

**JUDGE'S CORNER  
NOTES FROM THE BENCH**

January 2012

**1. CONSENT ORDER FEES AND COSTS**

- a. Although this district has limited attorney fees and costs in consent orders/adequate protection orders to \$500.00, in light of recent filing fee increases the orders may now include fees and costs totaling \$526.00.
- d. Consent orders/adequate protection orders allowing fees and costs totaling more than \$526.00 must be noticed for hearing.

**2. TAX REFUNDS IN CHAPTER 13 CASES**

- a. Tax refunds belong to the bankruptcy estate and should not be used for any purpose without either the trustee's permission or a court order approving their use.
- b. Debtors should not apply for rapid refunds or refund anticipation loans.
- c. The court plans to order every chapter 13 debtor to turn over all federal and state tax refunds to the trustee promptly, failing which the case will be dismissed with the possibility of a bar to filing another chapter 13 petition for some period.
- d. Debtors should not assume that the court will confirm a modified plan to cure problems resulting from unauthorized use of a tax refund.

**3. MORTGAGE ARREARAGES**

- a. More cases are reaching confirmation with substantial mortgage arrearage claims. Large mortgage arrearages suggest at least two problems for debtors:
  - (i) The claims may undermine feasibility of the plan.
  - (ii) Large mortgage arrearages may support a finding that a debtor lacks good faith necessary to confirm the plan.
- b. If the mortgage arrearage claim exceeds 18 months (regardless of the amount of that debt, and whether other charges are added), debtors should consider carefully how they intend to prove at the confirmation that they are in good faith.
- c. Among things debtors must be prepared to address are:

- (i) disposition of funds that were not used to pay the mortgage (if those funds were available),;
- (ii) specific facts about attempts to obtain mortgage relief;
- (iii) whether the debtor has made all mortgage payments timely since filing chapter 13; and
- (iv) changes in the debtors' circumstances since starting chapter 13 that demonstrate that the debtor will have the money to pay his mortgage debt on time for the term of the plan, and that he actually intends to pay the mortgage debt.

### July 2011

#### **1. PLAN OBJECTION DEADLINE**

- a. Pursuant to Local Rule 3015-2(a), plan objections are due 15 days before confirmation. This is to give parties more time to resolve objections and file amended plans by the Friday pre-hearing deadline.
  - i. 8 days before the hearing is the deadline for objections to *motions*,
  - ii. 15 days before the hearing is the deadline for *plan objections*.
- b. These rules all are designed to allow you to prepare a confirmable plan to avoid the need for a confirmation hearing.
- c. Untimely objections will be stricken.

#### **2. CONFIRMATION CONTINUANCES**

- a. The court liberally grants continuances in order to confirm plans that are feasible. However, multiple continuances can delay confirmation for many months.
- b. Going forward, motions for continuances will not be routinely granted.
- c. In particular, a continuance will not be granted to do something for which a continuance has previously been granted, that has not been done by the continued hearing. This commonly includes the following:
  - i. Filing amended schedules.
  - ii. Filing amended or modified plans.
- d. Instead, the case will be converted or dismissed.

- e. When moving for a continuance, please be sure to ask for enough time to get your plan ready for confirmation.
- f. Additionally, all motions to continue should recite whether the mover previously has asked to continue the hearing.

### **3. RECONSIDERATION OF DISMISSALS**

- a. A motion to reconsider any order typically must be based on facts that were not known to the mover (or its counsel), and not able to be discovered with due diligence before the court acted. That rule applies to motions to reconsider dismissal.
- b. The court has been granting motions to reconsider dismissals liberally, especially when the trustee does not oppose them; this is consistent with the goal of giving debtors a chance to try to stay in chapter 13, especially in light of the 2005 amendments to the Bankruptcy Code. However, at some point not making plan payments is a choice.
- c. Do not assume that once a case is dismissed, the debtor can catch up by making the payments not made before dismissal.

### **October 2009**

#### **1. DEFICIENCY NOTICES**

Effective December 1, 2009, the clerk stopped sending out deficiency notices to members of the bar for failure to file:

- a. schedules
- b. statements of financial affairs
- c. means test
- d. payment advices
- e. chapter 13 plans
- f. electronic declarations
- g. financial management course certificates

The clerk sends deficiencies for certificates of service and numerous other problems including incorrect PDF's, incorrect event selection when filing in CM/ECF.

The clerk will continue to send to pro se debtors deficiency notices by United States mail.

**April 2009**

**1. MOTIONS TO EXTEND OR CONTINUE THE AUTOMATIC STAY**

- a. The court will not expedite a hearing on a motion to continue or extend the stay in a repeat filing when it is not possible to give adequate notice of the hearing to parties in interest.
- b. Specifically, the court will not set expedited hearings on those motions when they are filed later than noon the previous Friday.
- c. The mover must submit a proposed order setting an expedited hearing at the time the motion to expedite is filed.
- d. If the motion and proposed order are received too late in the day for the order to be signed, docketed, and issued to allow proper service, the court will not set an expedited hearing.

**2. *EX PARTE* MOTIONS FOR STAY RELIEF**

- a. Creditors should review local rule 4001-3 regarding ex parte motions for stay relief, especially the provisions dealing with relief after a breach of a consent order.
- b. Specific issues relating to ex parte motions include:
  - (i) Real Party in Interest
    - (a) Loans are assigned, and companies change names.
    - (b) Especially if the creditor's name differs from the name in the consent order, ex parte motions must explain why the mover remains the real party in interest.
    - (c) If the mover differs from the party to the consent order, submit documents demonstrating that the mover is the real party in interest.
  - (ii) Notarization
    - (a) Affidavits in support of the ex parte motions must reflect that the oaths were made in the presence of a notary public and must be properly executed.

- (iii) Relief sought
  - (a) Ex parte motions and proposed orders should only provide for relief permitted under the local rules.
  - (b) Orders providing for the turn over of collateral or other relief will not be signed, and the mover may be ordered to appear and explain the basis for the relief sought.

### 3. ORDER SUBMISSION

- a. Please submit orders **promptly** and **properly**, with the correct email subject line and in the correct format. Detailed instructions for submitting orders are in the Administrative Procedures guide on the court's website.
- b. Missing orders can cause problems, for example, orders concerning claims objections.
  - (i) The Trustee cannot pay claims if the debtor prevails on an objection but does not submit an order.
  - (ii) The trustee may submit a request for appropriate relief if the mover does not submit an order on a matter that affects what she does.
- c. If orders are not received before a case is dismissed, they will not be signed. Obtaining any relief once a case has been closed will require a motion to reopen and in some cases, payment of filing fees.
- d. The clerk has been instructed not to keep cases open once they have been dismissed.