

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



**NOTICE**

**DATE:** August 17, 1998

**SUBJECT:** STANDING ORDER CONCERNING ALL CHAPTER 13 CASES  
AND NOTICING FEES IN CHAPTER 12 AND 13 CASES

On August 17, 1998, the judges of the U.S. Bankruptcy Court for the Northern District of Texas adopted General Order 98-4. General Order 98-4 is a standing order concerning all chapter 13 cases and noticing fees in chapter 12 and 13 cases. General Order 98-4 supersedes General Order 93-1. Copies of General Order 98-4 are available on the Court's web page (<http://www.txnb.uscourts.gov>) or in the Clerk's Office.

U. S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**

AUG 17 1998

DIANA C. MARSHALL, CLERK

By

Deputy

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

IN RE:

STANDING ORDER CONCERNING ( GENERAL ORDER 98-4  
ALL CHAPTER 13 CASES (   
AND NOTICING FEES IN (   
CHAPTER 12 AND 13 CASES (

IT IS HEREBY ORDERED:

1. EFFECTIVE DATE AND NOTICES HEREOF. Unless otherwise provided herein or ordered by the Court in an individual case, this Standing Order governs and supersedes General Order 93-1 regarding all Chapter 13 cases filed on or after October 1, 1998, in all Divisions of the United States Bankruptcy Court for the Northern District of Texas. Conspicuous notice of this Standing Order shall accompany the Notice of Section 341 Meeting of Creditors. The Chapter 13 Trustee shall furnish a copy hereof upon request to any party in interest.

2. DEFINITIONS. The following definitions shall apply hereto:

Claims Bar Date--90 days after the first date set for the Section 341 Meeting of Creditors (Fed. R. Bankr. P. 3002) and 180 days after the date of the order for relief as to claims of governmental units (11 USC 8502(b)(9)).

Collateral--The property securing a secured claim.

Final Plan--The document to be filed by Debtor within 10 days of its service on the Debtor or the Debtor's attorney by the Trustee, or any pre-confirmation amendment thereof. The Final Plan shall always be in a form prescribed by the Trustee and shall contain all information required by the Trustee's form. Any changes or additions to the Trustee's prescribed form shall be underscored and/or typed in a distinctly different font and placed at the end of the document so as to be obvious and conspicuous.

Payment--The amount to be paid by the Debtor to the Trustee beginning 45 days from the Petition Date and each month thereafter until Plan completion, as specified in the Debtor's Preliminary Plan or the Debtor's Confirmed Final

Plan. A Payment may be for purposes of pre-confirmation disbursement or for a Final Plan Payment.

**Petition Date**--The date the Chapter 13 case was filed or the date of conversion to Chapter 13 from another chapter.

**Plan Payment**--The amount to be paid by the Debtor to the Trustee for distribution to creditors pursuant to the Final Plan (exclusive of pre-confirmation disbursements). When Debtor does not elect to have the Trustee make pre-confirmation disbursements, a Payment made pre-confirmation will be treated as a Final Plan Payment and held by the Trustee until confirmation or denial of confirmation of a Final Plan.

**Preliminary Plan**--The document to be filed by the Debtor within 15 days of the Petition Date on a form prescribed by the Trustee and containing all information required by the Trustee's form.

**Related Expense**--An amount equal to the Trustee's statutory percentage fee which a Debtor may authorize the Trustee to receive for handling pre-confirmation disbursements. All Related Expenses and any interest earned thereon shall be deposited into the Trustee's expense account and used exclusively to pay the compensation and reasonable and necessary expenses of the Trustee as may be approved by the United States Trustee.

**Service**--Service of a Notice of Intent to Dismiss (NOI) hereunder upon an attorney or party may be by personal delivery, by FAX, or by United States first class mail addressed to their last known address. Service by mail is complete upon mailing. If service is by mail 3 days shall be added to any prescribed response period. When a Debtor is represented by an attorney, service shall be on both the Debtor and the attorney.

**Surrendered Collateral**--The collateral which the Debtor's Preliminary Plan or Final Plan designates to be surrendered.

**Trustee**--The Trustee appointed in the case by the United States Trustee, including the Standing Chapter 13 Trustee, or the United States Trustee if serving as Trustee in the case.

3. **DISMISSAL WITHOUT FURTHER NOTICE.** A Chapter 13 Petition may be dismissed without prejudice after 15 days (as to subsection "e") or 48 hours (as to subsections "a," "b," "c," or "d") prior written Notice of Intent to Dismiss (NOI) mailed to

the Debtor and mailed or faxed to Debtor's counsel and without further notice unless the default is cured prior to the expiration of such period. The Clerk is authorized to enter an Order of Dismissal upon certification by the Trustee, or such other authority ordered by the Court or allowed by law, that:

a. The Debtor did not file the Schedules or a Statement of Financial Affairs within 15 days of the Petition Date unless within such time Debtor filed with the Clerk and personally delivered or faxed to the Trustee a motion to extend such time; or

b. The Debtor did not file and serve on the Trustee and all scheduled creditors, a Preliminary Plan and an Authorization for Pre-Confirmation Disbursement on forms prescribed by the Trustee, within 15 days of the Petition Date unless within such time the Debtor filed with the Clerk and personally delivered or faxed to the Trustee and mailed to all scheduled creditors a motion to extend such time; or

c. The Debtor did not pay to the Trustee within 45 days after the Petition Date the first Payment specified in the Debtor's Preliminary Plan; or

d. The Debtor failed to attend the Section 341 Meeting of Creditors and Debtors' Seminar without the agreement of the Trustee to continue the meeting; or

e. The Debtor did not pay to the Trustee when due, any pre-confirmation Payment (except the first) specified in the Debtor's Preliminary Plan; and

PROVIDED HOWEVER with regard to subparagraph "e" of this section:

i. The Trustee's NOI shall specify the exact dollar amount due to completely bring all Payments current, as of the 15<sup>th</sup> day after the date of such notice;

ii. If at the time of the NOI the Trustee has been served with one or more Section 362 Motions, the Trustee shall mail or fax a copy of such NOI to the attorney for each such Movant, provided a Notice of Appearance has been filed by such attorney and served on the Trustee;

iii. No such order shall be submitted or requested by the Trustee with regard to subparagraph "e" of this section if an Interlocutory Order (I/O) satisfactory to the Trustee has been signed by the Debtor or Debtor's counsel and delivered to the Trustee as of the 15<sup>th</sup> day after the date of such Notice; and

f. No such order shall be submitted or requested by the Trustee if, prior to the expiration of such Notice, a responsive pleading is filed by Debtor and personally delivered or faxed to the Trustee, set on the Trustee's next available miscellaneous or general docket before the Court, in no less than 10 days, and served on the attorney for any party that has filed a 362 Motion and served a copy of the Motion as well as a Notice of Appearance on Debtor and Debtor's attorney.

#### **4. PRE-CONFIRMATION DISBURSEMENTS.**

**a. Debtors May Authorize Pre-Confirmation Disbursements.** Within 15 days of the Petition Date, the Debtor shall file and serve on the Trustee and all scheduled creditors an "Authorization For Pre-Confirmation Disbursement" (APD) in a form prescribed by the Trustee. If a Debtor elects not to authorize pre-confirmation disbursements, such fact shall be indicated on the form, and any Payments may be held by the Trustee in a non-interest bearing account. Any amendment or change to such APD which adversely affects any secured creditor shall be filed with the Court, served on the Trustee, 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.

**b. Trustee May Disburse Pre-Confirmation.** The Trustee may disburse monthly pre-confirmation payments authorized by a Debtor, in the following order:

- (1) Trustee's Noticing Fees as allowed by the Court, Related Expense, and \$5.00 account reserve,
- (2) Filing Fees,
- (3) Undisputed secured claims,
- (4) Debtor's attorney fees and other allowed administrative expenses,
- (5) Undisputed priority claims, and
- (6) Undisputed special class, unsecured (without interest).

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

**c. Use Of Interest.** Any interest received by the Trustee as a result of the Debtor's Payments pursuant hereto shall be paid into the Trustee's expense account and used exclusively to pay the compensation and reasonable and necessary expenses of the Trustee as may be approved by the United States Trustee.

d. Trustee Not Required To Handle Pre-Confirmation Disbursements. The Trustee may elect not to handle pre-confirmation disbursements in any case.

e. Pre-Confirmation Disbursements To Secured Claims Deemed Proposed Adequate Protection. All pre-confirmation disbursements on a secured claim shall be deemed proposed adequate protection payments.

f. Allowed Secured Claim For Undersecured Creditor Fixed At Collateral Value Less Total Pre-Confirmation Disbursements Received. The allowed secured claim of an undersecured creditor shall be the difference between the value of the collateral, as of the Petition Date, and the aggregate pre-confirmation disbursements received by a secured creditor, unless otherwise ordered by the Court.

g. No Waiver Of Objection To Confirmation, Valuation Or Right To Request Stay Relief. Acceptance of any pre-confirmation disbursement shall not be a waiver of any claimant's right to contest confirmation, to contest valuation, to request relief from the automatic stay, or to request adequate protection.

h. Stay Lifted As To Surrendered Collateral. The Debtor's Preliminary Plan shall describe any collateral to be surrendered, and specify the date (not more than 25 days after the Petition Date) by which it will be surrendered. THE AUTOMATIC STAY SHALL BE LIFTED without further order of the Court as to such surrendered collateral, as of the date so specified. If no such date is specified, the stay shall lift on the twenty-sixth (26<sup>th</sup>) day after the Petition Date unless an Amended Preliminary Plan is filed and served on or faxed to the affected creditor and if a Notice of Appearance by creditor's counsel has been filed and served on Debtor's counsel, the Amended Preliminary Plan shall also be personally delivered or faxed to creditor's counsel at least 5 business days prior to the specified date. If no such date is specified, the Amended Preliminary Plan must be personally delivered or faxed to such affected creditor and to creditor's counsel, if a Notice of Appearance by creditor's counsel has been filed and served on Debtor's counsel, on or before the 21<sup>st</sup> day after the Petition Date. If an Amended or Modified Plan is filed which provides for the surrender of any collateral, the automatic stay shall be lifted without further order of the Court as to such surrendered collateral on the eleventh (11<sup>th</sup>) day after the Amended or Modified Plan is filed.

i. Payments Made For Pre-Confirmation Disbursement Not Considered "Plan" Payments. Payments made by a Debtor to the Trustee for pre-confirmation disbursement shall not be considered "Plan" payments pursuant to 11 U.S.C. §1326(a) or 11 U.S.C. §1325(b)(1)(B), and upon dismissal or conversion of the case shall be disbursed by the Trustee as provided in the APD or other order of the Court, in the Trustee's next regularly scheduled disbursement, after which the balance shall be refunded to the Debtor or, if the case is converted to Chapter 7, disbursed to the Debtor and delivered to the Chapter 7 Trustee.

j. Total Payments Not To Exceed 60. The total of all monthly Payments shall not exceed 60 payments in the aggregate.

5. DISBURSEMENT ON DISMISSAL OR CONVERSION AFTER CONFIRMATION. If a case is dismissed or converted after confirmation, the Trustee shall disburse all Plan Payments in accordance with the confirmed Final Plan.

6. CREDITOR'S CERTIFICATE OF CONFERENCE, AND REQUIREMENT FOR TRUSTEE'S REVIEW AND APPROVAL OF ALL AGREED ORDERS. A Creditor shall include a Certificate of Conference with the Debtor's attorney on any Section 362 Motion to Modify Stay, any Objection to Confirmation, Response to Objection to Claim or Response to Motion for Valuation. The Certificate shall state that the creditor or its attorney made a good faith effort to negotiate a settlement of the dispute with Debtor's counsel or that Debtor's counsel failed to respond to the creditor's communication by the same time on the second business day after such communication. In the event the Debtor and creditor reach an agreement with respect to a Motion to Modify Stay, Objection to Confirmation, Objection to Claim, Motion for Valuation, or any other Contested Matter between a Debtor and a creditor, the Trustee shall be permitted three 3 business days to review the Agreed Order prior to presentation to the Court, without prejudice to objecting prior to the Order becoming final.

7. SERVICE BY CREDITORS OF PROOFS OF CLAIM ON DEBTOR ATTORNEYS AND TRUSTEE. Creditors shall serve a copy of each Proof of Claim with all attachments on the Trustee and on the Debtor's attorney.

8. PLAN, OBJECTION TO CLAIMS, AND MOTION FOR VALUATION

a. As soon as practicable after the Claims Bar Date, but no later than 270 days from the Petition Date, the Trustee may prepare and send to the Debtor or Debtor's counsel a proposed Final Plan, Motion for Valuation, and, at the Trustee's election, an Objection to Claims.

b. Unless changes or modifications are requested of the Trustee the Debtor or the Debtor's counsel shall sign and file the Final Plan, any Objection to Claims not previously served, and the Motion for Valuation within 10 days of the date of such service.

c. Upon its filing, the Debtor's attorney or, at the Trustee's election, the Trustee shall promptly serve a copy of the Final Plan, any Objection to Claims not previously served and the Motion for Valuation on all parties in interest, and thereafter promptly complete and file with the Clerk a Certificate of Service as to each.

d. Any Objection to Confirmation, Response to any Objection to Claims, or Response to the Motion for Valuation shall be filed with the Court and served on the Debtor, Debtor's counsel and Trustee within 30 days after service of the Final Plan, any Objection to Claims, and Motion for Valuation, respectively.

e. All objections to Debtor's Final Plan and Responses to any Objection to Claims and the Motion for Valuation shall be deemed waived:

- (i) if not timely filed and served as provided above, or
- (ii) if the proponent of any such Objection or Response fails to attend the Trustee's pre-hearing conference.

9. IRS REFUNDS. The Internal Revenue Service (IRS) is authorized to set off any pre- and post-petition income tax refunds owed to a Debtor against a Debtor's pre-petition tax liability, subject to the following conditions:

a. Refunds for tax years ending prior to the date of the petition may be applied to the pre-petition tax liability of the Debtor, in accordance with applicable law.

b. Refunds for tax years ending after the date of the petition shall be applied only as follows:

- (1) First to any outstanding post-petition taxes owed by the Debtor to the IRS;
- (2) Second, to the allowed secured claim of the IRS;
- (3) Third, to the allowed priority claim of the IRS;

(4) No application shall be made to any unsecured non-priority claim owed to the IRS;

c. Any refund in excess of the sums applied in Subsections "a" and "b" above shall be refunded to the Debtor but delivered in care of the Trustee, who is hereby authorized to endorse, deposit, and apply same to any delinquency in Debtor's Chapter 13 Payments.

d. Within 30 days of any such setoff, the IRS shall advise the Debtor, the Debtor's attorney of record, and the Trustee, in writing, of the following:

(1) The amount of the refund applied to the interest and/or principal of the IRS allowed secured claim;

(2) The amount of the refund applied to the IRS's allowed "priority" claim;

(3) The amount of the pre-petition refund applied to the IRS allowed general unsecured claim;

(4) The amount of the refund to be paid to the Debtor (but delivered in care of the Trustee); and

(5) The amount of the refund applied to the post-petition taxes owed by the Debtor to the IRS, provided notice to the Trustee is required only if the IRS filed a Proof of Claim for such post-petition taxes.

e. Upon receipt of such written notice from the IRS, the Trustee shall credit the amount set forth in the notice to the respective allowed claims of the IRS, such offset to be considered a "direct payment" by the Debtor, under the Final Plan; such direct payment for IRS claims being paid by the Trustee under the Final Plan shall be applied to the last payment(s) due under the Final Plan.

f. The total "base amount" payable by the Debtor under the Plan shall be reduced to the extent of any such "direct payment" to the IRS for IRS claims being paid by the Trustee under the Final Plan, unless otherwise provided by order of the Court.

g. The IRS shall promptly refund to the Trustee any over payment resulting from any such setoff.

h. Nothing herein shall prohibit the IRS, the Debtor, or the Trustee from seeking an order of the Court providing for a different disposition of income tax refunds.

i. The Debtor shall timely file all post-petition federal tax returns, and shall pay all tax due pursuant to said returns either directly to the IRS or to the Trustee, upon modification of the Final Plan providing for payment of such to the IRS. The IRS shall mail written notice to the Trustee, Debtor and Debtor's counsel of Debtor's failure to comply with this paragraph.

j. The Debtor shall file with the IRS-Special Procedures Section all required federal tax returns for all periods ending prior to the Petition Date, within 60 days after the later of the Petition Date or due date of the return unless otherwise agreed in writing by the IRS or unless otherwise ordered by the Court;

k. Regarding post-petition taxes, if the Debtor does not fully comply within 30 days of the notice provided in paragraph i, either by (1) filing the return and paying the tax, including applicable penalties and interest, in full, or (2) filing the return and filing a Final Plan modification to pay the tax, including applicable penalties and interest, in full; or regarding pre-petition taxes, if the Debtor does not file such delinquent tax returns within 60 days of the later of the Petition Date or due date of the return, the IRS will notify the Trustee of said non-compliance and the Trustee may file a motion to dismiss the case due to said non-compliance.

**10. DEBTOR'S ATTORNEY COMPENSATION AND EXPENSE REIMBURSEMENT IN CHAPTER 13 CASES.**

EXCEPT FOR PAYMENTS DEPOSITED INTO AN ATTORNEY'S TRUST ACCOUNT AND HELD PENDING ORDER OF THE BANKRUPTCY COURT AFTER NOTICE TO THE TRUSTEE AND OTHER PARTIES IN INTEREST AS PROVIDED IN LOCAL RULE 2016, NO FEES OR COSTS IN EXCESS OF \$1,750.00 PLUS BANKRUPTCY CLERK FILING FEES SHALL BE REQUESTED OR RECEIVED FROM THE DEBTOR BY THE DEBTOR'S ATTORNEY AND/OR PAID DIRECTLY TO DEBTOR'S ATTORNEY, PRE- OR POST-CONFIRMATION.

A MAXIMUM OF \$1,500.00 PLUS BANKRUPTCY CLERK FILING FEES MAY BE PAID BEFORE CONFIRMATION UNLESS OTHERWISE ORDERED BY THE COURT. THE BALANCE, IF ANY, SHALL BE PAYABLE ONLY AFTER THE DEBTOR'S CASE IS CONFIRMED.

Debtor's attorney fees and costs exceeding \$1,750.00 plus filing fees may be allowed upon a formal fee application, or Motion For Allowance of Additional Fees on a form prescribed by the Trustee or as otherwise ordered by the Court. Each Chapter 13 Trustee may from time to time publish and file with the Clerk "Trustee Guidelines" and suggested forms and procedures

concerning the amount, rate of payment, and services to be performed relating to Debtors' attorney fees. Any fee application or Motion For Allowance Of Additional Fees And Costs which conforms to such Trustee Guidelines shall be deemed to have the Trustee's recommendation unless otherwise expressly stated by the Trustee.

**11. TRUSTEE'S NOTICING FEES.**

a. Effective date and notices hereof. This provision regarding Trustee's Noticing Fees governs all Chapter 13 and Chapter 12 cases effective May 1, 1998, in all divisions of the United States Bankruptcy Court for the Northern District of Texas and supersedes General Order 98-3.

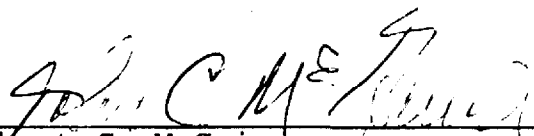
b. Noticing fees may be collected from funds paid to the Standing Chapter 13 Trustees or to the Standing Chapter 12 Trustees. The Standing Chapter 13 Trustees and the Standing Chapter 12 Trustees may charge, in addition to the percentage fee fixed pursuant to 18 USC 8586(e)(1)(B) and any related expense authorized pursuant hereto, noticing fees in each case administered by the respective Standing Trustee equal to \$.50, plus postage per envelope.

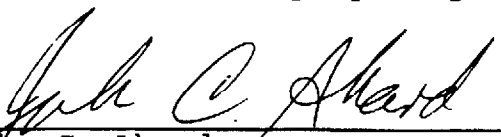
The Standing Chapter 13 Trustees and Standing Chapter 12 Trustees may collect in advance, as hereafter provided, for up to three (3) notices, reports or orders, including, but not limited to, the Section 341 Notice, Debtor's Final Plan, Motion For Valuation and Objection To Claims, Notice or Order of Dismissal, Notice or Order of Conversion, Notice or Order of Debtor Discharge or Trustee's Final Report and Account and Request for Discharge. 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.

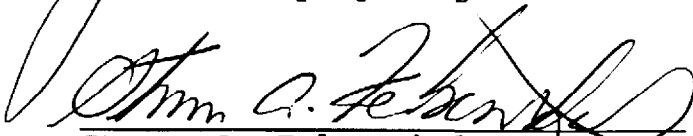
The Standing Chapter 13 Trustees and the Standing Chapter 12 Trustees shall be entitled to collect noticing fees authorized hereby from the first and any subsequent monies received from the debtor, whether before or after confirmation.

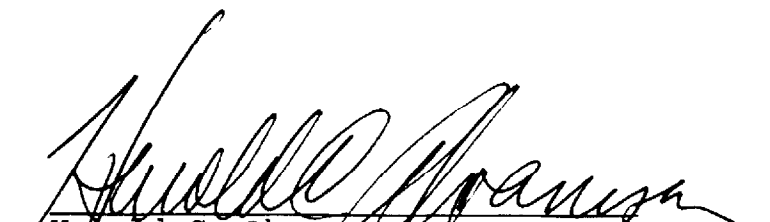
SO ORDERED.


SIGNED this 17 day of August, 1998.

  
Robert C. McGuire  
Chief U.S. Bankruptcy Judge

  
John C. Akard  
U.S. Bankruptcy Judge

  
Steven A. Felsenthal  
U.S. Bankruptcy Judge

  
Harold C. Abramson  
U.S. Bankruptcy Judge

  
Massie Tillman  
U.S. Bankruptcy Judge