

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



August 13, 2010

CLERK'S NOTICE 10-03

**Notice Regarding Amendment to General Order 2009-03
and Issuance of General Order 2010-01**

The United States Bankruptcy Court for the Northern District of Texas has entered General Order 2010-01, *In re Amended Standing Order Concerning all Chapter 13 Cases*. General Order 2010-01 governs and supersedes General 2009-03 which has been amended as follows effective immediately:

1. **EFFECTIVE DATE AND NOTICES HEREOF.** Unless otherwise provided herein or ordered by the Court in an individual case, effective immediately, this General Order governs and supersedes General Order 2009-03 regarding all Chapter 13 cases filed on or after October 17, 2005, in all Divisions of the United States Bankruptcy Court for the Northern District of Texas. Conspicuous notice of this General Order shall accompany the Notice of Section 341 Meeting of Creditors. The Chapter 13 Trustee shall place a copy of this General Order on the Trustee's website and, upon request, shall furnish a copy of it to any party in interest in any pending case.

2. **DEFINITIONS.** The following definitions shall apply to this General Order:

Service - Service upon an attorney or party may be by personal delivery, facsimile transmission, e-mail (if the attorney or party has consented to electronic notice under General Order 2004-06) or by United States first-class mail addressed to the address provided by the Debtor pursuant to 11 U.S.C. § 521~~;~~. If requested and authorized by a party, in lieu of providing individual notices, the Trustee may provide a report setting forth the information otherwise contained in the notice which will be sent either via regular U.S. mail or email on the same date that the individual notices are sent. However, if an address has been provided to the Debtor pursuant to 11 U.S.C. § 342 or Fed. R. Bankr. P. 2002(g)(1), or to the Clerk pursuant to 11 U.S.C. § 505(b)(1) and Fed. R. Bankr. P. 5003(e), then service shall be to that address, or as otherwise ordered by the Court pursuant to Fed. R. Bankr. P. 2002(p)(1). Service by mail is complete upon mailing. Service of a Notice of Electronic Filing or a Daily Summary Report of

Bankruptcy Filings (as both are defined in General Order 2004-06) is the equivalent of service of the document by first-class mail, postage prepaid, by the approved participant in the Court's Electric Filing Program (as defined by General Order 2004-06). Electronic service is complete upon electronic confirmation of electronic service. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper is served by United States first-class mail, three days shall be added to the prescribed period. When a Debtor is represented by an attorney, service shall be on both the Debtor and Debtor's Counsel.

4. ADEQUATE PROTECTION DISBURSEMENTS.

a. **Debtors Shall Authorize Adequate Protection Disbursements By The Trustee.** Unless otherwise ordered by the Court, within 14 days of the Petition Date, the Debtor shall file and serve on all scheduled creditors (unless service is made by the Clerk), an "Authorization For Adequate Protection Disbursements ("AAPD") in a form prescribed by the Trustee. Any Payments may be held by the Trustee in a non-interest bearing account. Any amendment to the AAPD shall be filed with the Court, served on all affected creditors, and on the creditors' counsel if a Notice of Appearance has been filed and served on Debtor's Counsel by creditor's counsel, and shall contain a Certificate of Service reflecting this service. Protection concerning motor vehicles shall be presumed adequate if in a monthly amount equal to 1.25% of the value of the motor vehicle determined by averaging the wholesale and retail values contained in the most recent NADA publication for a comparable motor vehicle. If the Trustee is disbursing the current post-petition mortgage payments, the payment amount thereof must be included in the AAPD.

b(1). **Trustee Shall Disburse Adequate Protection Payments.** Unless otherwise ordered by the Court, the Trustee shall disburse adequate protection payments monthly as provided in the AAPD, whether or not a proof of claim has been filed, in the following order:

- (a) Trustee's Fee, any Noticing Fees allowed by the Court, and a \$5.00 account reserve;
- (b) Filing fees;
- (c) Current post-petition mortgage payments, if applicable;
- (d) Adequate protection payments provided for secured claims; and
- (e) Fees for Debtor's Counsel, unless the Debtor is pro se;
- (f) Priority claims.

If funds received by the Trustee are insufficient to pay a full monthly payment to any specified category cumulatively, payments shall be made pro rata within such numbered lettered category.

g. Adequate protection disbursements may include Trustee's Fees, Noticing Fees, Filing Fees, Payments on Secured Claims; including applicable current post-petition mortgage payments, Priority Claims, and fees for Debtor's Counsel, unless the Debtor is pro se.

5. DISBURSEMENT ON DISMISSAL OR CONVERSION AFTER CONFIRMATION. Unless otherwise ordered by the Court, if a case is dismissed or converted after confirmation, the Trustee shall disburse funds on hand from Payments as provided in the confirmed Plan for one disbursement cycle, and then refund the remaining balance to the Debtor.

6. CREDITOR'S CERTIFICATE OF CONFERENCE ON § 362 MOTIONS AND OBJECTIONS TO CONFIRMATION, AND REQUIREMENT FOR TRUSTEE'S REVIEW AND APPROVAL OF ALL AGREED ORDERS, ~~AND REQUIREMENT TO PROVIDE LIMITED PAYMENT HISTORY, EVIDENCE OF DEBT, AND PERFECTION OF LIEN REGARDING REAL PROPERTY.~~

b. Notwithstanding L.B.R. 4001.1(e), if a creditor claiming a lien on real property files a Section 362 motion to terminate, annul, modify, or condition the automatic stay, the creditor shall file within 7 days ~~attach to the motion~~ a sworn affidavit detailing any alleged payment delinquency and providing a current chronological payment history beginning with the first payment alleged to be delinquent.

7. CONFIRMATION HEARING AND TRUSTEE'S PRE-HEARING CONFERENCE REGARDING CONFIRMATION.

b. The ~~Chapter 13 Trustee Debtor~~ will be responsible for mailing a notice to all parties in interest on the date the Plan ~~and/or the AAPD~~ is filed, notifying such parties that the Plan ~~and/or the AAPD~~ has been filed and the date, place and time of the confirmation hearing. The confirmation hearing shall be set and commenced at the last available date the Court has scheduled confirmation hearings that is not more than 45 days after the Section 341 Meeting. Failure of the ~~Chapter 13 Trustee Debtor~~ to timely send the notice may be grounds for dismissal of the case at the confirmation hearing.

c. The Chapter 13 Trustee will be responsible for mailing to all parties in interest a Notice of the date, place and time of the deadline for objecting to confirmation, the Trustee's Pre-Hearing Conference, and the Confirmation hearing.

d.e. Unless the Court orders otherwise, the hearing on Section 506 valuations, interest rate, and treatment under the Plan will occur at the confirmation hearing. Claim amount and classification will be determined by the TRCC (see paragraph 8 below) and other order of the Court. The TRCC may also contain a proposed Modification of the confirmed Plan.

8. TRUSTEE'S RECOMMENDATION CONCERNING CLAIMS AND PLAN MODIFICATION, IF REQUIRED.

b. The TRCC may list and propose disallowance of any claims scheduled but not filed.

c.b. Objections to the TRCC shall be filed within thirty (30) days from the date of service of the TRCC.

d.e. Unless an objection is timely filed as to the ~~treatment of any claim amount or classification of any claim or to any~~ modification, the claim or modification will be allowed or approved as described in the TRCC, and such ~~amount and classification treatment~~ will be final and binding on all parties without further order of the Court.

e.d. The TRCC shall include a notice of the time, date, and location of the court hearing on any objection, as well as the time, date, and location of the Trustee's pre-hearing conference thereon. If no objection is timely filed, no Trustee's pre-hearing conference or Court hearing will be held. Matters resolved at or before the pre-hearing conference may be presented to the Court by the Trustee in the form of an Agreed Order prior to or at the scheduled court hearing.

f.e. All unresolved objections to the TRCC shall be deemed waived:

- (i) if not timely filed and served as provided above, or
- (ii) if the proponent of any such objection fails to attend the Trustee's pre-hearing conference, or give the Trustee prior written notice that a hearing is necessary.

g. The TRCC will not affect value of collateral, treatment under the Plan unless modified, or interest rate determined at confirmation, but may show these for information only.

9. IRS REFUNDS.

c. Unless otherwise ordered by the Court, ~~any~~ any IRS refund in excess of \$2,000 (the "Excess Refund") issued by the IRS and received by the Trustee after the Petition Date and before the final payment is made under the plan or the case is converted or dismissed may be kept by the Trustee (to the extent of such excess) and paid pro rata to the Debtor's allowed general unsecured creditors (timely filed non-penalty, then late filed non-penalty, then penalty unsecured). In such event the Base Amount will be increased by such amount, and the Plan will be deemed modified accordingly.

d. The Trustee may file a Notice of Intent To Disburse Excess (year) Tax Refund To Creditors And Raise Debtor's Plan Base ("Notice") and may set it for a Pre-Hearing Conference. If no objection is filed within twenty-one (21) days after the Trustee files the Notice, any opposition to the Trustee's treatment of the Excess Refund shall be deemed waived.

e. If an objection to the Trustee's Notice of Intent ("Objection") is timely filed, if not previously set by the Trustee, the contested matter will be set on the next Pre-Hearing Conference Docket after twenty-one (21) days from the date the Objection and a Notice of Hearing is filed.

f. If no other party in interest files a timely Response to the Notice or Objection prior to the Pre-Hearing Conference, the matter may be resolved in the Trustee's discretion by Agreed Order, or set for hearing before the Court.

10. COMPENSATION AND EXPENSE REIMBURSEMENT TO DEBTOR'S COUNSEL IN CHAPTER 13 CASES.

e. As guidelines, the Court contemplates that the following matters will be included in the Standard Fee:

(2) Preparation of the bankruptcy petition, including emergency petitions, schedules, and statement of financial affairs, chapter 13 statement of current monthly income (B22C), Plan, and AAPD; including emergency petitions;

h. In a Level 2 business case, the Court deems \$3,500 as reasonable compensation and reimbursement of expenses for an attorney under 11 U.S.C. § 330(a)(3)(B) (the "Business Standard Fee"). The Court will therefore allow the Business Standard Fee, plus bankruptcy clerk filing fees, in a Level 2 business case without the requirement of an application for compensation under 11 U.S.C. § 330 and Rule 2016(a). ~~The Trustee may establish criteria for determining Level 1 and Level 2 business cases, subject to other order of the Court. A Level 2 business case is when (1) the debtor's monthly gross receipts (or the monthly gross receipts of any corporation, partnership, LLC, etc. controlled by the debtor) are \$10,000.00 or more, (2) the debtor incurs trade credit in the production of income that is not paid in full every month, (3) the business has any employees other than family, (4) the business has a liquor license, or (5) any other reason that in the opinion of the trustee justifies a more thorough investigation that than is possible at a 341 docket.~~

k. Provided the Debtor agrees, and notwithstanding any other provision of this General Order, for certain matters not within the guidelines for the Standard Fee or the Business Standard Fee, and to encourage uniformity and consistency and to minimize the expense of the fee application process, the Court will approve, upon motion, and waive the application requirement, the following fees:

- (1) For a Plan modification, \$350, plus expenses not to exceed \$50.
- (2) For a motion to sell property, \$350, plus expenses not to exceed \$50.
- (3) For a motion to incur debt, \$350, plus expenses not to exceed \$50.
- (4) For a motion to lift (after the two motions to lift stay included within the Standard Fee or the Business Standard Fee), \$350, plus expenses not to exceed \$50.

(5) For an Objection to a Trustee's Notice of Intent To Disburse Excess (year) Tax Refund To Creditors And Raise Debtor's Plan Base, \$200.

11. COMPENSATION AND EXPENSE REIMBURSEMENT TO CREDITOR ATTORNEYS IN CHAPTER 13 CASES. The Court deems the lesser of (1) \$675 and (2) the actual amount paid or to be paid by the creditor to its attorney as fees and expenses to be reasonable compensation for fees and actual expenses for a to a creditor's attorney who is entitled to compensation from a debtor's estate under 11 U.S.C § 506(b) and applicable non-bankruptcy law in any case, without prejudice to a party contesting entitlement to fees, or the reasonableness of the amount or mode of payment of fees and expenses. Allowance of fees and/or expenses in a greater amount shall be by separate order of the Court after a hearing on application or motion and notice. Effective February 1, 2007, the submission of an agreed order containing a provision providing for the recovery of attorneys' fees in a pending bankruptcy case shall constitute an affirmative representation to the judges of this Court by all signatories to the Agreed Order that there is objective evidence supporting a finding that the creditor has a properly perfected lien and is oversecured or is otherwise legally entitled to recover such fees. Effective (determined by Upon the entry of this General Order), such submission shall also constitute an affirmative representation by the creditor and its counsel that the attorneys fees provided for in the Order do not exceed the amount the fees actually paid or to be paid.

12. TRUSTEE'S NOTICING FEES.

b. The Standing Chapter 13 Trustees may collect, in advance, as hereinafter provided, for reports or orders, including, but not limited to the Notice of Deadline For Objecting To Confirmation And Trustee's Pre-Hearing Conference and Confirmation, TRCC, Notice or Order of Dismissal or Conversion, Notice or Order of Debtor Discharge, Trustee's Final Report and Account, Request for Discharge, and/or Notices required under 11 U.S.C. § 1302(d) regarding domestic support obligations. It is hereby found and determined that said fees are reasonable and appropriate to defray the actual, necessary costs and expenses reasonably attributable to the giving of said notices. Subject to United States Trustee approval, the Standing Trustees may choose to reduce the number of notices for which noticing fees are collected. The Standing Chapter 13 Trustees shall be entitled to collect noticing fees authorized hereby from the first and any subsequent monies received from the Debtor, whether before or after confirmation.

13. MANDATORY WAGE DIRECTIVE. Unless the Court orders otherwise, the Trustee may require if the a Debtor who is a wage or salary employee, to the Debtor must complete and deliver to the Trustee the information necessary for the submission of a wage directive by the Trustee, not later than the initial Section 341 Meeting. The Trustee will promptly issue a wage directive to such Debtor's employer, and, Unless otherwise ordered by the Court, such directive may be terminated by the Trustee or the Court.

~~15. MODIFICATION REQUIRED OR NOT REQUIRED.~~

~~a. Unsecured creditors are not guaranteed a dividend when a Plan is confirmed. If a secured or priority claim is allowed for an amount greater than the confirmed Plan designates, a modification is not required unless 11 U.S.C. § 1325(a)(4) applies (the so-called best interests test) or unless the Plan is rendered insufficient, in which event a prompt modification is required.~~

~~b. Valuation disputes will not require a modification. Valuation disputes will be adjudicated at the confirmation hearing unless the Court orders otherwise.~~

~~c. Modification is not required for mortgage arrears unless the arrearage amount renders the Plan insufficient, in which event a prompt modification is required.~~

15.16. MONTHLY STATEMENTS WILL NOT VIOLATE THE AUTOMATIC STAY. Unless the Debtor or Debtor's Counsel has notified the creditor to discontinue sending post-petition statements, a creditor will be deemed not to have violated the automatic stay by voluntarily continuing to send the Debtor the usual and customary monthly statements concerning the Debtor's accounts. A creditor claiming a lien on real property and whose lien is provided for with "direct" payments in the Plan shall continue to send the Debtor regular payment statements, invoices, or other memoranda of regular payments due after the Petition Date, if it was the practice of the creditor to send the Debtor such statements before the Petition Date, and the continued sending of these payment statements, invoices, or other memoranda of regular payments will be deemed not to violate the automatic stay. If the current post-petition mortgage payments are being disbursed by the Trustee, the creditor shall file with the Court and send to the Debtor, Debtor Attorney, and Trustee any payment changes, invoices, or other memoranda of regular payment changes.

16.17. DOMESTIC SUPPORT OBLIGATIONS AND TAX RETURNS.

b. No more than Within 7 days before the Trustee's pre-hearing conference concerning confirmation, a Debtor with domestic support obligations shall file with the Court a certificate pursuant to Sections 1325(a)(8) ~~and (9)~~ of the Bankruptcy Code.

c. Prior to confirmation, pursuant to Section 1325(a)(9) of the Bankruptcy Code, a Debtor shall file with the Court a certificate concerning all applicable Federal, State, and local tax returns as required by Section 1308 of the Bankruptcy Code.

17. CHAPTER 13 DISCHARGE. When a Debtor completes all payments to the trustee required by the plan, the trustee will file a Notice of Completion with the Court. No Order of discharge will be submitted by the trustee until the Debtor has filed his Certification and Motion for Entry of an Order of Discharge (per Clerk's Notice 07-06) and the 20 day time for any objection has expired with no objection having been filed. If the Debtor's Certification and Motion is not filed, no Discharge Order will be submitted by the Trustee. If the 20 days has passed and the Debtor has not filed the Certificate and Motion, and the case is ready to be closed otherwise, the clerk's office will close the case without a discharge. If the Debtor wishes to receive a discharge after the case has been closed, he will be required to reopen the case and pay the required filing fee to reopen the case and timely file the Certificate and Motion for a Chapter 13 Discharge.

The amended General Order can be accessed at www.txnb.uscourts.gov or by clicking on General Order 2010-01 at the top of this notice.

FOR THE COURT
Tawana C. Marshall
Clerk of Court