shall be filed promptly enough that (i) it may be heard by the court within thirty (30) days of the date of the filing of the petition, and (ii) parties may be given twenty-three (23) days' notice of the hearing without the need for an expedited or emergency hearing.

Expedited hearings will be granted only in exceptional circumstances, such as where the movant presents evidence that the motion could not be filed in time to permit a regularly-noticed hearing to be held within thirty (30) days of the commencement of the case or the court's docket requires that the hearing be held on less than twenty three (23) days' notice.

Obtaining a Setting

If the moving party is represented by counsel, the motion may be scheduled using the court's self calendaring procedures. If the dates listed do not permit the moving party to

provide twenty-three (23) days notice and have a hearing concluded before the 30th day after the filing of the case, counsel should contact the Courtroom Deputy.

If the moving party is pro se, please contact the Courtroom Deputy.

Notice of Hearing Required

A notice of hearing shall be filed with the court within two (2) days of the filing and service of the motion.

Service of the Motion and Notice of Hearing

A copy of the motion and notice of hearing must be served on all parties against whom the debtor seeks to extend the stay, and proof of such service shall be filed within two (2) days of service.

Contents of the Motion

The motion shall:

- specifically allege the identity of the creditor(s) as to which the debtor seeks to extend the stay;
- Identify, by case number, any and all prior bankruptcy filings by the debtor;
- state whether the debtor has had more than one previous case pending within the preceding year;
- state whether any previous case was dismissed within the preceding year after the debtor failed to perform any of the acts set forth in 11 U.S.C. § 362(c)(3)(C)(II)(aa) - (cc);
- state whether there has been a substantial change in the financial or personal affairs of the debtor and, if so, support the statement with specific factual allegations;
- state whether any creditor moved for relief from the automatic stay in a previous case and, if so, the disposition of that motion; and
- allege specific facts entitling the movant to relief.

Evidentiary Showing at the Hearing on the Motion

At the hearing on the motion, the debtor must present evidence demonstrating that the new case is filed in good faith as to the creditor(s) to be stayed. Normally, this evidence will come from the debtor's actual testimony at the hearing. If the debtor does not testify, it will be difficult for the debtor to overcome the presumption of bad faith found in 11 U.S.C. § 362(c)(3).

FOR THE COURT
Tawana C. Marshall
Clerk of Court