

**United States Bankruptcy Court
Western District of Missouri**



**Eat & Greet
Educational Program**

An informal luncheon and discussion of current bankruptcy issues and procedures

Kansas City, Missouri

March 30, 2015
11:30 am – 1:00 pm
Charles Evans Whittaker Courthouse
Jury Assembly Room, Second Floor
400 East Ninth Street
Kansas City, MO 64106

Lunch provided by the Court

Agenda

- Bankruptcy Judge's Perspective: Current Issues
- Bankruptcy Clerk's Perspective: Clerk's Office Tips & Tricks
- Chapter 13 Trustee's Perspective: Tax Refund Procedures & Other Matters
- Question and Answer Session

Presented by:

Chief Bankruptcy Judge Arthur B. Federman
Bankruptcy Judge Dennis R. Dow
Bankruptcy Judge Cynthia A. Norton
Richard V. Fink, Chapter 13 Trustee
Rob Lawson, Bankruptcy Court Operations Manager

1.2 hrs. MO and 1.0 hrs. KS CLE Approved

Eat & Greet Materials
By Judge Cynthia A. Norton
March 30, 2015

I. Excerpts from the W.D. of Missouri Local Bankruptcy Rules:

Rule 2016-1. Compensation For Services Rendered and Reimbursement of Expenses

A. Prepetition Retainers and Other Payments.

11 USC §§ 329 and 330 and Fed. R. Bankr. P. 2016 and 2017 require or authorize the court to review and approve the compensation and expenses of attorneys in bankruptcy proceedings. Therefore, certain disclosures and applications are required. Pursuant to § 329 and Fed. R. Bankr. P. 2016(b), the attorney for the debtor shall file with the petition a disclosure of the amount and source of all retainers received by the attorney. The disclosure shall be served on the United States Trustee and any case trustee. Unless excused pursuant to the provisions of subpart D of this Rule, all professionals shall: (1) deposit all retainers (with the exception of earned on receipt retainers), whether received from the debtor or any other source, in the attorney's trust account pending an order of the court; and (2) with respect to all retainers and other payments made or fees sought, file an application seeking approval of such retainers, payments, and fees pursuant to § 330 and Fed. R. Bankr. P. 2016(a) (in the case of Chapter 11, 12, and 13 proceedings), or file an application to facilitate the court's review of the reasonableness of such retainers, payments, and fees pursuant to § 329 and Fed. R. Bankr. P. 2017 (in the case of Chapter 7 proceedings). Until the case is closed by final decree, debtor's attorney is under a duty to disclose all subsequent payments by filing a supplemental statement as required by Fed. R. Bankr. P. 2016(b).

B. Service of Application.

An application for professional fees and expenses and the required notice shall be served on debtor's attorney, the case trustee, the United States Trustee, the attorneys for all committees, and all parties who have requested service of notices. A detailed, itemized statement of the kind required by Fed. R. Bankr. P. 2016(a) shall be filed with the application. All such applications shall be based upon contemporaneous time records and shall include: a detailed description of the services performed; the date on which services were performed; the attorney or other employee performing such services; the amount of time expended on the enumerated services; and the applicable hourly rate. Each description of services rendered shall include a detailed description of the tasks performed (including, for example, the subject and purpose of correspondence, telephone conversations, conferences, and legal research). Failure to include this information may result in disallowance of fees. The applicant is responsible to ensure that the itemized statement is made PDF compatible for filing under the ECF system. The notice shall advise the noticed parties of the filing of the application and of the opportunity to file objections within 21 days of the date the notice is given and that, absent any objections, the court may approve the application without further notice or hearing.

C. When Application Over \$1,000. Additional Notices.

When an application is necessary and if such application is for compensation exceeding \$1,000, in addition to service in Paragraph B, applicant shall serve on all creditors a notice (**See Local Form - MOW 2016-1.1**) stating: the amount of fees and expenses sought; period covered; number of previous applications filed; amounts of compensation previously sought and allowed; original retainer and balance; that parties have 21 days to object, if no objections are filed the Court may enter an order, and if objections are filed the Court may set a hearing.

D. When Application Unnecessary. If debtor's attorney's total fee in a below median family

income case is \$3,000 or less, or if the total fee in an above median family income case is \$3,500 or less, and if the attorney and the debtor(s) have signed the applicable Rights and Responsibilities Agreement (See Local Forms MOW 2016-1.3 or 2016-1.4), the disclosure of fees in initial filings is sufficient and it is unnecessary to file an application under subpart C of this rule.

This General Order is effective on May 14, 2014 and shall remain in effect until further order or notice of this court.

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D. Adversary Proceedings.

The fee amount set forth in Paragraph D does not include the filing of any adversary proceeding necessary to obtain confirmation of a Chapter 13 plan. If it is necessary to file an adversary proceeding to obtain confirmation of a plan, and if the attorney and the debtor(s) have signed the applicable Rights and Responsibilities Agreement (See Local Form MOW 2016-1.4), the attorney's fee will be allowed in an amount not to exceed \$1000 per adversary proceeding without an itemized application. For fee amounts in excess of \$1000, the attorney shall comply with the requirements of Paragraph B of this rule. Fees pursuant to this paragraph must be approved by the Court upon submission of an application at the close of the adversary proceeding.

**E. PostConfirmation
Attorney Fees in Chapter 13 Cases.**

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F. Payment of Attorney Fees Through Chapter 13 Plan

- Amendments to Schedules - \$150
- Amendments to Schedules I & J with Business Attachments - \$200
- Appearance at Hearing Due to Trustee's Request for Hearing Based on Debtor's Failure to Cooperate - \$125
- Certificate of Service Regarding State Tax Returns - \$100
- Defense of Motions for Relief from the Automatic Stay - \$350
- Defense of Motions to Dismiss - \$200
- Filing Proofs of Claim on behalf of creditors - \$125
- Motions for Emergency Hearing - \$100
- Motions for Payoff of Chapter 13 Plan - \$75
- Motions for Relief from Stay (divorce) - \$200
- Motions to Approve Permanent Home Mortgage Modification (no hearing) - \$250
- Motions to Approve Permanent Home Mortgage Modification (with hearing) - \$350 Motions to Approve Settlement/Allow Use of Settlement - \$175
- Motions to Approve Trial Home Mortgage Modification (no hearing) - \$250
- Motions to Approve Trial Home Mortgage Modification (with hearing) - \$350
- Motions to Avoid Lien or Avoid Judgment - \$200
- Motions to Distribute Insurance Proceeds - \$125
- Motions to Employ Counsel/Professional - \$175
- Motions to Incur Additional Debt - \$150

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1. Dismissed or Converted Cases. If the Chapter 13 case is dismissed or converted and the debtor's attorney is owed fees:

a. Pre-confirmation:

i. The attorney is not entitled to payment of attorney fees from the trustee other than from funds received on or before the date of the entry of the order of dismissal/conversion which otherwise would be refunded to the debtor; and

ii. In order to obtain those funds, less the trustee's fee, the Court must enter an order upon a timely filed motion.

b. Post-confirmation: The trustee shall distribute funds to creditors, including debtor's attorney, pursuant to the terms of the confirmed plan as funds are available.

Rule 9013-1. Motion Practice

A. Writing.

Motions shall be in writing unless made in open court and shall state with particularity grounds for the relief requested.

B. Supporting Documents.

When allegations of fact not appearing of record are relied on in support of a motion, no more than 5 pages of affidavits and other pertinent documents shall be filed with the motion. If all affidavits and other pertinent documents exceed 5 pages, they shall be summarized and this summary (**See Local Form - MOW 9040-1.1**) shall be submitted with the motion. True and accurate copies of all affidavits and other pertinent documents shall be provided to opposing counsel at the time the motion is filed. 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 21 days after service of the motion.

D. Content of Response.

Responses shall address the merits of the motion and, if applicable, set out actions to remedy the particular problem. Failure to comply with this requirement may result in a ruling on the motion without a hearing.

Rule 9013-3. Certificate of Service

A. Certificate of Service. Each pleading shall have a signed certificate of service at the end of the pleading or on a separate, captioned certificate, stating: the manner and date of service, and each person served, either by name or reference to a standard mailing list, including electronic notice using the Court's ECF system. A pleading without a proper certificate may be stricken or denied.

B. Incorrect Certificate. A certificate is not sufficient if it is in a separate cover letter or on a cover sheet which is not a separate, captioned certificate, or consists of a general statement that proper parties have been served.

II. Pertinent Standing Orders:

Local Rule 9060-1C. Continuance of Hearings. If a hearing continuance is desired, a motion must be filed no later than two days prior to the scheduled hearing, except for cause arising within that two day period. If the motion is filed on the day before or the day of the scheduled hearing, the movant must also contact the assigned courtroom deputy by e-mail or telephone. . Any motion for continuance shall state, in addition to the reasons for such continuance, whether opposing counsel consents to such motion. A movant who is not aware of opposing counsel's position on the continuance should also state the efforts made to contact such counsel, including the date on which movant first attempted such contact.

This General Order is effective on June 10, 2013 and shall remain in effect until further order or notice of this court.

Rule 7001-1. General – Rules of Pleading Regarding Bankruptcy Court's Authority to Enter Final Judgment.

In an adversary proceeding before a bankruptcy judge, the complaint, counterclaim, cross-claim or third-party complaint shall contain a statement that the proceeding is either (1) both statutorily and constitutionally core; (2) statutorily, but not constitutionally core; or (3) non-core. Any responsive pleading shall admit or deny such statement. If (2) or (3) are alleged in any such pleading, that pleading shall further state whether the party consents to entry of final orders or judgment by the bankruptcy court.

This General Order is effective immediately for all pending and new cases and shall remain in effect until further order or notice of this court.

Summary of Relevant Supreme Court Cases

RECENT SUPREME COURT DECISION

Jesinoski v. Countrywide Home Loans, Inc., 135 S.Ct. 790 (2015)

The Eighth Circuit affirmed the district court's ruling that a lawsuit must be filed within three years of the loan consummation date in order to rescind. The Supreme Court reversed and held that a borrower "need only provide written notice to his lender [of the intent to rescind] within the 3-year period, not file suit within that period."

Here, three years after borrowing funds to refinance their mortgage, the borrowers sent the lender a letter indicating their intent to rescind the loan. The borrowers sent the letter within the 3-year period, but the lender asserted that the rescission was invalid. A year later, the borrowers filed suit for rescission and damages.

The Supreme Court addressed the issue of whether a borrower must file a lawsuit to exercise the right to rescind under TILA or whether providing written notice to the lender is sufficient. The Court abrogated in part *Keiran v. Home Capital, Inc.*, 720 F.3d 721 (8th Cir. 2013), the case relied on by the Eighth Circuit. *Keiran* held that § 1635(f) eliminated the right to rescind when a borrower fails to sue within three years of consummating the loan. Examining §§ 1635(a), (b), (g), and (f) of the Act, the Court concluded a borrower's right to rescission is triggered by notifying the lender of his or her intent to rescind, as plainly stated in the statute. The Court noted that "[a]lthough § 1635(f) tells us *when* the right to rescind must be exercised, it says nothing about *how* that right is exercised." Reversing the Eighth Circuit, the Court ruled:

[t]he clear import of § 1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent § 1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.

PENDING SUPREME COURT DECISIONS

Viegelahn v. Harris (In re Harris), 757 F.3d 468 (5th Cir. 2014), *cert. granted*, 135 S.Ct. 782 (2014).

Upon conversion from Chapter 13 to Chapter 7, the debtor filed a motion to compel the Chapter 13 trustee to turn over undistributed funds. The bankruptcy court granted the motion, and the district court affirmed. As a matter of first impression, the Fifth Circuit reversed and held that undistributed payments made from the debtor's wages, held by the trustee, must be distributed to creditors according to the confirmed plan.

The undistributed funds arose from the debtor's continued payment of mortgage arrears following foreclosure. The trustee placed a hold on sending the arrears payments to the mortgagee after the court lifted the stay. At the time of conversion, the trustee held approximately \$5,500. A little over \$4,000 went to creditors and the remainder to pay the debtor's counsel. The debtor sought return of the funds distributed to creditors, arguing the trustee lacked authority to disburse the funds after conversion.

The Fifth Circuit began its analysis by distinguishing a Chapter 13 estate, which includes property held at the time of filing as well as property acquired post-petition -- but before the case is closed, dismissed, or converted -- from a Chapter 7 estate, which only includes property held at the time of filing. Continuing its analysis with a review of §§ 348(f)(1) and (2), which address property of the estate in a converted case, the court explains that the passage of these provisions makes clear that property, including wages, acquired post-petition, does not become part of the Chapter 7 estate upon conversion unless bad faith exists. The court specifically states that “any funds paid by the debtor to the trustee pursuant to the Chapter 13 plan that have not been distributed at the time of conversion are not transferred to the Chapter 7 estate.” However, the court acknowledges the lack of statutory guidance on where such funds should go.

The court found unpersuasive the debtor’s reliance on a previous Fifth Circuit case, *In re Stamm*, 222 F.3d 216 (5th Cir. 2000), since that case dealt with pre-confirmation conversion and § 1326(a)(2) makes plain that payments made under a proposed plan must be returned to the debtor. The court explained that although the debtor’s obligation to continue payments cease upon conversion, and creditors are no longer bound, the plan is not “retroactively undone.” Therefore, the trustee is not prohibited from distributing funds paid when the debtor was still obligated under the plan. The court disagreed with the trustee’s argument that creditors, either specific creditors or a class of creditors, have a “vested right” to the payments once transferred to the Trustee. The Court opined that the “vested rights” approach failed to take into consideration that the “shall distribute” language in § 1326(a)(2) only applies to payments made pre-confirmation.

Upon considering Congress’ policy of encouraging Chapter 13 filings and avoiding disincentives to this end, the court held that returning undistributed funds to the debtor would not further this goal and also noted that conversion did not retroactively alter the benefits received by the debtor or the detriment of the creditor. Although creditors do not have a “vested right” to the funds, the Court held that the creditors’ claim was superior to that of the debtor.

Bank of America v. Caulkett (In re Caulkett), 566 Fed. Appx. 879 (11th Cir. 2014), *cert. granted* 135 S.Ct. 674 (2014).

The Eleventh Circuit affirmed the district court’s decision to void a wholly unsecured junior lien on residential property. The issue was whether §§ 506(a) and (d) allowed a Chapter 7 debtor to strip-off a second priority lien on his home when the first priority lien exceeded the property’s value. Without analyzing the issue, the Court stated that it was bound by its decisions in *McNeal v. GMAC Mortg., LLC (In re McNeal)*, 735 F.3d 1263 (11th Cir. 2012) and *Folendore v. United States Small Bus. Admin.*, 862 F.2d 1537 (11th Cir. 1989) and held that a junior lien was voidable under § 506(d).

Bullard v. Hyde Park Sav. Bank (In re Bullard), 752 F.3d 483 (1st Cir. 2014), *cert. granted* 135 S.Ct. 781 (2014).¹

In *In re Bullard*, the First Circuit held that the Bankruptcy Court’s Order denying confirmation of a proposed plan and giving the debtor thirty days to file an amended plan was

¹ Case summary obtained from Annual Bankruptcy Institute materials prepared by Judge Federman and his law clerk Erica Garrett.

not a final appealable order. In so holding, the First Circuit noted a circuit split. The Sixth Circuit had also recently joined the Second, Eighth, Ninth, and Tenth Circuits in holding that such an order is not final if the case has not been dismissed since the debtor remains free to propose another plan. The Fourth Circuit, “over strong dissent,” had recently joined the Third and Fifth Circuits in holding that such an order can be final, even if the underlying bankruptcy case has not been dismissed. The First Circuit cited the Eighth Circuit’s *Zahn v. Fink* (*In re Zahn*), 526 F.3d 1140 (8th Cir. 2008), and the Tenth Circuit’s *Simons v. FDIC* (*In re Simons*), 908 F.2d 643, 644 (10th Cir. 1990) and *Gordon v. Bank of Am., N.A.* (*In re Gordon*), 743 F.3d 720 (10th Cir. 2014). *See also, In re Imperial Auto Protection, LLC*, 2014 WL 3019134 (E.D. Mo. July 3, 2014) (Sippel, J.); 2014 WL 3018796 (E.D. Mo. July 3, 2014) (Perry, J.) (denying motion for interlocutory appeal from order denying motion to dismiss case, because appeal did not involve a controlling issue of law as to which there exists a substantial ground for difference of opinion, and the appeal would not materially advance the ultimate termination of the litigation).

Wellness Int’l Network, Ltd. v. Sharif, 727 F.3d 751 (7th Cir. 2013), *cert. granted* 134 S.Ct. 2901 (2014).

In *Wellness*, the Supreme Court will answer two questions impacting the scope of the bankruptcy court’s jurisdiction: (1) whether a bankruptcy court has the constitutional authority to enter a final order determining property of the bankruptcy estate under 11 U.S.C. § 541 when a subsidiary state property law is involved; and (2) whether Article III permits the exercise of judicial power of the United States by the bankruptcy courts based on express consent, and if so, whether implied consent is sufficient.

The crux of the facts in this “decade-long saga” between the debtor and creditor is the parties’ dispute over the bankruptcy court’s authority to enter a final judgment on a state law alter-ego claim. *Wellness* argues that the bankruptcy court has jurisdiction because the action “stems from the bankruptcy itself,” even in light of *Stern*. The debtor argues that a final decision must be made by a federal district court to comply with the Constitution.

Baker Botts, LLP v. ASARCO, LLC (*In re ASARCO, LLC*), 751 F.3d 291 (5th Cir. 2014), *cert. granted* 135 S.Ct. 44 (2014).²

Section 330(a) allows judges to award “reasonable compensation for actual, necessary services rendered by” an attorney or other professional employed by the estate. The courts are divided as to whether this includes work attorneys do in defending their fees, and the Supreme Court has granted certiorari on the issue. Section 330(a)(3) provides that in awarding compensation a court should consider “all relevant factors,” including “whether their services were necessary for the administration of, or beneficial . . . toward the completion of a case,” and “whether the compensation is reasonable” based on comparable practitioners in non-bankruptcy cases. The Fifth Circuit concluded that since such services were not likely to be of benefit to the estate, they were not compensable. Debtor’s counsel argued that the Fifth Circuit’s holding was contrary to the text of the statute, which gives courts broad discretion, and to historical practice.

² Case summary obtained from Annual Bankruptcy Institute materials prepared by Judge Federman and his law clerk Erica Garrett.

PETITION FOR CERTIORARI SUBMITTED

Crawford v. LVNV Funding, LLC, 758 F.3d 1254 (11th Cir. 2014).

Reversing the bankruptcy and district courts, the Eleventh Circuit held that filing a proof of claim on a stale debt amounted to “collection activity” and therefore violated the Fair Debt Collection Practices Act (FDCPA or Act).

The debtor, Stanley Crawford, owed approximately \$2,000 to a furniture company. The furniture company charged off the debt and sold it to LVNV Funding, a bulk debt buyer. Several years after the three-year statute of limitations had run, Crawford filed for Chapter 13 bankruptcy. Subsequently, LVNV filed a proof of claim to collect the debt, and the debtor objected based on the expiration of the statute of limitations period. Crawford argued that LVNV’s filing of the proof of claim on a stale debt violated the FDCPA.

The district court reasoned that “filing a proof of claim is not the same thing as attempting to collect a debt[.]” Agreeing with another bankruptcy court, the district court explained that if filing a proof of claim is a “collection activity” under the FDCPA then every proof of claim filing would also violate the automatic stay.

The Eleventh Circuit explained that the purpose of the FDCPA is to regulate the conduct of debt collectors and eliminate “the use of abusive, deceptive, and unfair [and unconscionable] debt collection practices[.]” Pointing out the ambiguity in Congress’ use of the terms “unfair” and “unconscionable,” the Court employs a “least-sophisticated consumer” standard to determine whether a debt collector’s conduct violates the Act. This standard considers whether “the least sophisticated consumer would have been deceived by the debt collector’s conduct.”

The Court stated that LVNV filed the stale claim because it knew that if the debtor or trustee failed to object the claim would be allowed. Federal courts have uniformly held that the threatening suit or filing suit on a time-barred claim violates the FDCPA. Both inside and outside of the bankruptcy context, “the limitations period provides a bright line for debt collectors and consumer debtors, signifying a time when the debtor’s right to be free of stale claims comes to prevail over a creditor’s right to legally enforce the debt.” The Court explained that the “least sophisticated consumer” would be misled into believing that by filing the proof of claim the creditor can legally enforce the debt. Therefore, the Court held that LVNV’s filing of a time-barred proof of claim was “unfair,” “unconscionable,” “deceptive,” and “misleading,” thus violating the FDCPA.

519 B.R. 531
United States Bankruptcy Court,
W.D. Missouri.

In re Henry Hamilton GENTRY and Gloria Gail
Gentry, Debtors.

No. 14–60795. | Signed Oct. 1, 2014.

Synopsis

Background: Chapter 13 trustee objected to debtors' claimed exemptions in firearms under Missouri law as household goods.

[Holding:] The Bankruptcy Court, Arthur B. Federman, Chief Judge, held that where debtors used guns for hunting, the firearms qualified as "household goods" and, thus, were exempt under Missouri law.

Objection overruled.

Attorneys and Law Firms

*531 J. Paige Oster, Licata Bankruptcy Firm, Springfield, MO, for Debtors.

ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTIONS

ARTHUR B. FEDERMAN, Chief Judge.

The Chapter 13 Trustee objected to the Debtors' claimed exemptions in firearms under § 513.430.1(1) of the Missouri Statutes as household goods because the Debtors had not specified whether the firearms are for their daily household use. The Debtors responded that they use the firearms for hunting purposes. At hearing, the parties requested clarification on the question of whether debtors in Missouri are permitted to claim an exemption in firearms as household goods under § 513.430.1(1). For the reasons that follow, I find that, in the typical case, where a debtor keeps the guns for hunting or self-defense, firearms can be household goods under § 513.430.1(1)

and, thus, exempt under Missouri law. The Trustee's Objection is, therefore, OVERRULED.

^[1] Missouri has opted out of the federal exemption scheme in *532 § 522(d) of the Bankruptcy Code.¹ Consequently, debtors domiciled in Missouri during the relevant period may only claim the exemptions provided by Missouri law and federal law other than the Bankruptcy Code.² As relevant here, § 513.430.1(1) of the Missouri Statutes permits debtors to exempt:

Household furnishings, *household goods*, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for personal, family or household use of such person or a dependent of such person, not to exceed three thousand dollars in value in the aggregate.³

The question here is whether firearms qualify as "household goods ... held primarily for personal, family or household use" under § 513.430.1(1).

At the outset, it is important to point out that exemptability of household goods arises in two overlapping, but distinct, contexts in bankruptcy cases: First, whether a debtor may claim an exemption in certain household items, thereby removing those items from the reach of creditors (which is the issue here); and second, whether a bankruptcy debtor can avoid a nonpossessory, nonpurchase-money lien on such exempt items under § 522(f) of the Bankruptcy Code. As discussed more fully below, all but one of the cases this Court has found regarding the exemptability of firearms as household goods in Missouri arose in the context of lien avoidance under § 522(f) of the Bankruptcy Code, and not exemptability under § 513.430.1(1) of the Missouri Statutes, which is the issue here.

Generally speaking, § 522(f) permits bankruptcy debtors to avoid nonpossessory, nonpurchase-money liens in certain property to the extent such liens impair exemptions. In *In re Thompson*,⁴ the Eighth Circuit considered whether such a lien could be avoided on livestock owned by a farmer, and exempt under state law. For lien avoidance purposes, the debtors there claimed the livestock was household goods. The Eighth Circuit emphasized the distinction between state law exemptions and exemptability for lien avoidance purposes: "Although a state may elect to control what property is exempt under state law, federal law determines the availability of a lien avoidance."⁵

At the time the Eighth Circuit decided *Thompson*, § 522(f)(1)(B) of the Bankruptcy Code permitted debtors to

avoid non-possessory, nonpurchase-money security interests in “household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.”⁶ Although this language was very similar to Missouri’s § 513.430.1(1), the Eighth Circuit noted that Congress enacted § 522(f)(1) because it was concerned with creditors who, in loaning money, took security interests in all of a debtor’s personal belongings, and then threatened repossession as a means of coercing reaffirmation agreements from frightened debtors.⁷ In light of that legislative concern, the Eighth Circuit concluded that “only those personal goods necessary to the debtor’s new beginning *533 and of little resale value fit the federal bankruptcy philosophy embodied in section 522(f)[1].”⁸ As compared to the state law exemption statutes, which are to be construed liberally in favor of the debtor,⁹ the Eighth Circuit’s *Thompson* test for lien avoidance was rather restrictive.

Despite *Thompson*’s relatively restrictive test, the court in *In re Boyer* held that, for purposes of § 522(f)(1) and under *Thompson*, “household goods include more than those items that are indispensable to the bare existence of a debtor and his family. Items which, while not being luxuries, are convenient or useful to a reasonable existence must also be included.”¹⁰ Based on that analysis, that same court later held that a list of items which included guns fit within the definition of § 522(f)(1)’s household goods.¹¹ Another court held that guns were exempt under *Boyer*’s definition, and also because § 522(f)(1)(A) includes “personal property found in [a] debtor’s residence, which is necessary to the functioning of a household or is normally used by and found in the residence of a debtor.”¹²

On the other hand, the court in *In re Oswald* held that guns were not exempt under § 522(f)(1)(A) because “[i]tems are not ‘household goods’ merely because they are found in many, or most homes” and because courts from other jurisdiction had held guns were not exempt.¹³

There thus developed a split of authority on the question of whether firearms are household goods for lien avoidance purposes under § 522(f). However, as the court in *In re McCain* inferred, the definition of “household goods” for lien avoidance under § 522(f) and *In re Thompson* is more restrictive than it is for exemption purposes under § 513.430.1(1).¹⁴ Indeed, that conclusion has been reinforced by the fact that, as part of BAPCPA, Congress added § 522(f)(4) to narrow the definition of “household goods” for lien avoidance purposes even further.¹⁵

*534 But here we are dealing with a claimed exemption under § 513.430.1(1), not lien avoidance. On that point, I found only a single case holding that firearms are not exempt under § 513.430.1(1): *In re Coffman*.¹⁶ However, in so deciding, that court appears to rely summarily on *In re Oswald*,¹⁷ but neither *Coffman* nor *Oswald* recognized the different standard for § 522(f) set out in *In re Thompson*.

In contrast to *Thompson*’s relatively restrictive standard for lien avoidance, the Debtors here point out that courts liberally construe Missouri exemption laws in favor of the debtor.¹⁸ And, except for providing dollar limitations to categories of exempt items, Missouri law does not require its exemptions to be limited only to “personal goods necessary to the debtor’s new beginning and of little resale value,” as *Thompson* said was the case under § 522(f). As a result, I agree with the Court in *In re McCain* that, for purposes of exemptions under § 513.430.1(1), the concept of household goods includes more than those items that are indispensable to the bare existence of a debtor and his family; rather, items which, while not being luxuries, are convenient or useful to a reasonable existence should also be included.¹⁹ In other words, as the court in *In re Ray* said, the concept of household goods includes personal property necessary to the functioning of a household or normally used by and found in a debtor’s residence.²⁰ Household goods need not be used daily, or for non-recreational purposes; guns are no different than camping equipment, golf clubs, Xboxes, or bicycles, all of which are regularly approved as exempt.

In sum, guns could be found to be convenient or useful to a reasonable existence or necessary to the functioning of a household—particularly if they are kept for hunting or self-protection purposes—and, thus, exemptible under § 513.430.1(1). By contrast, as the Debtors concede, a collection of antique guns not intended to be used for those purposes would not seem to qualify as household goods under § 513.430.1(1).

¹² Here, the Debtors’ attorney represented that the Debtors use the guns—a 12 gauge pump shotgun; a .22 pump rifle; and a 20 gauge pump shotgun, valued collectively at \$250—for hunting purposes, and the Chapter 13 Trustee does not appear to dispute that representation. As a result, the Court finds that the three firearms at issue here are household goods under § 513.430.1(1).

One final note: There was no dispute here as to the valuation placed on the guns by the Debtors. Unlike certain other types of household goods, guns may not

depreciate rapidly, or at all, after their purchase. Debtors should value them with that in mind.

IT IS SO ORDERED.

ACCORDINGLY, the Chapter 13 Trustee's Objection to Exemptions (Doc. No. 16) is OVERRULED.

Footnotes

1 Mo.Rev.Stat. § 513.427.

2 *Benn v. Cole (In re Benn)*, 491 F.3d 811, 813 (8th Cir.2007).

3 Mo.Rev.Stat. § 513.430.1(1) (emphasis added).

4 750 F.2d 628 (8th Cir.1984).

5 *Id.* at 630.

6 *Id.*

7 *Id.*

8 *Id.* at 631. *See also In re McGreevy*, 955 F.2d 957, 961–62 (4th Cir.1992) (holding that “household goods” under § 522(f) are “those items of personal property that are typically found in or around the home and used by the debtor or his dependents to support and facilitate day-to-day living within the home, including maintenance and upkeep of the home itself” and, while not declaring a *per se* rule, firearms did not meet the definition in this case).

9 *See, e.g., In re Maloney*, 311 B.R. 525, 527 (Bankr.W.D.Mo.2004).

10 63 B.R. 153 (Bankr.E.D.Mo.1986) (holding that a lawn mower, jewelry, camera, clock/radio telephones, a television and stereo system were household goods).

11 *In re Bowen*, 82 B.R. 102, 105 (Bankr.E.D.Mo.1988) (applying the definition announced in *In re Boyer* to a list which included firearms).

12 *In re Ray*, 83 B.R. 670, 673 (Bankr.E.D.Mo.1988) (holding that a list of items which included guns “fall squarely within the realm of objects ‘convenient or useful to a reasonable existence,’ and, therefore, within § 522(f)(2)(A)’s “broad definition” of “goods.”).

13 *In re Oswald*, 85 B.R. 541, 543 (W.D.Mo.1986). *See also In re Gray*, 87 B.R. 591, 593 (Bankr.W.D.Mo.1988) (mentioning the *Thompson* standard, but, being bound by *In re Oswald*, ruling that guns were not household goods under § 522(f)).

14 114 B.R. 652 (Bankr.E.D.Mo.1990) (holding that, while firearms were “properly categorized as household goods,” they were “not necessary to the Debtors’ new beginning,” and, therefore, not subject to lien avoidance).

15 *See In re Zieg*, 409 B.R. 917, 920 (Bankr.W.D.Mo.2009). Section 522(b)(4) now defines “household goods” to mean specified items such as clothing, furniture, appliances, 1 radio, 1 television, 1 VCR, linens, china, crockery, and so forth, and expressly excludes items such as, *inter alia*, works of art and electronic entertainment equipment with FMV of more than \$650.

16 125 B.R. 238 (Bankr.W.D.Mo.1991).

17 85 B.R. 541, 543 (W.D.Mo.1986).

18 *In re Bryan*, 466 B.R. 460, 464 (8th Cir. BAP 2012) (citing *Norwest Bank Neb., N.A. v. Tveten (In re Tveten)*, 848 F.2d 871, 875

In re Gentry, 519 B.R. 531 (2014)

(8th Cir.1988)).

19 114 B.R. at 653 (citing *In re Boyer*, 63 B.R. at 159).

20 *In re Ray*, 83 B.R. at 673.

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IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

IN RE:)
)
) Case No.
)
)
)
Debtors.)

**RIGHTS AND RESPONSIBILITIES AGREEMENT BETWEEN
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS**

It is important for persons who file a Chapter 13 bankruptcy case to understand their rights and responsibilities. It is also important for them to know what their attorneys' responsibilities are and the necessity of communicating openly with their attorneys to make the case successful. Attorneys' clients also are entitled to expect certain services to be performed by their attorneys. In order to assure that clients and their attorneys understand their rights and responsibilities in the bankruptcy process, the following Rights and Responsibilities have been adopted by the Bankruptcy Court for the Western District of Missouri. The signatures below indicate that the responsibilities outlined in the agreement have been accepted by the Clients and their attorneys. Nothing in this agreement is intended to modify, enlarge or abridge the rights and responsibilities of a "debt relief agency," as that term is defined and used in 11 U.S.C. § 101, et. seq.

Any attorney retained to represent you in a Chapter 13 case is responsible for representing you on all matters arising in the case (unless otherwise agreed as to adversary proceedings or otherwise ordered by the Court). The attorney may not withdraw from a bankruptcy case in this District unless (a) the attorney and you agree to the attorney's withdrawal and another attorney enters the case on your behalf, or (b) the Court, after notice and a hearing, approves an attorney's motion for withdrawal or substitution of attorneys. When appropriate, the attorney may apply to the Court for compensation that is additional to the maximum initial fees set out in this agreement.

I. BEFORE THE CASE IS FILED, YOU AGREE TO TIMELY:

1. Discuss with your attorney your goals in filing the case.
2. Cooperate with your attorney in preparing all required bankruptcy papers and documents, thoroughly reviewing drafts of documents, and advising your attorney of corrections needed.
3. Provide your attorney with all documentation he or she requests, including but not

limited to accurate copies of the following documents:

- a. Certificate of Credit Counseling, together with the debt repayment plan, if any, prepared by the nonprofit budget and credit counseling agency that provided individual counseling services to you prior to bankruptcy.
- b. Proof of income you received from all sources in the 6-month period before your case was filed. Some examples include paycheck stubs, Social Security statements, worker's compensation payments, income from rental property, pensions, disability payments, self-employment income, child and spousal support, and other payments. If you are self-employed or own a business, you should provide report(s) disclosing monthly income and expenses for the 6-month period before the filing date.
- c. If another person is expected to contribute to your Chapter 13 case, proof of that person's income and ability to pay.
- d. Copies of federal and state income tax returns, or transcripts of returns, for the most recently ended tax year, as well as any other returns requested by your attorney.
- e. Proof of your identity and Social Security number. Some examples are your driver's license, passport, or other document containing your photograph.
- f. A record of your interest, if any, in an educational individual retirement account or a qualified State tuition program.
- g. The name, address and telephone number of any person or state agency to whom you owe back child or spousal support or make current child or spousal support payments. Include all supporting documents for the payments. Some examples of supporting documents are a court order, a declaration of voluntary support payments, a separation agreement, a divorce decree, and a property settlement agreement.
- h. Any insurance policies requested by your attorney.
- i. Documents relating to any inheritance to which you are entitled.
- j. Documents relating to any legal action in which you are a party.

II. AFTER THE CASE IS FILED, YOU AGREE TO TIMELY AND PROMPTLY COMPLY WITH ALL APPLICABLE CHAPTER 13 RULES AND PROCEDURES, INCLUDING BUT NOT LIMITED TO:

1. Keep the chapter 13 trustee and your attorney informed of your current address and telephone number and employment status.
2. Attend the § 341(a) meeting of creditors at the time(s) ordered.
3. Make all required Chapter 13 plan payments on time.
4. Sign a payroll deduction order, if one is required.
5. Inform your attorney of any change in your marital status, the commencement of any child support or spousal support obligation, or any change in any existing child support or spousal support obligation.
6. Inform your attorney of any wage garnishments, seizure of assets or liens that occur or continue after the filing of your bankruptcy case.
7. Contact your attorney if you lose your job, if your income increases, if you have new or unexpected financial problems, or if you receive (or find out that you might be entitled to receive) any money or property from an inheritance or legal action.
8. Inform your attorney of any change in a creditor's address or in the amount of any payment you are required to make.
9. Keep records of all mortgage payments you make to secured creditors during the case.
10. Provide copies of all federal and state tax returns or transcripts to your attorney when requested, and pay over to your attorney or the trustee, as directed, the nonexempt portion of any tax refunds.
11. Contact your attorney if any tax refunds are seized or are not received when expected.
12. Contact your attorney if you are sued during the case or if you file a lawsuit or intend to settle any dispute relating to events that occurred either before or after the filing of your bankruptcy case.
13. Contact your attorney before buying or selling any real estate, before buying or selling any unencumbered personal property with a value of more than \$2,500.00, or before incurring any debt in excess of \$2,500.00. Requests to incur debt of \$2,500 or less may be submitted directly to the Chapter 13 trustee.
14. Provide on a timely basis all information or documentation requested by your

attorney, including all information needed to respond to any motion or objection seeking relief in your bankruptcy case.

15. Provide your attorney with all documentation necessary to comply with any audit request.
16. Respond promptly to all communications from your attorney.

III. BEFORE THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

Attorney will personally:*

1. Meet with you to review your assets, liabilities, income, and expenses.
2. Counsel you regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss bankruptcy procedures, and answer your questions.
3. Review the completed bankruptcy petition, statements, schedules, and all amendments with you.
4. Explain to you that the attorney is being engaged to represent you on all matters arising in the Chapter 13 case, and reach an agreement with you on whether the attorney is to represent you in adversary proceedings that might be filed in the case.
5. Explain to you the attorney's fees that are being charged in the case, how and when those attorney's fees are determined and paid, and whether additional fees will be charged for representation in adversary proceedings that might be filed in the case.
6. Explain to you which payments must be made directly to creditors by you and which payments will be made through the Chapter 13 plan.
7. Explain to you how, when, and where to make the Chapter 13 plan payments.
8. Explain to you how, when, and where to make your mortgage payments after the bankruptcy case is filed.
9. Advise you of the need to maintain appropriate insurance, such as homeowner's insurance on your home and liability, collision, and comprehensive insurance on vehicles that are leased or are security for a loan.

10. Provide a fully signed copy of this agreement to you.

With the assistance of staff under his or her supervision, your attorney will:

11. Verify the number and status of any prior bankruptcy case(s) filed by you or any related entity.
12. Timely prepare and file your petition, statements, schedules, required documents and certificates, and all necessary amendments to these filings.

* The term “personally” means that the described service will be performed only by an attorney who is a member in good standing of the Bar and admitted to practice before the bankruptcy court. The service shall not be performed by a non-attorney even if that individual is employed by the attorney and is under the direct supervision and control of that attorney.

IV. AFTER THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

1. Advise you of the requirement to attend the § 341(a) meeting of creditors and inform you of the date, time, and place of the meeting. In the case of a joint filing, inform you and your spouse that both of you must appear at the meeting.
2. Inform you that you must be punctual for the § 341(a) meeting of creditors or the meeting may be continued to a later date.
3. Attend the § 341(a) meetings and any court hearings, either personally or through another attorney from his or her firm or through an appearance attorney who has been adequately briefed on the case.
4. Advise you if an appearance attorney will stand in for him or her at the § 341(a) meeting or any court hearing, and explain to you in advance, if possible, the role and identity of the appearance attorney. In any event, it is your attorney’s responsibility to adequately prepare the appearance attorney for the meeting or hearing by providing all documents and information in sufficient time to allow for proper representation of you.
5. Serve the Chapter 13 plan on all creditors and other parties on a timely basis.
6. Submit to the Chapter 13 trustee on a timely basis properly documented proof of all sources of income for you.

7. Notify you on a timely basis if any pleading seeking relief against you is filed. This notification shall specify a deadline by which you should contact your attorney to discuss a response to the pleading and may state that if you do not contact the attorney timely, such attorney may choose not to file a response. Such notification should explain the potential consequences of not filing a response to the pleading.
8. If your attorney is contacted by you on a timely basis, as provided in paragraph 7, such attorney will timely respond in an appropriate manner to any pleading seeking relief against you.
9. Prepare, file, and serve on a timely basis any necessary amended statements and schedules and any change of address, based on information provided by you.
10. Monitor all information filed in your case for accuracy and completeness, including but not limited to reviewing the order of confirmation, the claims register, and notices concerning the payment of claims, and promptly notify the trustee of any problems or discrepancies.
11. File objections to claims when appropriate.
12. Prepare and file proofs of claim for creditors when appropriate.
13. Prepare, file, and serve timely motions to modify the plan after confirmation, when necessary.
14. Explain to you that additional legal fees may be charged for filing or responding to motions after confirmation, and explain that the fees for those services are set or approved by the Court.
15. Prepare, file, and serve motions to buy, sell, or refinance real estate or personal property, when appropriate.
16. Prepare, file, and serve any other motion that may be necessary to appropriately represent you in the bankruptcy case, including but not limited to motions to impose or extend the automatic stay, motions to avoid liens on real or personal property, and motions to value the collateral of secured creditors.
17. Respond promptly to your questions and communications throughout the term of the plan, and provide all other legal services that are necessary for the administration of the bankruptcy case.
18. Unless otherwise agreed before the bankruptcy case is filed, your attorney will represent you in adversary proceedings, including but not limited to objections to

discharge and/or dischargeability.

19. If your attorney has not been retained to represent you in adversary proceedings, and an adversary proceeding is then filed against you, the attorney will explain to you the estimated cost of providing representation in the adversary proceeding, the risks and consequences of an adverse judgment, and the risks and consequences of proceeding without counsel.
20. Advise you of the requirement to complete an instructional course in personal financial management, and the consequences of not doing so.
21. Represent you at a discharge hearing, if required.
22. Represent you in connection with any audit request.

V. ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES

The guidelines in this District for payment of attorneys' fees in Chapter 13 cases without a detailed fee application provide for maximum initial fees of \$3,000 for legal services provided up to confirmation of the Chapter 13 Plan. In this case, the parties agree that the fee for these preconfirmation services will be \$_____, payable as follows:

Such fee does/does not (circle the appropriate verb) include representation in adversary proceedings. (If neither is circled, representation in adversary proceeding is included) Fees for postconfirmation services are subject to court approval, based on the schedule contained in Local Rule 2016-1, or based on actual time records submitted by the attorney.

Other than the initial retainer, your attorney may not receive fees directly from you. All other fees due shall be paid through the Chapter 13 Plan unless otherwise ordered by the Court.

If you dispute the legal services provided or the fees charged by your attorney, you may file an objection with the court. Should your attorney's continued representation create a hardship, such attorney may seek a court order allowing him or her to withdraw from the case. Under Local Rule 2090-1, such attorney will not be allowed to withdraw until another attorney enters the case, unless good cause is shown to permit the withdrawal.

Client's Signature. By signing this agreement, you certify that you have read the agreement and understand and agree to carry out the terms of the agreement to the best of your ability, and that you have received a signed copy of the agreement.

Attorney's Signature. By signing this agreement, your attorney certifies that, before the case was filed, he or she personally met with you and counseled and explained to you all matters as required by this agreement.

Debtor

Date

Debtor

Date

Attorney

Date

**Motion Practice in the United States Bankruptcy Court
for the Western District of Missouri**

Honorable Dennis R. Dow

I. Generally

A. Form of Motions

1. Must be in writing unless made orally at hearing. Local Rule 9013-1.A.
2. Documents Supporting Motion
 - a. If relying on facts not of record, affidavit or documents must be attached.
 - b. May be attached unless they exceed five pages, in which case a summary of the documents must be provided.
 - c. Copies must be provided to opposing counsel. Local Rule 9013-1.B.
3. Proposed Orders – recent amendments to Fed. R. Bankr. Proc. 4001 notwithstanding, proposed orders need not be submitted on motions for relief from stay, for use of cash collateral or to borrow in cases under Chapter 7 or Chapter 13.
4. Responses
 - a. Unless another time period is specified by statute, the Federal Rules of Bankruptcy Procedure, local rules or court order, responses are due within 21 days. Local Rule 9013-1.C.
 - b. Responses must address the merits of the motion and, if appropriate, offer remedies. Failure to do so may result in the motion being granted with no hearing. Local Rule 9013-1.D.
 - c. Responses should not contain separate requests for relief. All such requests should be contained in a separate motion.

B. Service of Motions

1. By Whom – most motions must be served by the movant. Local Rule 2002-1.A., B.

Revised 10/28/13

2. On Whom Served
 - a. Must be served on all parties in interest as specified on the most current version of the mailing matrix maintained for the case. Local Rule 2002-1.C.
 - b. Certain specified motions must also be served upon the United States Trustee (e.g., employment and compensation of professional persons; use, sale or lease of property outside the ordinary course of business; approvals of compromises). Local Rule 2002-2.A.
 3. What Must be Served – must serve request for relief; court may order the hearing notice to be served by the movant as well. Local Rule 9060-1.B.
 - a. If the movant has been directed to serve the notice of hearing, failure to promptly serve the notice or to file a certificate of such service may result in denial of or delay in granting the motion.
 - b. If directed to serve a notice of objection deadline, use the format suggested on the court's website.
 4. Certificate of Service – each pleading must be accompanied by a certificate of service endorsed on the pleading or on a separate document and indicating the manner in which the document was served, the date of service and the persons upon whom the document was served. Local Rule 9013-3.A.
- C. Processing of Motions – motions are processed in one of the following four ways.
1. Notice with Opportunity for Hearing – Local Rule 9060-1.G.
 - a. These motions are scheduled for hearing only if a response is filed within the time set in a notice issued by the court (e.g., relief from automatic stay, redemption, lien avoidance).
 2. Set for Hearing – Local Rule 9060-1.H.
 - a. Motions described in this subparagraph of the rule are set for hearing regardless of whether a response is filed (e.g., motions to extend or impose stay, objections to confirmation, objections to secured claims).
 - b. The movant is required to serve notice of the scheduled hearing.

3. Held for Response – Local Rule 9060-1.I. These motions are held for the appropriate period of time (in most instances 21 days) to determine if a response is filed (e.g., borrowing, debtor's motion to convert or dismiss, Chapter 13 trustee's motion to dismiss).
 - a. If a response is filed, a hearing will be scheduled; the movant will be directed to serve notice of the hearing.
 - b. If no response, an order will be entered granting the motion.
4. Ruled Sua Sponte – Local Rule 9060-1.J.
 - a. The motions identified in this subparagraph of the rule may be ruled by the court upon the motion papers with or without awaiting a response. No hearing will be set unless the court determines that one is necessary (e.g., application to pay filing fee in installments, application to waive the filing fee, motions for extension of time, motions to reinstate dismissed cases).

D. Practical Tips on Motion Practice

1. Check the local rules for any specific requirements of form, content or procedure.
2. Make the motion as self-contained as possible, including all relevant facts. Do not make the judge search the file for information relevant to the motion.
3. Include all grounds for the relief requested. The court may find some persuasive and others not. Cite the applicable law.
4. Remember, this is your opportunity to convince the court that the relief requested is appropriate. The more detailed and persuasive the motion, the greater the chance it may be granted without the need for a hearing. Even if a response is filed and a hearing is set, a detailed and persuasive motion may incline the court to your side of the dispute as the court reviews the motion papers prior to the hearing.

II. Specific Motions

A. Procedural Motions

1. Extension of Time
 - a. Make certain that the deadline you seek to extend can be extended

by the court and is not subject to limitations on the court's power to extend. Fed. R. Bankr. P. 9006(b)(2), (3).

- b. Extension of time requires a demonstration of cause. Do not assume that you will receive the requested extension even if it is the first one that has been requested. If you seek to extend the deadline for the second time or more, describe why the first extension was insufficient, what progress has been made and why additional time is necessary. If the motion is filed after the expiration of the relevant time period, the movant must demonstrate excusable neglect.
- c. Assert all grounds for the requested extension. The court may agree with some of the reasons offered and disagree with others.
- d. If possible, advise the court of the position of the opposing party with respect to the motion, particularly if the opposing party does not oppose the requested extension. Providing the court with this information will facilitate a prompt resolution of the motion and, if unopposed, virtually assure a successful one.

2. Shorten Time or Expedite

- a. Some time periods may not be shortened. Make certain that the relief you request can be granted by the court. Fed. R. Bankr. P. 9006(c)(2).
- b. Cause must be demonstrated in order to shorten the time otherwise provided for response. Be specific in your assertion of reasons for shortening the time or expediting the hearing. State all grounds in support of the request as some may be more persuasive than others.
- c. If requesting that the court take action on the face of the motion without a hearing and without awaiting expiration of the ordinarily prescribed time for response, be clear in your request.

3. Continuances

- a. Local rules require that such requests be filed within two days of the hearing, except for cause arising within that two-day period. Local Rule 9006-1.C. If you make a later request for postponement, because the reason arose within the two-day period, make sure to bring the motion to the attention of the courtroom deputy. You must appear unless you have been notified that the motion was granted.

- b. Cause must be shown for the requested continuance. Be specific as to the reasons why the hearing should be postponed and indicate the period of time requested. State all available grounds for the requested postponement as the court may find some more persuasive than others. If requesting a continuance for the second time or more, state precisely why the previous postponement was not sufficient, what has taken place in the meantime and why the additional time is necessary.
 - c. You must provide the court with a statement of the position of the opposing side or state the efforts made to contact opposing counsel. Unopposed motions for continuance are certainly more likely to be granted.
4. Vacating Orders
- a. Technically, such a motion is either a motion to alter or amend an order pursuant to Rule 9023 (which incorporates Rule 59 of the Federal Rules of Civil Procedure) or a motion for relief from a judgment or order pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure (incorporating Rule 60 of the Federal Rules of Civil Procedure). You must state one of the grounds for relief available under one of those rules.
 - b. Time limits – a motion to alter or amend must be filed within 14 days of the order you seek to amend; a motion for relief from judgment or order must be filed within a reasonable period of time and, for some requests, no later than one year from the date of the order.
 - c. If you seek to vacate an order of dismissal, it is wise to solve the problem giving rise to the dismissal or state a definitive proposal for resolving the problem; otherwise, the court may deny the motion.
5. Reopening Cases
- a. Reopening a closed case is done by motion, most often to accord certain relief to the debtor such as avoiding a lien on real property or seeking a determination of dischargeability of a student loan indebtedness. Such motions can also be filed to permit the filing of a certificate of obtaining the personal financial management course and facilitate the entry of an order of discharge in a case closed without a discharge order.

- b. The motion to reopen must be accompanied by an appropriate filing fee unless it is waived or deferred. Local Rule 1017-1.E.; Local Rule 5010-1.B. The fee is not required if relief is sought with regard to a violation of the discharge injunction, a determination of dischargeability or to correct an administrative error. Local Rule 5010-1.C.
- c. A motion to reopen must be served on all creditors, along with notice of a 21-day objection deadline. Local Rule 1017-1.E.
- d. A motion to reopen to add a creditor must be served upon the affected creditor along with a notice advising the creditor of the 30-day deadline for objecting to reopening or filing a complaint to determine dischargeability of the debt to be added to the schedules. Local Rule 5010-1.D., F.

B. Substantive Motions

1. Extension or Imposition of Automatic Stay

- a. Contents of motion – the motion should advise the court of the number of previous cases filed by the debtor and pending within the one-year period which were dismissed, identify those cases by jurisdiction and case number, state the reason for dismissal of the prior cases and assert all facts relied upon to rebut any presumption of lack of good faith in filing. Local Rule 4001-2.B.
- b. Service of motion and notice of hearing
 - (1) Must be served on all parties to be bound. Local Rule 4001-2.C.
 - (2) Case will be set for hearing on first motion docket after 14 days from the date of the filing of the motion. The movant must serve the hearing notice generated by the court. If an expedited hearing is sought, it must be requested by the movant. Local Rule 4001-2.D.
 - (3) Responses must be filed within 14 days of service.
- c. Hearing
 - (1) Will be held regardless of whether an opposition to the motion is filed, unless an affidavit is filed and found to be satisfactory.

- (2) Debtor or debtors should attend the hearing and be prepared to answer the court's questions or testify.
- (3) Should be prepared to demonstrate that the problem causing the dismissal of the prior case has been resolved and provide any other facts indicating that the case is otherwise filed in good faith (e.g., substantial payment offered to creditors; plan payments assured by wage order).
- (4) The court may grant the motion without a hearing if no opposition is timely filed, the debtor files an affidavit containing the facts upon which debtor relies to rebut any presumption for lack of good faith and the court determines the affidavit is satisfactory. If no order is entered within 48 hours of the scheduled hearing, the parties should appear as scheduled. If on a document separate from the motion, the affidavit must contain all of the facts relied upon to rebut the presumption rather than a mere incorporation by reference of the allegations contained in the motion.

2. Relief from Automatic Stay – Local Rule 4001-1.

a. Contents of motion. Local Rule 4001-1.B.

- (1) Motions should indicate the balance due on the claim of the creditor as of the date of the filing of the petition.
- (2) In a Chapter 7 case, if the motion is filed before the meeting of creditors, it must assert the value of the collateral securing the claim.
- (3) In a Chapter 13 case, motions for relief based upon a payment default on a claim secured by real property must be accompanied by a detailed payment history on a form prescribed by the local rules.

b. Service of the motion and accompanying papers

- (1) The movant must serve the notice of hearing and certify such service. Failure to do so may result in denial of the motion. Local Rule 4001-1.A.
- (2) The trustee must be served with all documents supporting the motion. Local Rule 4001-1.F.

- (3) Debtor's counsel and the trustee must be served with all documents evidencing perfection of the claimed security interest.
 - (4) With respect to deeds of trust, the movant may serve only that page or pages showing the recording information and the signature of the debtors. Full copies of the exhibits must be made available on request to interested parties.
3. Objections to Claims – Local Rule 3084-1.H., I., J.
 - a. It is the debtor's obligation to object to claims in Chapter 13 cases. Claims filed will be allowed unless objected to.
 - b. Form of objection
 - (1) Use of Local Forms 3007-1.1 and 3007-1.2 is encouraged, but not required.
 - (2) The objection must state some factual or legal basis for disallowance of the claim. Merely stating that appropriate documentation has not been attached or that the claimant has failed to respond to a request for itemization does not state a basis for disallowance of the claim.
 - (3) The objection must refer to the court's claim register number.
 - c. Service – the objection must be served upon the claimant, the claimant's attorney and the trustee.
 - d. Omnibus objections may be filed subject to the limitations of Fed. R. Bankr. Proc. 3007(d) and (e).
4. Motions for Payoff – Local Rule 3093-1.
 - a. Contents of motion – a motion requesting a payoff figure from the Chapter 13 trustee must be accompanied by the following information: the reason for the request for payoff; the source of funds to be used to payoff the Chapter 13 plan; the claims to be included in the payoff figure; the proposed percentage payment to unsecured claims and basis for any proposed payoff less than in full.
5. Motions to Borrow – Local Rule 3088-1.D.

- a. Request to borrow must be made to the court if debtor seeks to borrow more than \$2,500.00.
- b. Contents of the motion – a motion to borrow must contain the following information: the identity of the lender; the amount of the borrowing; the precise terms of the borrowing, including the periodic payment and interest rate; the purpose of the borrowing; and the impact of the repayment obligations on the debtor's ability to make payments under the Chapter 13 plan.

6. Motions to Suspend

- a. Motions to suspend should contain the following: (1) the precise number and amount of payments to be suspended; (2) the reason for the payment default; (3) a confirmation that the debtor is able to continue to make the payments going forward.
- b. The Court may be reluctant to grant a motion to suspend if it has granted numerous such suspensions in the past or if there have been multiple dismissals for failure to make plan payments and reinstatements.
- c. Anticipate the problems the motion to suspend may create. Be prepared to take necessary corrective action, such as amending the plan or increasing plan payments.

7. Motions to Retain Tax Refund

- a. If possible, the anticipated tax refund should be built in to the debtor's income as reflected on Schedule I and the Form 22C. In addition, expense amounts based on the debtor's experience in using tax refunds for deferred or extraordinary expenses should be reflected on Schedule J.
- b. A motion to retain tax refunds should include the following: (1) the source and amount of the anticipated refund; (2) a specific itemization of the proposed disposition of the funds, including the purpose and the amount of each expenditure and a detailed explanation as to why the expense is necessary and reasonable.
- c. The Court will ordinarily approve expenditures for unanticipated and out of the ordinary vehicle repairs and medical expenses and repairs to real property that affect the structural integrity of the property or the health and welfare of the occupants. Requests for

other kinds of proposed expenditures should be accompanied by a brief explanation of the circumstances. Failure to do so will likely cause your motion to be set for hearing.

8. Lien Avoidance

- a. Motions to avoid liens as impairing exemptions under § 522(f) should contain the following information: description of the property subject to the lien and its value; the identity of the lienholder and the amount of the claim; basis for the claim of exemption; a demonstration as to why the lien impairs an exemption claim in accordance with the formula set forth in § 522(f)(2).
- b. Responses in opposition to motions to avoid liens should state specifically the reason why the lien is not subject to avoidance. If the respondent contends that the property is not exempt, the response should state why the exemption should not be allowed. If the respondent contends that the property is of a value sufficient that the lien may be retained without impairing the exemption, then the amount and basis for an alternative valuation should be stated. If the respondent contends that for some other reason the lien does not impair the exemption and is therefore not avoidable, it should be stated specifically.

9. Motions to Sell

- a. Motion to sell property outside the ordinary course of business should contain the following information: (1) a description of the property to be sold; (2) the reason for the sale; (3) the identity of the purchaser and the relationship, if any, between the purchaser and the debtor; (4) sale price with some indication of the reasonableness of that price, particularly in relation to any previously scheduled value; and (5) the proposed disposition of the proceeds, including the payment of any commission, closing costs, debts and amounts to be retained by the debtor.

10. Dismissal or Conversion – Local Rule 1017-1.

- a. Dismissal of cases under Chapter 7 or 11. Local Rule 1017-1.A.
 - (1) Must state reasons for dismissal, including the existence of any agreement between the debtor and any creditor or party in interest.
 - (2) Must serve notice of the motion on all creditors with 21-day

objection period.

b. Conversion – Local Rule 1017-1.C.

- (1) Must state reasons for conversion and state if case was previously converted from another chapter.
- (2) Notice of motion must be served by the debtor on the trustee, the United States Trustee and parties requesting notice. Creditors have 21 days to object to the motion.
- (3) The above procedure is not applicable to requests to convert cases from Chapter 13 to Chapter 7. Such conversions are done by notice. The filing of the notice is the effective date of the conversion. Fed. R. Civ. P. 1017(f)(3).

11. Discharge – Local Rule 4004-4.

- a. After completion of payments in a Chapter 13 case, the debtor must file a motion requesting the entry of an order of discharge, using Local Form 4004-4.1.
- b. If no such request is filed, the case will, upon the filing of a final report, be closed without the entry of an order of discharge. The case must then be reopened and an appropriate reopening fee paid in order to obtain a discharge order.

C. Motions in Adversary Proceedings

1. Motions for Default Judgment

- a. Contents – motions for default judgment should demonstrate the following: the plaintiff's entitlement to the relief requested; that proper service has been effectuated as required by Fed. R. Bankr. P. 7004; and that no timely response to the complaint has been filed.
- b. Procedure – the motion must be filed with the court and served on the parties against whom default judgment is to be rendered. A proposed order must be submitted to the court. If damages are sought in an unliquidated amount, the court will enter an interlocutory judgment of default and set a hearing on determination of damages.

2. Motions for Summary Judgment – Local Rule 9013-1.H.

- a. Contents of motion – by rule, a motion for summary judgment must contain an itemized statement of the alleged undisputed facts supporting the request for relief set forth in separately numbered paragraphs with references to the factual record supporting those assertions.
- b. Contents of response – likewise, the response must identify in separately numbered paragraphs with references to the factual record, the facts allegedly in dispute. Facts in the motion will be deemed admitted unless controverted in the response.
- c. Facts asserted in the motion or response must be supported by affidavits or documents or references to the record.
- d. Schedule – a response to the motion for summary judgment may be filed within 21 days; 14 days thereafter a reply may be filed by the movant.
- e. Timing – if possible, file the motion sufficiently in advance of the scheduled trial date to permit the briefing schedule to expire prior to trial. Otherwise, the court may decline to rule on the motion in advance of trial.

D. Replies to Motions

1. General Principles

- a. Replies must respond to the substance of the allegations contained in the motion. Local Rule 9013-1.D. Failure to do so may result in the motion being granted without a hearing. This requires that factual assertions made in the motion be admitted or denied and that affirmative defenses be specifically pled.
- b. Be as specific as possible about proposed solutions to problems raised in the motion. If possible, effectuate the proposed plan for resolving the issues raised by the motion prior to the hearing.

2. Motions for Relief From Automatic Stay

- a. With respect to allegations of default, if the movant has complied with the rule requiring the submission of a post-petition payment history, the burden shifts to the debtor to demonstrate that payments have been made which are not reflected on the schedule. Be as specific as possible about such payments, including details such as dates and amounts.

- b. If the debtor wishes to offer adequate protection, such proposal must be contained in the response to the motion. Local Rule 4001-1.E. If offering to cure defaults, be as specific as possible in the cure proposal with respect to both dates and amounts.
- 3. Motions to Dismiss for Default in Payment
 - a. A response to a motion to dismiss for default in plan payments should indicate why the payments are in default, demonstrate that the problem creating the default has been resolved and that the debtor is now in a position to continue the required plan payments, make a specific proposal for a cure of the default and demonstrate that the proposal is both reasonable and feasible.
 - b. If certain action is to be taken in response to the motion (such as suspension of plan payments), file the appropriate pleadings or take the appropriate action in advance of the hearing date on the motion to dismiss.

III. Small Business Chapter 11

A. Application for Retention

- 1. Counsel should file an application for retention immediately as the Court may not compensate counsel for time spent prior to the filing of such an application without extraordinary circumstances. The Court may not, pursuant to Rule 6003, enter an order any sooner than 21 days after the filing of the petition, but the Court will enter an order retroactive to the date of the filing of the application.
- 2. The Court will ordinarily authorize counsel to be paid on an ongoing monthly basis 80% of fees earned and 100% of expenses incurred, but a separate motion authorizing these monthly filings must be filed.

B. Use of Cash Collateral

- 1. A debtor may not use cash collateral without consent of every entity that has an interest in the collateral or an order from the Court. Unauthorized use of cash collateral may result in appointment of a trustee or a dismissal of the case.
- 2. Motions for authorization to use cash collateral should contain the following: (a) how much cash collateral the debtor proposes to use; (b) for what period of time the debtor proposes to use the creditor's cash collateral;

(c) for what purposes the debtor proposes to use cash collateral (commonly reflected in a proposed budget attached to the motion); (d) the identity of any entities that have a claim to cash collateral; (e) any proposals for adequate protection of those entities' interest in the cash collateral.

Common elements of adequate protection in cash collateral are limitations on amount, time and purpose, as reflected above, as well as the granting of a replacement lien in cash collateral used and a requirement for monthly reporting.

3. The Court may permit the interim use of cash collateral on short notice, but may not conduct a final hearing on the use of cash collateral sooner than 15 days after the filing of the motion. Accordingly, final approval of the use of cash collateral requires two orders and possibly two hearings. Debtor's counsel must serve the persons identified in Rule 4001 and the motion must contain the information required by that rule.
4. Attached is an order approved by the Court and entered in a Chapter 11 proceeding which provides a good model for a proposed cash collateral order.

C. Bar Date

1. The Court does not ordinarily enter a bar date in a Chapter 11 proceeding unless requested to do so.
2. Requesting a bar date early in a Chapter 11 case is good practice so that the number and amount of claims can be identified. This may be essential for demonstrating feasibility if the plan proposes to pay a certain percentage of the filed and allowed amount of unsecured claims.
3. Attached is an order entered by the Court in another Chapter 11 proceeding which provides a good model of a bar date order.

D. Plan Formulation

1. Only the debtor may file a plan in the first 180 days after the filing of the case. Debtor must file a plan within 300 days of the filing of the case. Failure to do so can result in dismissal of the proceeding.
2. In a small business case, the debtor may file a combined plan and disclosure statement. A form of such combined plan and disclosure statement has been approved by the Court and is available on the Court's website. See Local Rule 3016-3.D. and MOW 3016-3.1.
3. The disclosure statement portion of the form should, among other things,

contain historical income and expense information, a description of the financial results of the debtor while operating in Chapter 11, projections of income and expenses for the period of time over which plan payments are to be made, the amount of payments proposed to be made to classes under the plan, a balance sheet and an analysis of the value of the debtor's assets upon liquidation and the likely distribution to creditors in the event of such a liquidation.

E. Plan Confirmation

1. The Court will ordinarily combine hearings on the disclosure statement and plan of reorganization and will issue an order upon the filing of those documents preliminarily approving the disclosure statement, setting a hearing on confirmation of the plan and establishing deadlines for the filing of ballots and objections.
2. Small business debtors are now subject to a deadline for obtaining confirmation. The Court must confirm a plan within 45 days of the date on which it was filed. Although this deadline may be extended, extensions are subject to strict limitations. *See* 11 U.S.C. § 1129(e).
3. Confirmation Hearing
 - a. Immediately before the confirmation hearing, debtor's counsel should file a summary of the ballots indicating the number and amount of claims accepting or rejecting in each class and identifying those classes which have accepted or rejected. Copies of the ballots should be available for inspection at the confirmation hearing.
 - b. Debtor's counsel should be prepared to submit evidence necessary to permit the Court to make the findings required by § 1129(a). In particular, if any individual creditor has voted against the plan, the proponent of the plan must demonstrate that that creditor would receive more under the plan than it would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. In addition, with respect to each class which has rejected the plan, a proponent must demonstrate the plan is fair and equitable in accordance with the requirement set forth in § 1129(b). Even in a case in which there have been no objections, the Court will require some evidence indicating that the debtor is capable of making the payments proposed under the plan and that the plan is therefore feasible and may be confirmed in accordance with § 1129(a)(11).
 - c. Be prepared to tender to the Court a proposed confirmation order.

Any last minute agreements may be embodied in amendments to the plan made by interlineation in the confirmation order, assuming they are not material and do not require resolicitation.

Clerk's Office Tips & Tricks

What You Need to Know:

1. Linking Documents
2. CM/ECF search feature
3. Amended schedules (verifications)
4. Amended schedules (adding creditors)
5. Revised order noticing language
6. Home mortgage modification rules
7. Exhibit filing update
8. New means test forms
9. Redaction rules
10. ePOC
11. Revised 2015 docket dates
12. Bankruptcy fee changes
13. Save the dates – Koger and Bartlett

1. Linking Documents.

When filing a document in CM/ECF that relates back to a previously filed pleading, it's important to "Link" those documents correctly.

File a response to a motion:

[13-90001-13 Joseph Wayne Sample and Sarah Lynn Sample](#)
Type: bk Office: 4 (Kansas City)

Select the category to which your event relates.

Discharge
MOWBApi
advother
answer
appeal
auditor
claims
cmp
court
credtrd

Next Clear

Rather than trying to decide which category to select, try this simple trick to make it easier... Select the entire list of categories by clicking on the first option "Discharge", then hold down on the shift key while you scroll to the bottom of the pick list, next click on the last option "Utility." All of the categories should now be highlighted in blue.

Click the "Next" tab and proceed to the next screen.

File a response to a motion:

13-90001-13 Joseph Wayne Sample and Sarah Lynn Sample
Type: bk Office: 4 (Kansas City)

Select the category to which your event relates.

Discharge
MOWBApi
advother
answer
appeal
auditor
claims
cmp
court
crditerd

Next Clear

All of the documents filed in the case should now appear. Simply select the document to which your pleading relates.

File a response to a motion:

13-90001-13 Joseph Wayne Sample and Sarah Lynn Sample
Type: bk Office: 4 (Kansas City)

Select the appropriate event(s) to which your event relates:

03/21/2013 1 Chapter 13 Voluntary Petition , filing fee to be paid in the amount of 281 dollars. (Parle, Cecelia)

03/21/2013 2 Chapter 13 Plan (Parle, Cecelia).

03/21/2013 3 Certification by Debtor(s) Attorney that the applicable Rights and Responsibilities Agreement pursuant to Local Rule 2016-D has been executed . (Parle, Cecelia).

03/21/2013 4 Exhibit D to the voluntary petition filed by Joseph Wayne Sample (Parle, Cecelia).

03/21/2013 5 Exhibit D to the voluntary petition filed by Sarah Lynn Sample (Parle, Cecelia).

03/21/2013 6 Debtor's Certificate of Credit Counseling (Parle, Cecelia).

10/10/2013 7 Motion for Relief from Stay regarding *33702 North Hudson Lane, Kansas City, MO*. Movant requests the 14 day stay of Rule 4001(a)(3) be waived. (filing fee to be paid in the amount of 176 dollars) Filed by Nationstar Mortgage, LLC. (Parle, Cecelia)

Next Clear

Hint: You might not want to take advantage of this trick if the case you're working in contains hundreds and hundreds of documents. In that situation, be more selective with your category selection.

2. Need help finding a CM/ECF dictionary event? Use the “Search” option.

Many of us have trouble from time-to-time remembering the correct CM/ECF dictionary event to use. For help identifying available events, use the “Search” option.



Type in the key word(s) pertaining to the search and then hit the enter key. Hint: Keep the search criteria brief (one or two words).



Once you locate the event, click on the hyperlink to file the document.

The screenshot shows the ECF interface with a search results page. The top navigation bar includes 'Bankruptcy', 'Adversary', and 'Query'. The main heading is 'Search results for 'schedules'' with a sub-note '7 events found'. The results are categorized into three main sections: 'Bankruptcy Events → Motions/Applications/Requests', 'Bankruptcy Events → Notices', and 'Bankruptcy Events → Other'. Each section contains several hyperlinks, with the word 'Schedules' highlighted in yellow in each link. The 'Court Events ... → General Events' section also contains a link with 'Schedules' highlighted. The 'Orders/Opinions → Text Orders' section is listed at the bottom.

Bankruptcy Events → Motions/Applications/Requests

[Add Creditor to Schedules](#)

Bankruptcy Events → Notices

[Amendment to Schedules Adding Creditors \(Fee Due\)](#)

Bankruptcy Events → Other

[Affidavit in Lieu of Conversion Schedules](#)
[Amended Schedules](#)
[Conversion Schedules](#)

Court Events ... → General Events

[Notice Striking Document- Amended Schedules Rule 1009](#)

Orders/Opinions → Text Orders

Here is another example of using the “Search” feature in ECF: Home mortgage modifications.

The screenshot shows the home page of the ECF system for the United States Bankruptcy Court for the Western District of Missouri. The top navigation bar includes 'Bankruptcy', 'Adversary', 'Query', 'Reports', 'Utilities', 'Search', and 'Logout'. The main content area features the court's name, a logo of an eagle, and the text 'Case Management CM / ECF Electronic Case Files'. At the bottom, it reads 'U.S. Bankruptcy Court Western District of Missouri Official Court Electronic Document Filing System'. A search box in the top right corner is highlighted with a red border and contains the text 'mortgage'.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Case Management

CM / ECF

Electronic Case Files

U.S. Bankruptcy Court
Western District of Missouri
Official Court Electronic Document Filing System

Search Menus and Events
mortgage

ECF Bankruptcy Adversary Query Reports Utilities Search Logout

Search results for 'mortgage'
5 events found

Search Menus and Events
mortgage

Bankruptcy Events → Claim Actions (Go to - Reports, then Claims Register - to view claims filed)

[Notice of Mortgage Payment Change](#)
[Notice of Post-petition Mortgage Fees, Expenses, and Charges](#)

Bankruptcy Events → Motions/Applications/Requests

[Determine Mortgage Fees and Expenses re: Rule 3002.1](#)
[Home Mortgage Modification w/ 7 day notice](#)

Bankruptcy Events → Trustee/US Trustee (ONLY to be used by trustees)

[Notice of Final Cure Mortgage Payment](#)

3. Amended schedules (verifications).

Have you ever received this Notice (striking amended schedules, statements, or lists for failure to file a separate debtor's verification) from the Clerk's Office? If so, you're in good company.

#	Docket Text
14	Notice from the Clerk that the referenced Amended Schedules/Statements/Lists (Document #10 and #11) have been Stricken from the Record . Pursuant to Local Rule 1009-1 effective 1/1/2012, any amendments to schedules, statements or lists filed with the Court must be accompanied by a debtor verification. The debtor verification filed by the attorney for the debtor(s) shall be filed as <u>a separate document</u> and shall contain the image of the original signature of the debtor(s) for all Schedules/Statements/Lists not filed with the petition and any amendments thereto. (related document(s) <u>10</u> Amended Schedules filed by Elizabeth Ann Cramer, <u>11</u> Amended Schedules filed by Elizabeth Ann Cramer, <u>12</u> Verification by Debtor filed by Elizabeth Ann Cramer) (Parle, Cecelia) (Entered: 02/25/2015)

Pursuant to Local Rule 1009-1A, any amendments to schedules, statements or lists filed with the Court must be accompanied by a debtor's verification. Here are a few tips to avoid receiving a notice striking your amended schedules:

- File the Verification as a separate document/attachment
- Make sure that the verification contains the image of the **original signature** of the debtor(s)
- Check out Local Form MOW 1009-1.1 (See attached – page 14)

4. Amended schedules (adding creditors).

02/20/2015	17	Amended Schedule(s) B, C, D was modified to show updated personal property; updated exemptions; added creditor filed by Dwayne Lamont Bradford , Amended Statement of Financial Affairs filed by Dwayne Lamont Bradford , Amended Statement of Intention filed by Dwayne Lamont Bradford ., Amended Matrix Adding Creditors (in PDF). (Attachments: # <u>1</u> Verification) (Almstedt, Jonathan (crt)) (Entered: 02/20/2015)
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If you file amended schedules and it appears that a new creditor is being added without the required Notice, pursuant to Local Rule 1009-1B, the following Clerk's Note will be filed:

02/23/2015	18	Clerk's Notice to Debtor or Debtor's Attorney - A Notice of Amendment of Schedules Adding Creditors was <u>not</u> filed in conjunction with the Amended Schedule(s) D filed on 2/20/2015. The additional creditor(s) identified in the amended schedule(s) (Southwest National Bank) will not be officially added to the court record until the proper Notice of Amendment is filed and the required filing fee of \$30.00 is paid. (related document(s) <u>17</u> Amended Schedules filed by Dwayne Lamont Bradford, Statement of Financial Affairs, Statement of Intention, Amended Matrix Adding Creditors (in PDF)) (Almstedt, Jonathan) (Entered: 02/23/2015)
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To avoid receiving this type of Note from the Clerk:

- File the Notice of Amendment of Schedules of Debts and Addition of Creditor as a separate document
- Pay the required \$30.00 filing fee
- Serve the Notice on the affected entity

5. Revised order noticing language.

- a. In an effort to clarify that service of process must comply with Fed. R. Bankr. P. 2002 and Local Rule 2002-1, the Court modified the noticing language in its orders.

Local Rule 2002-1. Notice to Creditors and Other Interested Parties

Unless otherwise ordered, pursuant to Fed. R. Bankr. P. 2002 notice shall be given as follows to **all creditors and parties in interest**.

A. To be served by the Clerk.

- The Clerk or the Court's noticing agent shall serve the following notices:
1. Order for relief and § 341 meeting of creditors;
 2. Order for dismissal or conversion to another chapter;
 3. The deadline for filing proofs of claim in all chapters and the deadline for filing claims against a surplus in an estate;
 4. The deadline for filing § 727 discharge and § 523 dischargeability complaints;
 5. Waiver, denial or revocation of a discharge.

B. To be served by the movant.

- The movant or some other person as the court may direct shall serve the following notices:
1. Application for compensation and/or expenses over \$1000.00;
 2. Hearing on approval of a compromise or settlement of a controversy, unless the Court for cause waives notice;
 3. Hearing on proposed sale of all or substantially all of debtor's assets;
 4. Proposed use, sale or lease of property of the estate other than in the ordinary course of business;
 5. Objection deadline or notice of hearing on dismissal or conversion to another chapter;
 6. Motions to borrow or to suspend payments with a 21-day objection deadline to creditors;
 7. Time to file objections to and hearing on approval of disclosure statement or to make a final determination under §1125(f) as to whether the plan provides adequate information so that a separate disclosure statement is not necessary;
 8. Time for voting on, filing objections to, and conducting hearing on confirmation of a Chapter 11 plan;
 9. Time for filing objections to and conducting hearing on confirmation of a Chapter 12 plan;
 10. Entry of confirmation order of a Chapter 11 or 12 plan; and
 11. Notice of Petition for Recognition and Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives pursuant to relief sought under Chapter 15.

C. Preferred Creditor Addresses. An attorney required to serve a notice or order on behalf of the court must access the correct creditor addresses through the creditor mailing matrix maintained by the bankruptcy court. This list will include all addresses which have been provided by creditors under §342(e) and (f). An attorney accesses the court mailing matrix through the ECF system.

- b. Old: *The moving party is to serve this order on parties not receiving electronic service.*
- c. New: *The moving party is to serve this order on parties not receiving electronic notice but entitled to notice pursuant to Fed. R. Bankr. P. 2002, Local Rule 2002-1 and other applicable law.*
- d. **Tip.** Use the section of the Notice of Electronic Filing (NEF) to identify those parties to whom electronic notice was sent. Please note, however, that the last section of the NEF regarding "parties not receiving electronic notice" is not limited to those parties that requested notice pursuant to Fed. Rule. Bankr. P. 2002(g), but also includes those parties that simply filed a pleading in the case, such as a notice of mortgage payment change or reaffirmation agreement. Therefore, if limited service is allowed, simply perform a search (Control F) with the terms "pro se creditor" while in the CM/ECF Docket Report page to identify those creditors that have requested notice pursuant to Rule 2002(g).

6. Chapter 13 home mortgage modifications.

- a. Review of the rules and forms that became effective October 2, 2014.
- b. General order creating Local Rule 3082-1 related to home mortgage modifications in Chapter 13 cases. Summary:
 - i. The local forms are required when seeking court permission to enter into a trial or permanent home mortgage modification. When filing the motions, go to the CM/ECF dictionary event:

Bankruptcy Events → Motions/Applications/Requests → Home Mortgage Modification w/ 7 day notice.

An option is available within the event to select either “trial” or “permanent” depending on which motion is being filed.

- ii. The motions have a shortened objection period of seven days.
- iii. Trial home mortgage modification.
 1. During the trial home mortgage modification period, the debtor may elect to either pay the mortgage directly to the creditor or through the Chapter 13 Trustee from plan payments. Local Form MOW 3082-1.1 must be used.
 2. If the mortgage is paid directly, the Trustee shall cease disbursement on any pre-petition arrearage claim, any post-petition mortgage arrearages, and the initial post-petition amount (IPA) claim. The debtor may also request a Chapter 13 plan payment change which, once approved, will continue until further order of the court.
 3. If the mortgage is paid through the Trustee, the Trustee shall cease disbursement on any pre-petition arrearage claim, any post-petition arrearages, and the IPA claim during the trial period or six months, whichever is later. The debtor may also request a Chapter 13 plan payment change which, once approved, will continue until further order of the court.
 4. Absent court order to the contrary, the debtor shall have six months to finalize the home mortgage modification. If an agreement is reached, the debtor shall file a motion to approve permanent home mortgage modification. If an agreement is not reached, or if a motion to approve permanent home mortgage modification is not filed, the Chapter 13 Trustee shall file a motion, pursuant to Local Rule 3094-1C, to amend the Chapter 13 plan to pay the mortgage through the Trustee from plan payments and increase the plan payment if merited.
- iv. Permanent home mortgage modification.

1. If a permanent home mortgage modification agreement is reached, the debtor may elect to either pay the modified mortgage directly to the creditor or through the Chapter 13 Trustee from plan payments. Local Form MOW 3082-1.2 must be used.
 2. If the modified mortgage is paid directly, the Trustee shall cease disbursement on any pre-petition arrearage claim, any post-petition mortgage arrearages, and the IPA claim. The debtor may also request a Chapter 13 plan payment change which, once approved, will continue until further order of the court.
 3. If the modified mortgage is paid through the Trustee, the Trustee shall set up a Post Loan Modification Amount (PLMA) as a separate claim record and reset other mortgage claim records accordingly.
- v. This rule does not affect the payment of additional fees, expenses and charges filed in connection with a mortgage claim. Once allowed, these fees are set up by the Chapter 13 trustee as separate claim records that will continue to be paid absent objection and further order of the court pursuant to Local Rule 3091-1C(3)(e).
- c. General order amending Local Rule 2016-1F related to post-confirmation attorney fees in Chapter 13 cases.
- i. Motion to Approve Trial Home Mortgage Modification when no hearing is required - \$250. When a hearing is required -- \$350.
 - ii. Motion to Approve Permanent Home Mortgage Modification when no hearing is required -- \$250. When a hearing is required -- \$350.

7. Update regarding exhibit filing.

- a. The Bankruptcy Court will soon change its procedures regarding filing of document exhibits whereby all exhibits (attachments) will be filed with the Court, via CM/ECF, in their entirety. This change includes trial exhibits, proofs of claim supporting documents, and motion practice supporting documents.
- b. The document size limitation has been increased to 15 MB in CM/ECF.
- c. Local rules are being coordinated, and will be posted to the Court's website for public comment.

8. New means test forms.

http://www.mow.uscourts.gov/bankruptcy/Notice_of_New_Rules_and_Forms_effective_12_01_2014.pdf

9. Redaction rules.

- a. Fed. Rule. Bankr. P. 9037.

- b. \$25 redaction fee; may be waived in appropriate circumstances.
- c. Bankruptcy Events → Motions/Applications/Requests → **Request to Redact or Restrict Document.**
- d. A reopening fee is not required when redaction is the only purpose for reopening a case.

Note: The reopening fee is also not required when filing a complaint to obtain a determination under Rule 4007(b) (dischargeability complaint) or when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. §524 (discharge injunction violation).

10. Electronic proof of claim program. See attached, page 15.

11. Revised 2015 docket dates. See attached, page 16.

12. Bankruptcy fee changes. See attached, page 17.

13. Save the Dates!

- a. The Koger Symposium is scheduled for Friday, May 22, 2015, from 8:00 am – 1:00 pm.
- b. The Bartlett Lectures are scheduled for Friday, June 26, 2015, from 8:00 am – 4:15 pm (two sessions; one in the morning and one in the afternoon).

Chapter 13 Trustee's Perspective

What You Need to Know:

1. New office location
2. Tax refund procedures
3. Providing documents to Trustee via Secure FTP Server
4. ePay
5. EFT for debtor's attorney's fees
6. Proofs of claim objections – Local Rule 3084-1H

1. New office location!

Office of the Chapter 13 Trustee
Richard V. Fink, Trustee
2345 Grand Boulevard, Suite 1200
Kansas City, MO 64108-2663

There are no changes to telephone numbers, email addresses or the payment lockbox address.

2. Tax refund procedures. See memorandum, attached at page 19.

3. Providing information/documents to the Trustee (Secure FTP Server).

- a. Please do not email documents to the Chapter 13 Trustee's office. Rather, submit documents such as income tax returns, affidavits, deeds of trust, warranty deeds, promissory notes, certificates of title, pay stubs, bank and financial accounts, cancelled checks, dissolution decrees, etc. via a secure, dedicated website.
- b. In order to submit documents electronically, you must enroll to obtain access to the Secure FTP Server. The enrollment form is available at www.13network.com.
- c. File size must be less than 10 MB, and if you're already enrolled, please update your computer settings from 65.23.101.186 to sftp.wdmo13.com.

4. ePay.

- a. The Trustee's online ePay system is a secure, convenient alternative to personal checks, money orders or cashier's checks. There is a convenience fee collected by the Trustee's bank for payments remitted via ePay.
- b. Payments made by 4:00 pm are generally posted the next business day.
- c. There is a registration link on the trustee's websites, www.13network.com and at www.ndc.org. To register, debtors must know their bankruptcy case number and last four digits of their social

security number. Also, they must have an email address and know their bank's routing number and their account number.

5. Electronic fund transfers are available for payment of attorney's fees.

6. Proofs of claim objections.

Reminder that pursuant to Local Rule 3084-1H, it is the debtor's duty, and not the trustee's, to file objections to claims.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

IN RE:)
) Case No.
)
 Debtor(s))

VERIFICATION BY DEBTOR(S)

I/We, _____, named as the debtor(s) in this case, declare under the penalty of perjury that I/we have read the

- Schedule(s) _____ (A - J insert all that apply)
- Amended Schedule(s) _____ (A - J insert all that apply)
- Conversion Schedules _____ (A - J insert all that apply)
- Statement/Amended Statement of Financial Affairs
- Statement/Amended Statement of Intent
- Statement/Amended Statement of Current Monthly Income
- Matrix
- Amended Matrix

and that they are true and correct to the best of my/our knowledge, information, and belief.

Date: _____

Signature of Debtor

Signature of Joint Debtor

Instructions: File with original schedules or matrix not filed with the original petition or amended schedules/statements/matrix. Must be prepared as a separate document and must contain image of the debtor(s)' signature(s). Docket as a separate event or as a separate attachment to the schedules/statements/matrix.

ECF Event: If not filed as an attachment to the schedules/statements/matrix, but filed as a separate document use the event – Bankruptcy>Other>Verification by Debtor

United States Bankruptcy Court
Western District of Missouri



Electronic Proof of Claim Filing



Beginning August 1, 2014 **ALL CREDITORS** can file Proof of Claims online.

The United States Bankruptcy Court, Western District of Missouri, is pleased to provide an **Electronic Proof of Claims** filing program, **ePOC**, for creditors.

Via the Court's web site www.mow.uscourts.gov, **ePOC** streamlines claims processing. All creditors can electronically:

- File a claim
- Amend a claim
- Withdraw a claim
- Supplement a claim

Benefits to Creditors

- ✓ File a claim 24 hours a day, 7 days a week via the internet
- ✓ Save postage and envelope(s)
- ✓ Save time
 - creates claim form
 - eliminates mailing or delivering to Court
- ✓ Ease of using the ePOC program
- ✓ Instant confirmation of action

POC Questions
816-512-1800 or www.mow.uscourts.gov

**United States Bankruptcy Court
Western District of Missouri**



Bankruptcy Court Docket Dates – 2015

Central Division (Jefferson City) – Division 2

January 15, 2015	May 28, 2015	September 17, 2015	8:30 am: Stays, Liens, and Redemptions 9:00 am: Chapters 7 and 11 Misc. Motions 10:30 am: Chapter 13 Docket 1:30 pm: Adversary Proceedings and Contested Matters
February 19, 2015	*June 25, 2015	October 15, 2015	
March 19, 2015	July 16, 2015	*November 12, 2015	
April 23, 2015	August 20, 2015	December 17, 2015	

Southwestern Division (Carthage) – Division 3

January 22, 2015	May 28, 2015	*September 17, 2015	9:00 am: Chapter 7 Docket 9:30 am: Chapter 13 Docket 10:00 am: Chapters 11 and 12 Docket, Adversary Proceedings and Contested Matters
*February 19, 2015	June 25, 2015	*October 15, 2015	
March 19, 2015	July 23, 2015	November 19, 2015	
April 30, 2015	August 27, 2015	December 17, 2015	

Western Division (Kansas City) – Division 4 – Chapter 13 Only

January 12 and 26	May 4 and 18	September 14 and 28	9:00 am: Chapter 13 Docket: All Attorneys
February 9 and 23	June 8 and 22	October 5 and 19	
March 9 and 30	July 13 and 27	November 2 and 23	
April 13 and 27	August 10 and 24	December 7 and 21	

St. Joseph Division (St. Joseph) – Division 5

January 8, 2015	*May 7, 2015	September 3, 2015	9:30 am: Chapters 7, 12 and 13 Docket 10:00 am: Chapter 11 Docket, Adversary Proceedings and Contested Matters
February 5, 2015	June 11, 2015	October 1, 2015	
March 5, 2015	July 9, 2015	November 5, 2015	
April 2, 2015	August 6, 2015	December 3, 2015	

Southern Division (Springfield) – Division 6

January 14 – 15	May 13 – 14	September 9 – 10	11:00 am (Wed): Chapters 7 Docket 11:30 am (Wed): Chapter 13 Docket 1:30 pm (Wed): Adversary Docket 8:30 am (Thurs): Chapters 11, 12 and Checkett Chapter 7 Trustee Docket 9:30 am (Thurs): Adversary Docket
February 4 – 5	*June 10 – 11	October 7 – 8	
*March 5, 2015	July 8 – 9	November 4 – 5	
*April 15, 2015	August 19 – 20	December 2 – 3	

**United States Bankruptcy Court
Western District of Missouri**



Bankruptcy Court Fee Schedule
Effective December 1, 2014

Fee	Category
\$350.00	Adversary Proceeding (Complaint) Filing Fee.
\$298.00	Appeal Fee (for filing and docketing).
\$298.00	Cross-Appeal (for filing and docketing).
\$207.00	Authorization for Direct Appeal (in addition to the appeal or cross-appeal fee).
\$335.00	Chapter 7 Filing Fee, Administrative Fee and Trustee Surcharge.
\$1,717.00	Chapter 9 Filing Fee and Administrative Fee.
\$1,717.00	Chapter 11 Filing Fee and Administrative Fee.
\$1,550.00	Chapter 11 Railroad Filing Fee and Administrative Fee.
\$275.00	Chapter 12 Filing Fee and administrative Fee.
\$310.00	Chapter 13 Filing Fee and Administrative Fee.
\$1,717.00	Chapter 15 Filing Fee and Administrative Fee.
\$176.00	Motion to Compel Abandonment of Property of the Estate.
\$176.00	Motion to Sell Property of the Estate Free and Clear of Liens under 11 U.S.C. §363(f).
\$176.00	Motion to Vacate or Modify the Automatic Stay.
\$176.00	Motion to Withdraw Reference of a Case.
*Fees for a Motion to Reopen a Closed Case	
\$260.00	Chapter 7.
\$1,167.00	Chapter 9.
\$1,167.00	Chapter 11.
\$200.00	Chapter 12.
\$235.00	Chapter 13.
\$1,167.00	Chapter 15.

*If the case had previously been dismissed for failure to pay the original filing fee, both the balance of the original filing fee and the reopening fee must be paid. The fee must be collected when the motion is filed to reopen a case in which the court did not enter a discharge. The fee must not be charged in the following situations: (1) to permit a party to file a complaint to obtain a determination under Rule 4007(b); (2) when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. §524; and, **(3) when document redaction is the only purpose for reopening the case.** The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets.

**Fees for Conversion to a Different Chapter

\$922.00	Chapter 7 to Chapter 11.
\$15.00	Chapter 11 to Chapter 7.
\$60.00	Chapter 12 to Chapter 7.
\$35.00	Chapter 12 to Chapter 13.
\$25.00	Chapter 13 to Chapter 7.
\$932.00	Chapter 13 to Chapter 11.

**The fee is not due for sua sponte conversions.

Fees for Deconsolidation of Joint Petition

\$335.00	Chapter 7 (at request of debtor).
\$1,717.00	Chapter 11 (at request of debtor).
\$275.00	Chapter 12 (at request of debtor).
\$310.00	Chapter 13 (at request of debtor).

Miscellaneous Fees

\$.50	Reproducing any document (per page).
\$.10	Printing any electronic record from a courthouse public terminal.
\$11.00	Certification of any document.
\$21.00	Exemplification of any document.
\$30.00	Reproduction of an audio recording of a court proceeding.
\$30.00	Amendments to debtor's schedules of creditors, lists of creditors, or mailing list (except for creditor address changes when the creditor was previously listed).
\$25.00	Transfer of Claim.
\$25.00	Request to Redact/Restrict Document.
\$30.00	For conducting a search of the bankruptcy court records (per name or item searched).
\$46.00	For filing of any document not related to a pending case or proceeding.
\$46.00	Registration of a judgment from another district.
\$64.00	Retrieval of one box of records from the Federal Records Center, National Archives or other storage location removed from the place of business of the court.
\$39.00	For each additional box after the first.
\$53.00	For any payment returned or denied for insufficient funds.
\$40.00	Witness fees per day, plus mileage rate (check with clerk for current mileage rate).

OFFICE OF THE CHAPTER 13 TRUSTEE- WESTERN DISTRICT OF MISSOURI
2014 TAX REFUNDS

Richard V. Fink, Trustee
January 30, 2015

Below are my procedures for 2014 Tax Refunds:

1. You or the debtor(s) must provide the 2014 Tax Returns to my office. Please do not email them; please either upload them onto the Secure FTP Server or mail them to my office.
2. If the confirmed Chapter 13 plan provides for turnover of tax refunds to me, please remit those refunds to the lockbox, PO Box 1839, Memphis, TN 38101-1839, and identify the item as "2014 Tax Refund."
3. My staff will review the 2014 Tax Returns for:
 - Non-exempt equity (pre-petition asset-normally for the year in which the debtor(s) filed)
 - Understatement of income or disposable income (any year)
 - Delinquency and amortization issues (any year)
4. If the total of all tax refunds (federal, state and local) is \$1500.00 or less and neither the plan nor a court order requires the turnover of the refunds to me, the debtor may retain the refunds.
5. If the total of all tax refunds (federal, state, and local) is \$1500.01-\$2500.00, and neither the plan nor a court order requires the turnover of the refunds to me, the debtor may retain the refund and spend it on reasonable and necessary expenses **IF**:
 - You or the debtor(s) details to me, in writing, the expenses for which the tax refund will be used; **OR**
 - You have pro-rated the estimated tax refunds on Schedule I and included it in their monthly income, and the actual refund is close to the estimated amount; **AND**
 - If the tax refund is a pre-petition asset, the tax refund is wholly exempted on Schedule C. (If the tax refund is partially exempted, the remaining non-exempt portion will have to be explained to me in writing if the refund is not pro-rated on Schedule I).
6. If the total of all tax refunds (federal, state, and local) is \$2500.01 or greater, **and the debtor wishes to retain any portion of the refunds**, the debtor must file a motion with the court detailing the reasonable and necessary expenses. If the tax refund is fully accounted for on Schedule I and there is no equity in the tax refund, a motion need not be filed. If it is not fully accounted for on Schedule I or not wholly exempt the debtor will have to file a motion with the Bankruptcy Court to keep the nonexempt portion and/or the portion which is not accounted for on Schedule I.
7. Please instruct the debtor: 1) Not to spend the refunds until an order is entered AND is final if it is \$2500.01 or more; OR, 2) I have authorized its retention if it is between \$1500.01 and \$2500.00.
8. Please keep the following issues in mind when you review your client's tax returns:

- If the tax returns show that the debtor has had an increase in income, I may file a motion to amend the plan to increase the plan payment to account for the additional disposable income; OR, the debtor can amend the schedules and plan to reflect the debtor's positive change in circumstances.
- If the tax refund creates additional non-exempt equity, I may file a motion to amend the plan to cover the non-exempt portion of the refund; OR, the debtor may amend the plan to cover the non-exempt equity.
- I likely will not grant permission to keep the refund until an increase in income is accounted for and/or the non-exempt equity is covered.
- If the debtor is delinquent or the plan runs long, I likely will not grant permission to keep the refund until those issues are resolved.
- I encourage debtors to remit their tax refunds, or a portion thereof, to me to cure or reduce delinquency or amortization issues. Please identify in writing that the funds are intended for one of these purposes.
- If the debtor is below median and the debtor has satisfied the applicable commitment period by December 31st, 2014, it is unnecessary for the debtor to report the tax refunds to my office.
- If the debtor has proposed a 100% dividend to the unsecured non-priority creditors, it is unnecessary for the debtor to report the tax refunds to my office.