

PROPOSED AMENDMENTS TO THE LOCAL RULES



**U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI**

JUNE 2003

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RULE 1073-1. ASSIGNMENT OF CASES

Rule 1073-1 H. is created to read:

H. Platte County. Cases filed for Platte County residents in the St. Joseph Division will be automatically transferred to Kansas City on debtor's motion if a motion is filed with the petition, served on the U.S. Trustee, and states that debtor resides in Platte City or Platte County south of U.S. Highway 92. A motion for transfer not meeting the above criteria must be served on all creditors and other parties in interest. If the debtor fails to file the motion to transfer with the petition, such motion will not be considered prior to the § 341 meeting of creditors.

RULE 2016-1. COMPENSATION OF PROFESSIONALS

Rule 2016-1 B and E are amended to read:

B. When Application Unnecessary. If counsel's total fee in a case is \$1,500 or less, the disclosure of fees in initial filings is sufficient and it is unnecessary to file any itemized application. If counsel for the debtor in Chapter 13 elects to receive ~~their~~ his or her attorney's fees through the Chapter 13 plan, the Chapter 13 trustee shall pay debtor's counsel upon confirmation of the plan the sum of ~~\$600~~ 750 before all other creditors, as ~~funds become available~~ beginning with the first payment after confirmation, net of payments made by debtor to such counsel. The balance of the original attorney's fees shall accrue beginning the first month after the initial ~~\$600 of attorney's fees is scheduled to be paid~~ distribution by the trustee and shall be paid at the rate of ~~\$50~~ 75 per month, as ~~funds become available~~ beginning with the first payment after confirmation. In the event that the proposed plan payment is not sufficient to cover the fixed monthly payment of \$75, the filing of said plan shall be deemed a waiver of the right to receive fixed monthly payments on attorney's fees in the amount of \$75, and the Chapter 13 trustee shall set a fixed monthly payment.

E. Post-Confirmation Attorney's Fees in Chapter 13 Cases. Additional attorney's fees, if any, for post-confirmation services ~~shall be paid~~ may be allowed according to the ~~following~~ flat fee schedule ~~in the following amount and manner:~~ set out in this rule. Any deviation from this schedule shall be by motion made to the Court, supported by detailed time and expense records. The Chapter 13 trustee shall pay such fees in the first monthly disbursement after approval, or as funds become available.

\$150 Motions to suspend or abate payments (~~\$75 to file + \$75 if appear in Court~~) - \$150
\$125 Motions to incur additional debt - \$125
\$100 Motions to distribute insurance proceeds - \$100
\$150 Defense of Motions for Relief from the Automatic Stay (~~\$75 to respond + \$75 if appear in Court~~) - \$250

- \$100 Defense of Motions to Dismiss - \$125
- \$125 Amendments to the Chapter 13 Plan - \$150
 - Amendments to Schedules - \$125
 - Amendments to Schedules I & J with Business Attachments - \$175
- \$75 Filing Proofs of Claim on behalf of creditors - \$100
- \$75 Objections to Unsecured Proofs of Claim - \$75
- \$150 Objections to Secured Proofs of Claim (~~\$75 to file + \$75 if a response is filed by the creditor~~) - \$150
- ~~\$150 Notice of Amendment of Schedule of Debts and Addition of Creditors, including all Required Amendments to the Schedules and Matrix~~
- \$150 Motions to Sell Property (~~\$75 to file + \$75 if appear in Court~~) - \$150
- \$75 Motions to Employ Counsel/Professional - \$150
- \$150 Motions to Approve Settlement/Allow Use of Settlement (~~\$75 to file + \$75 if appear in Court~~) - \$150
- \$150 Motions for Emergency Refund (~~\$75 to file + \$75 if appear in Court~~) - \$75
- \$100 Motions to Vacate or Set Aside Order - \$100
- \$75 Motions for Emergency Hearing - \$75
- \$75 Appearance at Hearing Due to Trustee's Request for Hearing Based on Debtor's Failure to Cooperate - \$100
- ~~\$175 Amendments to Schedules I and J with Business Attachments~~
 - Defense of a Notice of Breach of Conditional Orders - \$100

Debtor's counsel may also request reimbursement for expenses, in addition to the above fee schedule, at the rate of up to ~~\$0.20~~ 0.25 per copy and any postage costs that counsel incurs. Debtor's counsel must include the number of copies, the postage rate, and the number of items mailed in the request for post - confirmation fees.

~~Any deviation from the above fee schedule shall be made by a motion to the Court and supported with detailed time and expense records. The Chapter 13 trustee shall pay any additional attorney's fees in the first monthly disbursement following approval, or as soon as funds become available.~~

Debtor's counsel seeking payment of flat fees pursuant to this rule shall file with the court a certification identifying the services provided, and stating that the services are for post-confirmation work. Such certification shall be served on the debtor, the trustee, the United States Trustee, and parties who requested receipt of notices, with 20 days after service to object. If no objections are filed, the court may enter an order as to such fees without further hearing.

RULE 3070-1. CHAPTER 13 DIRECT PAYMENTS

Rule 3070-1 is amended to read:

All payments must be through the plan unless the Court orders or the trustee agrees

otherwise, except debtors may pay directly: 1) unmodified payments on a note secured by debtor's residence real property; 2) ongoing support obligations pursuant to a court decree; and 3) payments to an employer's credit union by payroll deduction.

RULE 3083-1. CHAPTER 13 PLAN; OBJECTIONS TO PLAN

Rule 3083-1 A is amended to read:

A. **Plan Summary.** Each Chapter 13 plan must be filed with a plan summary or a combination plan/plan summary with all the information in the form in **Appendix 3-83** (as the form changes from time to time, it is recommended that counsel obtain the latest version from the Chapter 13 Trustee's website located at www.13network.com). Debtor shall serve the plan and summary on all creditors when the plan is filed and shall serve amended plans on all affected creditors.

RULE 3084-1. CHAPTER 13 PROOFS OF CLAIM; OBJECTIONS TO CLAIMS

Rule 3084-1 C, D & E, are amended to read:

C. **Classification.** If a claim does not state whether it is secured, unsecured priority, or ~~general~~ unsecured non-priority, it will be deemed an unsecured non-priority claim. ~~unless it is apparent from attachments that it is a perfected secured claim.~~

D. **Secured Claim.** A secured claim must state a fair market value for each item of collateral. The trustee will use the creditor's fair market value if the fair market value is clearly provided on the face of the proof of claim. If the creditor does not provide a fair market value on the face of the claim ~~or debtor's value if the creditor does not provide one;~~ then the trustee will use the value contained in the debtor's plan. If neither the proof of claim nor the plan states a value, the trustee shall use the value set out in the debtor's schedules. If neither the debtor nor the creditor has provided a fair market value, the trustee shall load the proof of claim as unsecured non-priority. Listing the amount of debt on the "secured" line of the claim or stating that the fair market value is more than the amount owed (or a similar statement) shall ~~does~~ not constitute providing the fair market value.

E. **Interest on Secured Claims (other than claims secured by debtor's residence).** Absent Court order to the contrary, all filed and allowed secured claims will be paid interest at the Chapter 13 rate (referenced below) ~~applicable rate~~ unless the plan/plan summary **specifically** provides for "zero" interest. ~~Absent Court order to the contrary, the "Chapter 13 Rate" referenced below shall be the applicable rate.~~

1. Filed and allowed oversecured claimants shall receive their contract rate of interest, if provided on or with the proof of claim, from the date of the petition up to the date of confirmation. From the date of confirmation forward, filed and

allowed oversecured claimants shall receive the posted "**CHAPTER 13 RATE.**" If the contract rate is not provided on the face of the proof of claim, such a claimant will receive the posted "**CHAPTER 13 RATE**" from the date of the petition forward. An oversecured claim is one in which the fair market value of the collateral exceeds the total amount of the claim.

2. Filed and allowed undersecured claimants and filed and allowed fully secured claimants shall receive the posted "**CHAPTER 13 RATE**" from the date of the petition forward on the secured portions of their claims.
 - a. A fully secured claim is one in which the fair market value of the collateral equals or exceeds the total amount of the claim.
 - b. An undersecured claim is one in which the fair market value of the collateral is less than the total amount of the claim.

3. F. **Interest on Claims Secured by Debtor's Residence.** Unless otherwise set forth in the Plan, a claim secured only by real estate which is the debtor's principal residence, shall receive its contract rate of interest from the date of the petition forward, if such interest rate is provided on the face of the proof of claim; otherwise it will receive the posted "**CHAPTER 13 RATE.**"

- a. 1. For adjustable rate mortgages, the trustee shall use the interest rate provided in the plan/plan summary. If the debtor's plan/plan summary does not provide an interest rate, the trustee shall use the appropriate posted "**CHAPTER 13 RATE.**"
- b. 2. If the adjustable rate changes, it is the responsibility of the debtor or the creditor to notify the trustee of the new interest rate so that the claim can be adjusted accordingly.

4. G. Chapter 13 Rate

1. The posted "**CHAPTER 13 RATE**" shall be determined by the standing Chapter 13 trustee for the Western District of Missouri semi-annually as follows:
 - a. July 1 to December 31: For cases with the initial plan filed between July 1 and December 31, the interest rate shall be the 5 year treasury note rate as of the preceding June 1, plus 3% nominal interest rate per annum. The standing Chapter 13 trustee shall make the rate for the ensuing six-month period available to the Clerk of the Bankruptcy Court for posting for the first business day following June 10.
 - b. January 1 to June 30: For cases with the initial plan filed between January 1 and June 30, the interest rate shall be the 5 year treasury note rate as of the preceding December 1, plus 3% nominal interest rate per annum. The standing Chapter 13 trustee shall make the rate for the ensuing six-

month period available to the Clerk of the Bankruptcy Court for posting for the first business day following December 10 of the preceding year.

5. 2. THE POSTED "CHAPTER 13 RATE" IN EFFECT AT THE TIME OF FILING OF THE INITIAL PLAN SHALL REMAIN IN EFFECT THROUGHOUT THE ENTIRE LIFE OF THE CASE.
6. 3. The posted Chapter 13 rate is, absent evidence to the contrary, presumed to be the applicable rate. Parties may introduce evidence to determine what the applicable market rate of interest might otherwise be, on a case-by-case basis.

RULE 3084-1 F, G & H are renumbered:

F. H. Objections. It shall be the debtor's duty, and not the trustee's, to file objections to claims. The debtor must serve the objection on the claimant, claimant's attorney and the trustee.

G. I. Claims Allowed. All Chapter 13 claims will be allowed as filed absent timely objection by debtor. Claims will be paid according to the notice allowing claims.

H. J. Claim Amount. If the face of the filed proof of claim does not clearly state an amount owed, the trustee will load the claim amount as zero.

RULE 3088-1. CHAPTER 13 EMERGENCY REFUNDS AND BORROWING

Rule 3088-1 C is amended to read:

C. Emergency Borrowing. The Chapter 13 trustee may grant debtor permission to borrow sums under ~~\$1,000.00~~ of \$2,500.00 or less per request. The application must state the lender, the amount requested of the loan, the terms of payment repayment (including monthly payments and interest rate), and the purpose of the loan. Requests to borrow amounts in excess of \$2500 must be filed with and approved by the Court.

RULE 3091-1. DISBURSEMENT OF INSURANCE PROCEEDS

Rule 3091-1 is repealed and recreated to read:

A. If the Debtor suffers a casualty loss and that loss is covered by insurance, the debtor does not need the approval of the Bankruptcy Court for the insurer to pay the loss payee pursuant to the terms of the insurance contract.

B. If any creditor being paid through the trustee's office is the loss payee on the insurance policy and funds are distributed to that creditor from the insurer, the trustee shall continue

to disburse payments to that creditor pursuant to the terms of the confirmed plan unless:

i. The debtor files an objection to the proof of claim and the Bankruptcy Court enters an order directing the trustee to cease making payments to the creditor or the order reduces the allowed amount of the claim (any such objection should state with specificity the treatment of both the secured and unsecured portions of the claim)

or

ii. The creditor withdraws its claim or amends its claim.

C. If the debtor receives any insurance proceeds in excess of \$2,500, after payment of the loss payee, from a loss under the policy, the debtor shall not dispose of such excess proceeds without an order of the court.

RULE 4001-1. AUTOMATIC STAY - RELIEF FROM

Rule 4001-1 A, B and F are amended to read:

A. Notice; Default. When a motion for stay relief, adequate protection, redemption, or lien avoidance is filed, the Court will issue an order setting an answer date and a hearing date if an answer is filed. If the respondent(s) fail(s) to ~~does not~~ timely file an answer, the motion is deemed ~~submitted~~ admitted and the Court may enter a final order.

B. Motion for Stay Relief; Contents. A motion for relief from the automatic stay shall state the amount of the balance due of principal and interest as of the date of the bankruptcy petition. ~~and the amount of the arrearage due after default. In addition, in Chapter 7 cases, if the motion is filed prior to the §341 Meeting of Creditors, the motion shall state an estimate of the value of the collateral.~~ In addition, the motion shall state the following:

1. In Chapter 7 cases, if the motion is filed prior to the §341 Meeting of Creditors, the motion shall state an estimate of the value of the collateral.

2. In Chapter 13 cases, where the movant is seeking relief from the stay for failure to make post-petition payments on a claim secured by real property that is the Debtor's principal residence or is treated by the Debtor's Chapter 13 Plan pursuant to § 1322(b)(5), then the motion, or attachments thereto, shall contain a legible post-petition payment history (Appendix 4-01). The payment history shall set forth the date each post-petition payment was received, the amount of each post-petition payment received, and how each post-petition payment was applied by movant. Pursuant to § 362(g)(2), the Debtor has the burden to prove any post-petition payment(s) alleged to have been made but not set forth in the motion, or attachments thereto.

F. Trustee; Service of Documents. A trustee is a party in interest and must be timely served with the motion for relief and all documents supporting the motion. Movant shall serve legible paper copies of all documents evidencing perfection of security interests on the trustee and debtor's counsel at the time of the filing of the motion for relief or promptly thereafter. In the alternative, as to mortgages and deeds of trust only, the movant may file the page of the document, showing recording information, and the signatures of the borrowers. If such alternative is used movant shall promptly provide paper copies of the entire document upon specific request from the trustee or debtor's counsel. Service shall be certified on the motion for relief (**Appendix 3-01**). Movant's failure to serve the trustee and debtor's counsel under this rule may result in delay in the hearing on the motion for relief or denial of the motion.

Rule 4001-1 I is created to read:

I. Conditional Orders Granting Relief from Stay. In Chapter 7 or 13 cases, an order that resolves a motion for relief from stay that, *inter alia*: (i) conditionally denies the motion; (ii) provides for future payment of some or all of the post-petition arrearage; (iii) contains a "drop dead" clause; and/or (iv) contains a grace period for curing a default of the term(s) of the order, shall be known as a conditional order granting relief from stay.

1. If the movant alleges that the debtor has defaulted on any term of a conditional order granting relief from stay, movant shall give the debtor ten (10) days written notice to cure. After such ten-day period has expired, without cure, the movant shall submit a final order setting out the terms of the alleged breach and granting the relief requested.

2. The Chapter 13 trustee shall continue to disburse on a filed and allowed claim until the final order granting relief from stay is entered. If the final order granting relief from stay is entered and all appeals have been exhausted, the trustee shall, as of the date of that order, adjust the claim to the principal amount paid and make no further disbursements on the claim. It shall be the responsibility of the parties to notify the trustee of any agreement or ruling reinstating the automatic stay and the terms thereof so that the claim may be reset.

RULE 5005-1. FILING AND TRANSMITTAL OF PAPERS

Rule 5005- 1 C is amended to read:

C. Procedures for Pro Se and ~~Non-Registered~~ Filers. Procedures for the filing of documents by pro se parties and ~~non-registered filers~~ are set out in **PART X, REQUIREMENTS AND PROCEDURES FOR PRO SE FILERS.**

RULE 9013-1 MOTION PRACTICE

Rule 9013-1 B and C are amended to read:

B. Supporting Documents. When allegations of fact not appearing of record are relied on in support of a motion, all affidavits and other pertinent documents shall be summarized and this summary (Appendix 3-01) shall be submitted with the motion. It shall be sufficient that the summary appear as a part of the motion.

C. Response. Unless otherwise provided by these Rules, the Federal Rules of Bankruptcy Procedure, or by order of this Court, respondent shall file a response, any memorandum of authority, opposing affidavits for summary judgment motions, and supporting documents within 20 days after service of the motion.

Rule 9013-1 G is created to read:

G. Summary Judgment Motions. Motions for summary judgment shall be filed within the time deadlines set out in the pretrial order, and shall comply with Rule 56, Fed.R.Civ.P.

1. The suggestions in support of a motion for summary judgment shall begin with a concise statement of uncontroverted material facts. Each fact shall be set forth in a separately numbered paragraph. Each fact shall be supported by reference to the place in the record where the fact is established.
2. Suggestions in opposition to a motion for summary judgment shall begin with a section that contains a concise listing of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be set forth in a separate paragraph, shall refer specifically to those portions of the record upon which the opposing party relies, and, if applicable, shall state the paragraph number in movant's listing of facts that is disputed. All facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party.
3. All facts on which a motion or opposition is based shall be presented in accordance with Rule 56 of the Federal Rules of Civil Procedure. Affidavits or declarations shall be made on personal knowledge and by a person competent to testify to the facts stated. Where facts referred to are contained in another document, such as a deposition, interrogatory answer or admission, a copy of the relevant excerpt from the document shall be attached.
4. Suggestions in opposition to a motion for summary judgment shall be filed within 20 days of the filing of the motion for summary judgment. A reply, if any, to the suggestions in opposition to a motion for summary judgment shall be filed within 10

days of the filing of the suggestions in opposition.

5. Unless oral argument is ordered by the Court, motions for summary judgment will be ruled on the written motion, supporting suggestions, suggestions in opposition, and reply suggestions.

Rule 9019-1 is created to read:

RULE 9019-1 SETTLEMENT OF ADVERSARY ACTIONS

Motions to Approve Compromise or Settlement of adversary actions shall be filed in the adversary action, and not in the main case, along with a certificate of service on those entitled to service under Fed. R. Bankr. P. 9019, 2002, or other applicable law.

POST-PETITION PAYMENT HISTORY

Post-Petition Due Date	Date Payment Received	Amount Due	Amount Received	Late Charges	Notes

(Appendix 4-01)