

**The United States Bankruptcy Court
Eastern District of Missouri**

U.S. Bankruptcy Court Materials
Chapter 13 Bankruptcy Seminar
Nuts and Bolts
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COMMENCING A CHAPTER 13 CASE: THE PETITION, SCHEDULES AND STATEMENTS, MATRIX, AND OTHER FORMS

I. INTRODUCTION

This section discusses the filing requirements to commence a Chapter 13 bankruptcy case. The information covered can also be found in the Local Rules of Bankruptcy Procedure (“Local Rules” or “L.R.”), the Bankruptcy Court’s Procedures Manual (“Procedures Manual”), and the Court’s web site at www.moeb.uscourts.gov.

II. APPLICABLE LAW AND RULES

A. OVERVIEW

Section 521 of the Bankruptcy Code specifies the debtor’s duties when commencing a bankruptcy case. Bankruptcy Rule 4002 further elaborates on the debtor’s duties, and Federal Bankruptcy Rules 1007 - 1009 specify deadlines and procedures for filing schedules and amendments thereto. Additionally, Local Rule 1002 sets forth the filing requirements to commence a bankruptcy case in this district. Local Rule 1007 mandates procedures for filing a creditor mailing matrix and verification.

The revised Federal and Local Rules of Bankruptcy Procedure that went into effect on December 1, 2009 changed **most** time periods of less than 30 days to multiples of 7, e.g., 5 days became 7 days, 10 days became 14 days, 15 days became 14 days, 20 days became 21 days, and 25 days became 28 days. There were a few time periods that did not change, however, so be sure to consult the specific rule applicable to your case, motion, etc.

The main concept behind the new federal time computation method is the “days are days” approach. This means that there are no more calendar days or business days in the rules. Revised Fed. R. Bankr. P. 9006 states explicitly that this method of computation applies to all local as well as federal bankruptcy rules. All time periods in the federal and local rules are to be computed as calendar days. If the end of a time period falls on a weekend or a holiday, the time period will end on the next business day if counting forward, and on the previous business day if counting backward.

B. LEGAL ISSUES THAT FREQUENTLY ARISE

L.R. 4004-3, Closing a Case without Discharge

The reopening filing fee needs to be paid. The Court will not consider any motion requesting that the Court reopen a case or reconsider any closure of a case without discharge for failure to provide or file a required document unless the movant has paid the case reopening fee.

L.R. 7055, Default Judgment

Complete all steps relating to the Request for Clerk's Entry of Default and the Motion for Default Judgment. Specific information is required on the affidavit relating to these pleadings as set forth in the local rule.

L.R. 9004 A, Format and title of Filings - Captions

All filings and proposed orders shall include all specific information as stated in this local rule.

L.R. 9004 D, Certificate of Service

Include co-debtor address in the copy mail list for co-debtor relief.

L.R. 9037, Privacy Redaction of Documents

No documents filed with the Court should contain personally identifying information. Personally identifying information includes Social Security numbers, names of minor children, dates of birth, and financial account numbers. The Court is not responsible for, is unable to, and will not redact information for the parties or review their documents to make sure that the personally identifying information has been redacted. It is solely the filer's responsibility.

If private information is displayed on a document filed with the Court, you can file a motion requesting a page(s) to be replaced and provide the replacement page(s) as part of the PDF. There is a CM/ECF event for this issue. The event is titled "*Motion to Amend by Redaction.*"

L.R. 9061 D, Notice of Hearing when a Response is Filed

This is a negative notice matter. The movant is to contact the Courtroom Deputy for the assigned Judge (or consult the Court's web site) when such a matter needs to be set for hearing. NOTE: NO FULL Social Security number should be on any document filed besides the B21 Form.

III. BANKRUPTCY COURT PROCEDURES

A. PETITION

What are the basic requirements for a voluntary petition?

Every bankruptcy case begins with the filing of a Petition. (Official Form No. B1). Official and Local forms along with filing fee requirements may be accessed through the Court's web site at www.moeb.uscourts.gov.

The Petition must contain the debtor(s)' signature(s). These signature(s) must match the name(s) on the first page of the petition, and in a joint petition (permitted only by a husband and wife), both debtors must sign. If the required debtor(s)' signature(s) are not on the petition, the Court

cannot accept the petition and it must be returned to the filer, or the Court can request that the petition be refiled.

The Court also cannot accept a petition for filing if it is presented without:

- 1) the required fee or an Installment Fee Application that is accompanied by at least ½ of the total filing fee;
- 2) the matrix and verification; and
- 3) a certification of credit counseling OR motion for exemption OR certification of exigent circumstances.

How is the Court division determined?

The United States Bankruptcy Court for the Eastern District of Missouri consists of three (3) divisions: Eastern, Northern and Southeastern. See 28 U.S.C. § 105. The division is determined by the county in which the debtor resides. A state map identifying the counties and the division applicable can be found in the Court Info section of the Court's web site. All petitions, regardless of division, are filed with the U.S. Bankruptcy Court in St. Louis.

Case numbers reveal the year the case was filed, the division and the judge to whom the case is assigned. All Eastern Division cases begin with the number 4 or 5 (*i.e.* 01-40001-399); Southeastern Division cases begin with the number 1 and Northern cases; number 2. The Judge to whom the case is assigned can be identified by the judge's 3-digit code: Chief Judge Schermer, 399; Judge Surratt-States 659, and Judge Rendlen 705. Thus, a case filed in 2008 in the Southeastern Division and assigned to Chief Judge Schermer would be 08-10001-399.

B. MATRIX

What is a matrix and what are its requirements?

The matrix is a list of all creditors by name and address. LR 1007-8 sets forth the requirements for the matrix. The debtor or both husband and wife in a joint case, must sign a verification of creditor matrix, certifying that the mailing matrix is true and correct to the best of the debtor(s)' knowledge. The Court uses the matrix to mail notices to creditors, including the initial Notice of Commencement of Case. Thus, the matrix and verification of matrix must be filed with the petition. If the matrix and verification of matrix are not filed with the petition, the Court will dismiss the case. The Missouri Department of Revenue should be listed on the matrix in ALL Chapter 13 cases. If the debtor is subject to a claim for domestic support, the matrix must include the address for the appropriate state child support enforcement agency. Such addresses are available through the web site of the Office of the United States Trustee. For general creditors, the debtor must use the last address for correspondence that the creditor has provided to the debtor unless the debtor is aware that the creditor has specifically directed use of a different address. If the creditor has not designated an address for correspondence, the debtor should use the creditor's billing address.

What is the correct format for preparing the matrix?

Local Rule 1007-8 sets forth the format for submitting the matrix. The address list should be typed using standard typefaces, in 10 point font, justified left, with a 1-inch left and right margin, and typed in a single vertical column. The list should be one inch from the top and bottom margin of the page.

Can I electronically file the matrix and verification of matrix with the petition?

Yes. You can file the matrix and the verification of matrix with the voluntary petition PDF. However, you also need to upload or individually add the creditors' names to the matrix via the pathway of : Bankruptcy, Creditor Maintenance, Upload a Creditor Matrix file of the CM/ECF database.

What are common matrix errors?

1. Failing to include the matrix and verification of matrix when electronically opening a case;
2. Failing to upload the creditors in the creditors maintenance portion of the CM/ECF database;
3. Failing to add the Missouri Department of Revenue in Chapter 13 cases (See Procedures Manual, p. 6 for address);

What if mail is returned to the Court as undeliverable?

The Court will return all such mail to the debtor or debtor's counsel. The debtor or debtor's counsel must attempt to locate a good address for the party(ies) whose mail was returned and send any returned mail to such entity(ies) at the corrected address. A certificate of service must then be filed listing:

1. the name and corrected address of all entities to whom notice was re-sent; and
2. the name and address of all parties whose notices were returned and for whom the debtor was unable to locate a corrected address.

See Local Rules 2002-3 and 9060(D). Pursuant to Local Rule 9060(D), if the address was not accurate at the time the petition was filed and was not previously updated in the case, notice of the corrected address or notice that no correct address could be located shall be filed with the Court using either Local Form 25 or the BNC Notice. The Clerk of Court shall update the case matrix with any current address upon receipt of one of these forms. A separate Local Form 25 or BNC Notice must be used for each entity. This procedure shall not be used to update creditor information that was accurate at the time the petition was filed or that has previously been updated in the case. If the address was accurate at the time the petition was filed or has previously been updated in the case, you must amend the matrix under Local Rule 1009.

What are the requirements for amending the matrix?

Please see Local Rule 1009 which sets forth the requirements. Local Rule 1009 outlines the content, service, procedure for large Chapter 11 cases, and the required notice of service in Chapter 7 individual cases.

C. CASE FILING PROCEDURE

What documents are required to commence a case and how should they be assembled?

Please see Local Rule 1002 for Chapter 13 filing requirements. To commence a bankruptcy case, the debtor must file at least (1) a “bare-bones” petition (first three pages of the voluntary petition); together with (2) the required fee or application to pay in installments; (3) matrix and matrix verification; and (4) credit counseling certificate. Good practice is to assemble the required documents as provided in Local Rule 1002.

When and where should the petition, matrix and other documents be filed?

All pleadings filed by attorneys are to be filed electronically. If the CM/ECF system is down at the time a document is due or at the time an emergency pleading needs to be filed, an attorney may file in person as set forth in Local Rule 5005(A). The Court hours of operation for filing in person are 8:30 a.m. until 4:30 p.m. A 24-hour drop box is located outside the courthouse to the right of the west entrance on 11th Street, near the handicap access door. Should an attorney need access to a computer to file a document, the attorney may use the public computer terminal and scanner at the Clerk’s Office during business hours.

When using the drop box, please note carefully how to file stamp pleadings and new petitions. Additionally, please be aware that new petitions, adversaries and other documents requiring a fee are not deemed filed until removed from the box and processed by the Bankruptcy Court, regardless of the date and time stamped in at the drop box. Other documents are deemed filed when file stamped at the box. The Court empties the drop box at 8:30 a.m. and 4:00 p.m. each weekday, except on federal holidays or on other occasions when the Court is closed due to special circumstances such as inclement weather.

Must personal information and/or identifiers be redacted from documents filed with the Court? Who is responsible for this?

Yes. The party filing the document is responsible for redacting the information. The following information should be redacted: 1) Social Security Numbers; 2) names of minor children; 3) dates of birth; and 4) financial account numbers. Please see Local Rule 9037 for all Court requirements regarding privacy and redaction of documents filed with the Court.

What should I do if I mistakenly electronically filed a claim with attachments and one of the attached pages displays the full social security number?

You should file a *Motion to Amend by Redaction*. Along with the filing of the Motion to Amend by Redaction the ECF filer should include the page of the document you wish to have replaced in the CM/ECF database.

D. SCHEDULES

Schedules are official bankruptcy forms (Official Form Nos. 6A-6J) listing the debtor's assets, liabilities, income and expenditures, and exemptions. Official forms may also be accessed through the Court's web site. Forms are not otherwise available at the Court.

E. STATEMENT OF FINANCIAL AFFAIRS

The Statement of Financial Affairs is an official form (Official Form 7) that consists of questions pertaining to the debtor's financial position. The last page of the statement of financial affairs, as with the schedules, contains a declaration page which the debtor (or husband and wife in a joint case) must sign under penalty of perjury.

When must schedules and statements be filed?

Unless filed with the petition, schedules and statement of financial affairs must be filed within 14 days of the petition. (Fed. R. Bankr. P. 1007(c)). If a "skeleton" or a "bare bones" petition was filed without schedules or the statement, the Court will issue a deficiency Order and Notice requiring these documents be filed within 14 days and stating the case may be dismissed on failure to do so.

F. INSTALLMENT FEE APPLICATIONS

What if the debtor is unable to pay the filing fee with the petition?

28 U.S.C. § 1930(a) and Federal Bankruptcy Rule 1006(b) allow the debtor to pay the filing fee in installments by filing an application to pay filing fees in installments with the petition. This Court has customized the official form for use in this district. This Court's form may be printed from the Court's web site under "Local Forms" (Local Form 1).

NOTE: Both debtors must sign the installment fee application if the petition is filed jointly by husband and wife.

How does an installment fee application work?

Federal Bankruptcy Rule 1006 and the installment fee application permit the debtor to pay in no more than four installments and require the last payment to be made within 120 days after filing the petition. This deadline may be extended, but only for good cause shown, provided the last installment is paid not later than 180 days after filing the petition. (Fed. R. Bankr. P. 1006(b)(2)). A separate motion is required to pay later than 120 days.

NOTE: One-half of the total filing fee must be paid at the time the petition is filed. The remainder may be paid in installments if the application is granted. L.R. 1006(A).

Can installment fee payments be made through the Chapter 13 plan?

Yes. Unless the fee is paid in full upon case opening, all fee payments MUST be made through the plan pursuant to Local Rule 1006(B). However, the installment fee application must indicate that payments will be made through the plan. Additionally, the plan must direct the Chapter 13 trustee to pay the filing fee. If the plan omits such language, the Trustee will object to confirmation.

G. ATTORNEY FEE DISCLOSURE (Rule 2016(b)), CHAPTER 13 ATTORNEY FEES, AND ATTORNEY CONDUCT/DISCIPLINE

What is the Attorney Fee Disclosure?

The Disclosure of Compensation of Attorney for Debtor Form, also known as the “Rule 2016(b) Form” is an official procedural form (Form No. B203) on which debtor’s counsel must disclose fees the attorney has charged, amounts already paid and amounts still owed by the debtor(s) for services rendered in connection with the petition. It also certifies the representation agreement between the parties. 11 U.S.C. § 329(a) and Federal Bankruptcy Rule 2016(b) require disclosure of debtor’s counsel fee arrangement.

NOTE: When an attorney files a Notice of Appearance, the 2016(b) form is to be filed at the same time.

Does the attorney need to file an Attorney Fee Election form and when does it need to be filed?

In a Chapter 13 case, the debtor’s attorney needs to file the Attorney Fee Election form. However, the filing of the Attorney Fee Election form is to be done as a virtual event in the CM/ECF system. The deadline for filing the Attorney Fee Election form is 14 days from the filing of the petition.

How does a debtor’s attorney receive fees in a case that has been dismissed prior to confirmation of a Chapter 13 plan?

The attorney must, within 10 days of the entry of the dismissal order, (1) file an application for an order allowing the fees as a Bankruptcy Code § 503(b) expense, and (2) obtain an order directing the trustee to hold funds pending the resolution of the fee application. If the fee sought, including fees paid prior to filing of the case, does not exceed \$1,100, the attorney may use the Court’s Short Form Attorney Fee Application and may file the application as a motion without hearing pursuant to L.R. 9062. If the fee sought, including fees paid prior to filing of the case, exceeds \$1,100, the application shall comply with the form, notice and hearing requirements of L.R. 2016-1. See LR 2016-3(C).

May an attorney continue to practice in the United States Bankruptcy Court for the Eastern District of Missouri if the attorney has been suspended or disbarred in another court?

Possibly. The attorney will automatically be suspended or disbarred upon the same terms as the attorney was suspended or disbarred in the original court. The attorney must then apply for reinstatement in this Court pursuant to Local Rule 2094 and show cause why the attorney should not continue to be suspended or disbarred in this Court.

H. ADDITIONAL BAPCPA FILING REQUIREMENTS

Where do I file the documentation supporting the current income calculations?

The debtor must bring the documentation supporting expenses claimed on the Disposable Income Official Form in Chapter 13 cases to the 341 meeting of creditors. Such documentation shall not be filed with the Court unless filing is necessary to comply with existing rules and procedures. Please see Local Rule 1007-1 for this and other requirements associated with the Current Income Calculations.

Where do I file payment advices?

Payment advices are not to be filed with the Court. Copies of payment advices or other evidence of income received within 60 days of the petition date is satisfied by providing such documentation to the trustee at least 7 days prior to the 341 meeting. If there was no such income, the debtor must provide the trustee with a verified statement that the debtor did not receive any such income. In no event shall this documentation be provided more than 45 days after the date of the filing of the petition. See generally Local Rule 1007-2(A).

Where do I file the Statement of Monthly Net Income?

This requirement is satisfied by including such information in Schedule I. See Local Rule 1007-2(B).

Where do I file the statement disclosing any reasonably anticipated increase in income or expenditures over the 12 months following the petition date?

This requirement is satisfied by including such information in item 17 of Schedule I and item 19 of Schedule J. See LR 1007-2(C).

Where do I file the tax returns that the debtor filed with the taxing authority(ies) pre-petition?

These are not to be filed with the Court. This requirement is satisfied by the debtor providing the trustee with a copy of the debtor's most recently filed federal and state tax returns, or a verified statement that such returns do not exist and the reason why the returns do not exist, at least 7 days prior to the 341 meeting. See LR 1007-5(A).

**Does the Certificate of Credit Counseling need to be appended to the Voluntary Petition?
Can I file one certificate for joint debtors?**

A separate certificate of credit counseling or Exhibit D shall be filed with the petition for each debtor unless a motion for exemption or exigent circumstances is filed. If a single Exhibit D is filed for both debtors in a joint case, the exhibit shall include the names and signatures of both debtors. The certificate of credit counseling or Exhibit D shall be appended to the voluntary petition or may be filed separately. If the certificate of credit counseling is filed separately, the “Certificate of Credit Counseling” event shall be used. If Exhibit D is filed separately, the “Support/Supplement” event shall be used. See generally Local Rule 1007-6 for Certificate of Credit Counseling requirements.

J. ADDITIONAL CHAPTER 13 REQUIREMENTS

What additional documents are required for a Chapter 13 bankruptcy case?

Plan: The Court’s mandatory form Chapter 13 plan can be found in the Forms section of the Court’s web site.

Attorney Fee Election Form: Under Local Rule 2016-3(A), there are two fee options authorized for payment of attorney fees in Chapter 13 cases. Debtor’s counsel may select the “flat fee option” and receive \$4,000 (\$4,281 if the filing fee is advanced) for all services rendered throughout a case without further application. The second option permits payment of \$2,300 (\$2,581 if the filing fee is advanced) without itemization and permits counsel to apply for additional amounts on further application. Additional details and instruction for subsequent fee applications in Chapter 13 cases is included in the Procedures Manual and these materials under the Motions and Chapter 13 Section.

The Attorney Fee Election form is now available for filing as a virtual event. Additional information on this subject can be found in Local Rule 2016-3. If the fee election form is not filed with the petition, the Chapter 13 trustee will object to confirmation. The attorney fee election event allows for a flat fee or fee application with a blank text box at the final event screen.

L. DEFICIENCY ORDERS AND NOTICES, AND NOTICES OF ERROR

What is a deficiency order and notice and when does the Court issue it?

The Court sends a deficiency order and notice when a petition is filed without all of the required documents. The Court will issue the deficiency order and notice immediately following receipt or electronic filing of a new petition to indicate which documents are missing and the deadline by which the deficiency must be cured. Failure to cure the deficiency by filing the missing documents within the time stated on the notice will likely result in prompt dismissal of the case. The Court uses two deficiency notices. The first provides 14 days to file any schedules or the statement required but not filed with the petition. The Court issues the seven-day notice if the debtor fails to provide an Attorney Compensation Disclosure Statement (2016B) form or other

documents critical to the Court's commencement of the case (e.g. social security number, attorney's signature, etc.). This notice grants seven days for the debtor to comply.

What is a Notice To Filer of Errors In Electronically Filed Documents?

When an electronic filing error is identified, a Notice To Filer of Errors In Electronically Filed Documents form will be docketed on the record and a Notice(email message) will be sent describing the actions the filer must take to correct the error. The following information will detail the forms used and the content of the forms. The following forms are used when specific errors are made related to electronically filed documents.

Bankruptcy Case - Re-filing Required

Adversary Case - Re-filing Required

Proof of Claim - Re-filing Required

Form Content

- ▶ The caption identifies the Party Role types (Debtor, Plaintiff, Defendant) and the case number(s).
Note: The Notice of Errors email message will identify the number and entry where the error was made. Whenever there is a Debtor only role type in the caption, the error relates to a Bankruptcy Case. If the party role types include Plaintiff and Defendant identified in the caption, the error relates to an Adversary Case.
- ▶ Immediately after the form title "Notice to Filer of Errors in Electronically Filed Documents" is a bold description, which speaks directly to the docketing error.
- ▶ The following check boxes identify the specific error, which includes an "other" choice in which case additional information is provided.
- ▶ "Action Required By the Filer" section identifies if a Corrected PDF is to be filed, or the PDF needs to be re-filed using the correct event with a 7-day deadline to correct the error.
- ▶ The Notice To Filer of Errors In Electronically Filed Documents relating to a Proof of Claim will at times require the filer to review the Claims Register Report "Remarks" section for the error detail message.

M. AMENDMENTS TO PETITION, SCHEDULES, STATEMENTS, AND MATRIX

When may the petition, schedules, statement and matrix be amended?

Federal Bankruptcy Rule 1009(a) governs amendments to the petition, schedules, statements and the matrix. If schedules are amended to add creditors after the case is closed, the case will need to be reopened to add the creditors. The Court is required to collect a fee based on the specific chapter of the case when a motion to reopen a case is filed whether or not the Court grants the motion to reopen.

Additionally, if schedules (D, E or F) are amended or the matrix is amended to add new creditors after the 341 notice has been sent but before the meeting has been held, the debtor or the debtor's attorney must notify the newly added creditors of the 341 meeting date.

Practice Point: File a memorandum or enhance the docket text when filing Amended Schedules to add or delete creditor(s) per L. R. 1009.

Is there a fee to amend schedules and matrices?

YES. There is a \$30.00 fee to add or delete creditors on schedules D, E or F or the matrix. The fee is also required to change the amount owed to a creditor or the classification of a debt. No fee, however, is required merely to correct an address or name.

What documents must be filed to amend schedules and matrix?

To add a creditor, you must file the amended schedule(s) and matrix listing only the new creditor. You must also file a memorandum identifying the change made by the amended schedule or matrix that has been filed (*i.e.*, addition of creditor xyz, or removal of creditor xyz from Schedule D and addition of creditor xyz to Schedule F). To delete a creditor, you must simply file a memorandum identifying the change. Also, if a fee is due, the filer must tender the fee.

N. CONVERSIONS

What is required to convert a case from Chapter 7 to Chapter 13?

Converting from Chapter 7 to Chapter 13 requires the filing of a motion. (See 11 U.S.C. § 706(a) & Fed. R. Bankr. P. 1017(f)(2)). The motion must be served upon at least the Chapter 7 trustee and the United States Trustee. Local Rule 9061(A)'s negative notice procedures can be followed with regard to hearing requirements. Conversion is effective on the date of the order granting the motion to convert. No filing fee is required to convert from Chapter 7 to Chapter 13.

What is required to convert a case from Chapter 13 to Chapter 7?

Chapter 13 debtors may convert to Chapter 7 by filing a notice of conversion. Conversion from Chapter 13 to Chapter 7 does not require a motion or hearing. Conversion becomes effective on the date the notice of conversion is filed. (Fed. R. Bankr. P. 1017(f)(3)). The current conversion fee of \$25.00 applies for any conversion from Chapter 13 to Chapter 7 and must be paid at the time of filing the notice of conversion.

What occurs after conversion and what deadlines apply?

The Court issues an order of conversion granting the debtor fourteen (14) days from the date of the order of conversion to file the schedules and statements, and seven business days for the matrix, verification of matrix, and attorney compensation disclosure (2016(b)) under the new chapter. If the case is converted to Chapter 13, the Chapter 13 plan must be filed within fourteen

days as well. The Court will send notice of the conversion to all creditors and will provide a new 341 meeting date and give notice to all creditors.

If a debtor completed a means test when the debtor initially filed under Chapter 7, but the case was converted to another chapter, the debtor must complete a new means test if the case is converted back to Chapter 7. Please see Local Rule 1019 for requirements in connection with conversion of cases.

SECTION 341 MEETINGS (MEETINGS OF CREDITORS)

When is the 341 meeting held and who sends notice?

Federal Bankruptcy Rule 2003 requires the 341 meeting be held within 21 to 50 days of the filing of a Chapter 13 petition. (Fed. R. Bankr. P. 2003(a)). In divisional offices, the meeting may be held up to 60 days after the petition is filed. The United States Bankruptcy Court, through BNC, the federal bankruptcy noticing center, mails notice of the meeting of creditors to all parties listed on the debtor's matrix. This notice is called the "Order and Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines" and includes the date, time and location of the 341 meeting as well as the name of the trustee and other relevant case information.

Where is the 341 meeting held?

In the Eastern Division (St. Louis), 341 meetings are held at the Thomas F. Eagleton United States Courthouse, located at 111 South 10th Street, at the corner of 10th and Walnut Streets in downtown St. Louis. Most meetings are scheduled on the first floor of the courthouse in room 1.310; however, from time to time, other locations can be used within the Eagleton Courthouse.

In the Southeastern Division (Cape Girardeau), Chapter 13 meetings are held at the Rush Hudson Limbaugh, Sr., United States Courthouse, 555 Independence St., Cape Girardeau, MO.

In the Northern Division (Hannibal), Chapter 13 meetings are held at the United States District Courthouse, 8th and Broadway, Room 312, also in Hannibal.

What if the debtor cannot attend? What happens if the debtor misses the 341 meeting?

Failure to attend the 341 meeting may result in dismissal of the case and a 180-day bar to filing another case. If a debtor cannot attend or misses the meeting of creditors, the debtor (or debtor's attorney) must immediately contact the trustee to obtain a new meeting date and time. The attorney, or the debtor (if the debtor does not have an attorney) must mail a notice of the continued 341 meeting to all creditors. The notice must include the date, time and location of the continued 341 meeting. The attorney, or the debtor (if the debtor does not have an attorney) must also file a certificate of service and a copy of the notice with the Court. To obtain a continued hearing date, parties should contact the case trustee. Thereafter, it is the debtor's (or debtor's counsel's) responsibility to mail notice of the continued 341 meeting date (including time and

location) to all creditors and file the notice of the continued meeting along with a certificate of service with the Court. Creditors must receive at least 21 days notice of the meeting. (Fed. R. Bankr. P. 2002(a)).

How can counsel confirm the date of a scheduled 341 meeting?

The United States Bankruptcy Court posts the 341 docket on its web page. By selecting the date of the meeting or reviewing all dates, parties can confirm the time, date, location and trustee assigned to a case. However, due to changes outside the control of the Court, the room number for §341 meetings in St. Louis may change. In such instances, parties should check the docket sheet outside the hearing room to verify the room number. Additionally, if a case has been rescheduled from its original docket, such changes are updated only after docketing and may not be reflected on the web page when checked. Further assistance can be obtained from the Chapter 13 Trustee.

CLAIMS

A. GENERAL GUIDELINES FOR FILING A PROOF OF CLAIM

How is a proof of claim filed?

Attorneys must file proofs of claim electronically by using Official Form B10 found in the bankruptcy forms section of the U.S. Courts' web site (www.uscourts.gov).

If the debtor wishes to file a proof of claim for a creditor, what must the debtor file?

The official proof of claim form (Official Form 10) should be used for all claims, even if the debtor files the claim for the creditor. Only the original proof of claim should be filed. When filing the claim electronically, the filer must change the "Filed By" to "Debtor."

Will the creditor get notice that a proof of claim has been filed on its behalf?

After entering a proof of claim filed by the debtor or trustee, the clerk's office will send notice of the filing of the proof of claim to the affected creditor, case trustee, debtor and debtor's attorney. This notice describes the amount and type of claim, (secured, unsecured, etc.), when it was filed, and by whom.

Local Rule 3004 states that the Chapter 13 debtor who files a proof of claim on behalf of a creditor should simultaneously file a copy of the claim, and an exhibit summary, if any, and serve a copy upon the creditor, the Chapter 13 trustee, if any, and the Chapter 13 Trustee's attorney. Notwithstanding this requirement on the debtor, the Court continues to send its form notice discussed above in Chapter 13 cases.

How is an objection to claim filed in a Chapter 13 case?

An objection to a proof of claim in Chapter 13 cases should be filed on the form provided in the local rules. (Local Rule 3007 (Form 11)). The objection to a proof of claim must state that any responsive pleading must be filed and served on the objecting party within 21 days or the objection may be granted. The objecting party must mail a copy of the objection to the claimant, to the debtor, and to the Chapter 13 trustee.

If no responsive pleading is timely filed, the objecting party must file a certification and order with the Court. (Local Rule 3007(B) (Misc. Local Form)).

If a responsive pleading is timely filed, either the objector or the claimant may set the objection for hearing, giving 30 days notice of the hearing to the debtor (if not represented by an attorney), the debtor's attorney (if any), the claimant (if set for hearing by the objector), the objector (if set for hearing by the claimant), and the Trustee. If both parties consent in a writing not filed with the Court, the objection need not be set for hearing or a hearing set on the objection may be continued or cancelled upon 48 hours notice to the Court by either party contacting the appropriate Courtroom Deputy. (Local Rule 3007(B)).

If a response is filed and the objection to claim is resolved prior to hearing, either of the parties should contact the courtroom deputy no less than 48 hours prior to the hearing and submit a proposed order to the Court.

What if I file an objection to a proof of claim, but the objection is based on a motion to avoid lien that has not yet been granted?

If a party files an objection to a claim on the basis, in whole or in part, that the claimant's lien is avoidable under Bankruptcy Code § 522(f)(1), and no final order has been entered on the motion to avoid the claimant's lien, the party objecting to the claim shall notify the Judge's Courtroom Deputy of the claim objection at the time the claim objection is filed.

B. GUIDELINES FOR ASSIGNMENT OR TRANSFER OF CLAIM (other than for security purposes)

How is a proof of claim filed if the claim is acquired by assignment or transfer?

If a claim is acquired before the transferor (original claim holder) filed a proof of claim, the transferee (and only the transferee) may simply file a proof of claim. (Fed. R. Bankr. P. 3001(e)(1)).

After a proof of claim has been filed, the transferee (the new creditor) must file evidence of the transfer. This document must contain the amount of the claim, the name of the original creditor and the name and address of the transferee. (Fed. R. Bankr. P. 3001(e)(2)). The Debtor may also file evidence of the transfer with the Court if the transferee neglects to do so. The Debtor should use the miscellaneous local form titled Debtor Request to Send Notice of Claim Transfer. This form is available in the Forms section of the Court's web site.

Does the transferee have to notify the original creditor (transferor) about the claim?

No, the transferee or the debtor only needs to file a notice of transfer and provide the Court the appropriate information to send notice.

The Court will prepare a notice of transfer and, through the Bankruptcy Noticing Center, will mail a copy of the notice to the original creditor specifying that any objections to the transfer must be filed within 21 days. The Court's claims register is automatically updated when the transfer of claim is filed.

If a party objects to the transfer, the objecting party must file an objection in writing along with a notice of hearing and must serve the objection and notice on the transferee (new claimant) and the trustee. The objection and notice must be mailed 30 days before the hearing. (Fed. R. Bankr. P. 3001(e)(5)).

C. GUIDELINES FOR WITHDRAWAL OF A PROOF OF CLAIM

How is a proof of claim withdrawn?

To withdraw a proof of claim, the claimant must file a written memorandum with all required case information displayed in the caption and the filer's signature along with the signature block withdrawing the claim. This document should include the name of the creditor withdrawing the claim, the amount of the claim as it was filed, the date the claim was filed, and the claim number. The creditor must, however, serve a copy of the memorandum on the debtor's attorney and the case trustee. The CM/ECF pathway is: Bankruptcy, Claims Actions, Withdrawal of Claim.

Who is responsible for what tasks regarding withdrawal of a proof of claim?

The creditor seeking withdrawal must file the memorandum of withdrawal with the Court. On receipt, the Court's CM/ECF system will adjust the official records to indicate the claim has been withdrawn. The Court will not mail notice of the change to any parties; however, the claims register will reflect that the claim has been withdrawn.

D. GUIDELINES FOR FILING AMENDED PROOFS OF CLAIM

How is a proof of claim amended?

To amend a claim, a new proof of claim should be filed. It should be clearly marked as "Amended." The proof of claim form used for filing an amended claim is the same form used for filing an original proof of claim. When filing an amended claim, the filer needs to enter the proper claim number within the screen where the "Amends Claim #" is electronically stored.

E. CLAIMS REGISTER

What information is in the claims register? How is it accessible?

The claims register is a record of all claims filed in a case. It is the Bankruptcy Court's responsibility to maintain this record. (Fed. R. Bankr. P. 5003(b)). The claims register is

available through PACER or may be viewed free of charge using one of the terminals in the public area of the clerk's office. Images of proofs of claims and all attachments may be viewed through PACER as well. The Court has imaged claims in all Chapter 13 cases where the claims were filed after June 1, 2000.

MOTION PRACTICE

I. INTRODUCTION

Any request for relief in a Bankruptcy Court proceeding must be filed in writing unless the judge permits an oral request in Court. The usual written procedure is a motion, which often requires a hearing, and, at conclusion of the hearing, submission of a proposed order. This section addresses procedures regarding motions, hearings, proposed orders and the basic operation of Chapter 13 cases. Scheduling motions and hearings is handled through the judge's courtroom deputy in the Court's Courtroom Services Department. The courtroom deputy works closely with the judge, other Court staff and the public to coordinate the Court's calendars. A list of names and telephone numbers of the courtroom deputies can be found in the Court Info section of the Court's web site.

II. APPLICABLE LAW & RULES

Generally, any request for an order should be by written motion. (Fed. R. Bankr. P. 9013). Federal Bankruptcy Rules 9013 and 9014 govern motion practice, specifying that the motion shall state with particularity, the relief or order sought, and the grounds therefore. The motion shall be served by the moving party on the trustee, debtor and other entities specified or having an interest in the matter. Specific motions arising under various sections of the bankruptcy code have their own procedures and time limits for service prior to hearing. Procedures for the most common motions in Chapter 13 cases are discussed below. They include: motions for relief, governed by § 362 and Federal Bankruptcy Rule 4001; motions to avoid lien, governed by § 522(f) and Federal Bankruptcy Rule 4003(d); and various Chapter 13 motions and procedures for confirmation of a Chapter 13 plan under § § 1321-1327, and Federal Bankruptcy Rules 3015 and 3021. Additionally, the Court's Local Rules dictate procedures in Chapter 13 cases.

III. BANKRUPTCY COURT PROCEDURES

A. MOTIONS

Each motion filed with the Court must contain a caption, a body of separately numbered paragraphs specifying the relief requested, and a certificate of service. The various proposed order guidelines can be found in the Local Rules.

(1) Caption - What information should be contained in the caption?

Local Rule 9004(A) requires that the right side of the caption include:

- case number with judge code (for all filings after the Court has assigned a case number);
- Chapter;
- adversary proceeding or motion number (for all filings after the Court has assigned the motion or adversary number);
- current hearing date, time, and location (city and courtroom); and
- date any response must be filed, if applicable.

The top left-hand side of the page of all filings and proposed orders shall include the name of the debtor. All filings and orders concerning motions shall also list the name of the movant and respondent on the top left, and filings and orders in adversary proceedings shall list the name of the plaintiff and the defendant. (Local Form 22, Sample Caption).

(2) Body of motion

The body of the motion should set forth in separately numbered paragraphs the legal and factual grounds on which relief is sought. For example, if the motion is a Motion for Relief from the Automatic Stay, the body should include reference to the code section under which relief is sought, a full description of the collateral, and proof of perfection or evidence of the creditor's lien (i.e. copy of recorded mortgage or car title). If real estate is involved, the legal description should be included.

(3) Wherefore clause

If the motion is a multi-part motion containing several requests for relief, the wherefore clause should include all aspects of relief requested.

(4) Certificate of service

The Movant must include a certificate of service on each motion that is filed with the Court or must file a separate certificate of service. Local Rules 9004(D) and 9013-3(F) govern certificates of service.

How can I tell, before I file a document electronically, who will be served with the document?

You can identify in advance of filing a document which parties will receive electronic service in any particular case by accessing the "Mailings" option under "Utilities." The CM/ECF pathway is: Utilities, Mailing Info for a Case.

B. HEARINGS

What pleadings must be set for hearing?

Counsel should always check the Federal and Local Rules of Bankruptcy Procedure to determine when a hearing is required. However, as a general rule, unless otherwise specified in the Local Rules, motions for relief from stay, motions to avoid liens, any motion that is contested (where objections are filed), objections to claims, and some applications for fees will need to be set for hearing by the movant/applicant. Local Rule 9062 provides a list of matters that do not require a hearing, and Local Rule 9061 provides a list of matters that may be heard on negative notice.

Ex parte motions: Parties should presume most matters will require a hearing. The Court will rule on only a limited number of matters on an ex parte basis. Such matters typically include: requests for examinations under Rule 2004, conversions of most consumer cases, motions to reinstate, and motions for relief from the automatic stay by consent.

What is the procedure for scheduling a hearing date?

Please refer generally to Local Rule 9060(A). The movant should contact the courtroom deputy of the judge to whom the case is assigned to request a hearing date and time. Alternatively, hearing dates and times can be obtained from the Court's web site or the courtroom deputy's voice mail message.

How does a movant obtain a hearing on an expedited basis?

Each judge has specific requirements that need to be met in order to obtain an expedited hearing date. Please contact the judge's courtroom deputy for assistance when trying to set a matter for an expedited hearing. Generally, on motions for relief, the Court will grant an expedited hearing if the debtor has failed to maintain insurance on movant's collateral or there is a continued foreclosure sale.

What information does the notice of hearing need to contain?

Please refer generally to Local Rule 9060(B). The caption of the notice of hearing should follow the same format as the caption of the motion; however, the notice should also contain the date, time and location of the hearing. The notice of hearing should also specify a date by which responses to the motion must be filed. All Judges require responses to be filed at least seven (7) days prior to the scheduled hearing on any motion for relief. In some instances, the judge may enter a default order if a response is not filed by this deadline. Check with the courtroom deputy for the proper procedure. Local Rule 9060(B)(2) allows a combined motion and notice of hearing to be filed as one event within the CM/ECF system.

When must a response be filed?

Responses to any matter set for hearing should be filed at least seven (7) days prior to hearing.

C. HEARINGS ON NEGATIVE NOTICE

Please refer generally to Local Rule 9061 for matters that can be set on negative notice. When a motion or application is filed on negative notice, instead of setting the motion for hearing, the movant files and serves a notice on the appropriate parties advising that parties have (generally) 21 days from the filing date of the pleading to file objections. No hearing occurs on these matters unless opposition is filed. “Negative Notice” means a motion will be set for hearing only if objections to the motion are filed. The objection period for opposing a pleading set on negative notice is generally 21 days, depending on the type of pleading. See L.R. 9061(B).

Is there a specific format which is to be used when a motion or application is filed on negative notice?

Yes. Local Rule 9061(C) provides a specific statement which is to be on all pleadings filed on negative notice.

Who sets the matter for hearing if an objection is filed?

Please refer generally to Local Rule 9061(D). If a party objects to a motion, claim or application set on negative notice, the responding party, the movant, applicant, claimant, or claim objector must contact the appropriate courtroom deputy to obtain a hearing date and then serve the objection, along with notice of the hearing on the movant and any other party entitled to notice.

If the time period for objection has passed and no objections were filed, the movant must file a certification and proposed order with the Court. Local Rule 9061(E). The certification must recite that the time for response has passed, and either (1) that no responses in opposition to the motion have been filed with the Court or received by movant, or (2) that any objections filed have been resolved. An appropriate order granting the motion or allowing the claim must also be filed. The certification and order must be submitted as one document. The certification must be dated and signed by the moving party or attorney.

NOTE: An error in the certification may subject the attorney to a \$100 sanction. Counsel should carefully check the Court file to ensure no objections have been filed prior to submitting the certification.

Attorneys should advise their clients prior to filing any pleadings on negative notice that orders cannot be processed if the objection period has not expired. Attorneys should take into consideration each client’s situation and the period of notice required in order to determine how best to serve the client’s needs. For example, if a client needs an order promptly, setting the pleading for hearing may serve the client better than filing the pleading on negative notice.

D. COURTROOM SERVICES

DIRECTOR OF COURTROOM SERVICES - oversees courtroom deputies, Chapter 13 deputies, and electronic court recorder operators (ECROS).

Matthew Parker (314) 244-4801

CHAPTER 13 DEPUTIES - perform courtroom deputy duties for Chapter 13 cases.

EASTERN DIVISION:

Linda Truccano - Chief Judge Schermer(314) 244-4809

Bob Brimmer - Judge Surratt-States (314) 244-4810

SOUTHEASTERN & NORTHERN DIVISION:

Wynne Abernathy - Chief Judge Schermer (Cape Girardeau)(314) 244-4806

John Howley, Jr. - Judge Surratt-States (Hannibal)(314) 244-4808

ELECTRONIC COURT RECORDER OPERATORS - maintain official record of Court proceedings, process CD transcript requests, and verify orders.

Robert Reese (314) 244-4804

Dorcas Walker. (314) 244-4826

Diane Lovell(314) 244-4813

E. PROCEDURES FOR FILING SPECIFIC TYPES OF MOTIONS

1. Motions to Avoid Liens

The motion must state the factual and legal reasons the movant believes that the movant is entitled to avoid the lien and must include a description of the collateral. Please refer generally to Local Rule 4003-2. In a Chapter 13 case, the motion may be set on negative notice following the 14-day objection period set forth in Local Rule 9061(D)(1). The motion must be served on a corporation’s registered agent. Registered agents can be found at: <https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp> .

2. Motions for Relief from Stay

Filing and hearing procedures

Please refer generally to Local Rule 4001-1. A motion for relief from stay must be accompanied by a filing fee of \$176.00. The movant must file the motion for relief together with the notice of hearing.

NOTE: If the creditor files a motion for relief with the written consent of the debtor, the Court will waive the filing fee and the need for hearing. Local Rule 4001-1(F).

A minimum of 21 days notice must be given for hearings on a motion for relief. Further, the Court must hear the motion within 30 days of the date the motion is filed. If the motion cannot be heard within the 30 days, the creditor must waive its right to a hearing within 30 days of filing. The creditor may reflect its waiver of the right to have the motion heard within 30 days in the caption of the motion.

What are the requirements for a consent motion for relief from stay?

A consent motion for relief from the automatic stay shall be styled as a “consent motion.” Pursuant to L.R. 9013-1(F), a consent motion for relief from the automatic stay need not be set for hearing and may be ruled upon without hearing. The Clerk of Court is authorized to waive the filing fee for a motion for relief from the automatic stay when the motion is filed with the written consent and signature of all respondents. Consent may be shown by separate certificate of consent or certificate of no opposition signed by the responding party but such consent or no opposition shall be filed as part of the consent motion. All consent motions for relief from stay shall be filed using the proper non-fee consent motion event in the CM/ECF system to avoid automatic assessment of the filing fee. Consent motions for relief to proceed with a domestic action do not require the signature of the non-debtor spouse. See L.R. 4001-1(F).

Expedited hearings on motions for relief - Please refer generally to Local Rule 9013-2(C). It is up to each Judge to decide if a matter will be heard on an expedited (emergency) basis. In addition to the substantive motion, the party seeking hearing on an expedited basis must file a motion for expedited hearing and contact the courtroom deputy for scheduling instructions.

Responses to motions for relief - Please refer generally to Local Rules 4001-1(D) and (E). If a response is filed, the movant and respondent should attempt to resolve the matter prior to hearing. If the matter is resolved, the parties may wish to contact the Court in advance to announce the matter has been settled and thereby possibly eliminate the need to attend the hearing. Always contact the appropriate courtroom deputy to announce a consent or settlement to verify the judge’s procedure. If the motion is not resolved, the parties should be prepared to submit evidence and legal arguments at hearing.

What are the requirements for a request for continuation of the automatic stay?

In cases where the automatic stay terminates on a date certain pursuant to Bankruptcy Code § 362(c)(3), any motion to continue the stay shall be filed within 14 days of the filing of the voluntary petition. When any such motion is filed by the Trustee, it shall be filed within 21 days of the filing of the voluntary petition. Such motions will be set for hearing between 21 and 30 days after the date of the petition. Responses may be filed until the time of the hearing. A motion for continuation of the stay shall be filed using the “Motion to Extend Automatic Stay” event. See L.R. 4001-2.

What are the requirements for a verified motion for imposition of the automatic stay?

In cases where no automatic stay exists upon the filing of the petition under Bankruptcy Code §§ 362(b)(20), (21), or (c)(4), the debtor, trustee, or any party in interest may file a verified motion for emergency imposition of the automatic stay under Bankruptcy Code § 362 as to any creditor(s). Such a motion shall be filed using the “Motion to Impose Automatic Stay” event. The movant shall set such motion for hearing and shall serve the motion upon all affected parties, upon the trustee or successor trustee of any pending foreclosure proceeding and upon any party in possession of the debtor’s repossessed collateral. The motion for imposition of an emergency stay

may be considered by the Court after notice and a hearing, and, if granted, the stay will continue for a period not to exceed 7 days or until conclusion of the final hearing on imposition of the stay, whichever is less. The motion shall (i) identify the circumstances justifying imposition of a stay, and (ii) indicate whether the movant consents to the continued processing of the creditor’s action, including statutory notices and publication or continued possession of the collateral pending final hearing. See L.R. 4001-3.

3. Chapter 13 Motions to Retain Tax Refund, Incur Debt, or Purchase or Sell Assets

Motion to retain tax refund

To retain any tax refund, the debtor must file a motion outlining the amount of the anticipated refund and why the funds are needed. This motion in Chapter 13 may be filed on 21-day negative notice and must be served on the trustee and all parties in interest.

NOTE: If you include the Tax Form 1040 with your motion, you must redact Personally Identifying Information per L.R. 9037.

Motions to incur debt or purchase or sell assets

The debtor’s motion to incur debt must explain how incurring such debt is consistent with the debtor’s budget and reorganization plan. Also, the debtor may not dispose of substantial assets while in bankruptcy without Court permission addressing disposition of the proceeds.

These motions may be set on negative notice and must be served on the trustee and all parties in interest. A movant may choose whether to set the above Chapter 13 motions on “negative notice” or whether to set them for hearing. If the movant chooses to set the motion for hearing, the movant must obtain a hearing date from the Court and serve notice of the hearing on all parties in interest.

IV. PREPARING ORDERS

A. MANNER OF SUBMISSION

- 1. E-mail Transmission.** Proposed orders shall be submitted to the Court by e-mail as an attached document in **WordPerfect** or **Word** format and shall be sent to the e-mail address that corresponds with the Judge assigned to the case referenced in the proposed order. The number of orders attached to an e-mail message is not limited. However, the combined size of the e-mail may not exceed 30 MB.

Send orders to:

Chief Judge Schermer - SchermerOrders@moeb.uscourts.gov

Judge Surratt-States - StatesOrders@moeb.uscourts.gov

Judge Rendlen - RendlenOrders@moeb.uscourts.gov

2. **Naming Convention.** The proposed order must conform to the following naming convention: *case number with judge code, descriptive file name (e.g. party and type of pleading) and appropriate file-type extension (“ .wpd” or “ .doc”).* Omit hyphens in case number. For example: 0254321172 Ford Motor Relief.wpd
 0254321399 GECC Cash Collateral.doc

Judge Codes: Chief Judge Schermer - 399
 Judge Surratt-States - 659
 Judge Rendlen - 705

3. **Content of E-mail Message.**

Subject line. The subject line of the e-mail message shall indicate the name of the attorney or law firm submitting the order(s).

Message. The e-mail message must contain the following information in the body of the message for each order or series of orders attached:

- a. the name of the party on behalf of whom the order(s) is/are submitted; and
- b. the date and time of the hearing to which the order(s) relates/relate if the matter was set for hearing. If the matter did not require a hearing, the message shall indicate “no hearing necessary.”

B. ENTRY OF ORDERS AND SERVICE

- 1. **Entry.** All orders, decrees, and judgments of the Court will be docketed electronically by the Court in accordance with these procedures. Any order docketed by the Court and transmitted through the ECF System without the original signature of the judge has the same force and effect as if the judge had affixed the judge’s signature to a paper copy of the order.
- 2. **Service.** Upon the entry of an order, decree, or judgment, the System will send an e-mail notification of the entry of the order to all registered participants in the case.

What should a proposed order contain?

The title of the order shall describe the motion, application, pleading, or other request to which it relates by title and shall indicate whether the order grants or denies the requested relief. The caption of the order shall include the date and time of hearing on the related motion, application, pleading, or other request. The text of the order shall be sufficiently descriptive to clearly state the relief granted, including a description of any property subject to the order. The end of each order shall:

- (a) contain the name and address of the person who prepared the order;
- (b) list the names and addresses of those to be served with the order; however, the name and address of the person who prepared the order need not be included a second time; and
- (c) contain a signature line and date line for the judge. The signature line for the judge shall not be on a page by itself or otherwise apart from the text of the order.

NOTE: Orders regarding motions for relief from the automatic stay or orders avoiding liens on certain property must describe the property that is the subject of the motion.

When should a proposed order be submitted?

For all motions that are set for hearing, the Court’s preferred practice is to have proposed orders submitted via e-mail after the motion has been filed. For motions set on negative notice, the proposed order should be submitted either after the period for objections has expired without opposition, or after hearing on any objections.

What if the Court’s ruling is different from the proposed order submitted?

Please refer generally to Local Rule 9050. If the Court requests that a party prepare an order consistent with a ruling made on the record, it is that party’s responsibility to prepare the order, serve the proposed order on all parties for comment and submit the finalized order to the Court for the judge’s signature. Delay in submitting an order following a hearing may result in the Court denying the motion for failure to prosecute.

BASIC OPERATION OF A CHAPTER 13 BANKRUPTCY CASE

A. CHRONOLOGY OF EVENTS AND SIGNIFICANT DOCUMENTS IN CHAPTER 13 CASES

1. **Filing** - As discussed in these materials on case commencement, a Chapter 13 petition should be accompanied by schedules and a Chapter 13 plan. The Chapter 13 debtor must carefully complete schedules I, J, and the Statement of Current Monthly Income and Disposable Income as the Chapter 13 trustee will give special attention to those documents to evaluate the debtor’s plan.
2. **Plan** - Section 1322 of the Bankruptcy Code controls the contents of a Chapter 13 plan. Reference should also be made to Local Rules 3015-2 and 3015-3 which set forth additional information that the plan must contain and states that the Court’s Chapter 13 model plan (Local Form 13) must be used.

A change to the plan’s provisions means that the plan is an amended plan and should be titled accordingly. A change only to the caption or hearing information does not make the plan an amended plan.

Current procedures under § 1322 and Local Rule 3015-2, and several important requirements from local practice in this district include:

- a. **Interest on Secured Claims** - Local Rule 3015-2(E). All Chapter 13 plans must provide for interest on secured claims paid through the plan. The clerk updates the applicable interest rate two times annually, providing notice of the current rate in

continuing announcements in legal newspapers, on the Court's web site and via public notice.

NOTE: The rate in effect at the time of filing the plan remains in effect throughout the term of the case, even if amended plans are subsequently filed.

- b. **Minimum Distribution to Unsecured Creditors** - All plans must provide for a specific minimum payment to unsecured claimants. Local Rule 3015-2(C).
- c. **Payments through Plan** - All debts except payments on debtor's residence and certain claims for child support arrearage must be paid through the Chapter 13 plan. Local Rule 3015-2(D).
- d. **Adequate Protection** - Adequate protection must be afforded to secured creditors with collateral that depreciates rapidly (such as automobiles) by providing repayment of principal at a rate of at least 1.5% per month. Local Rules 3015-2(G) and (J).
- e. **Minimum Plan Payments** - Plans must generally provide for monthly payments of not less than \$75.00 to the Chapter 13 trustee. Local Rule 3015-2(F).
- f. **Period to Cure Home Mortgage Arrearage** - Local Rule 3015-2(A) defines the "reasonable time" to cure defaults under § 1322(b)(5) as the shorter of 48 months or the plan duration.
- g. **Vehicle Valuation** - Absent other evidence, the policy for valuing vehicles in this district is determined as a percent of NADA Central edition based upon the vehicle's age. The policy is:

Absent evidence to the contrary, for purposes of 11 U.S.C. § 506, the Court's Vehicle Valuation Policy referred to in L.R. 3015-2(G) shall be 97% of the National Automobile Dealers Association (NADA) (Central Edition) retail value at the time of filing the petition.
(See Procedures Manual p. 14)

- h. **Future Tax Refunds** - All Chapter 13 plans must provide for all future tax refunds to be paid to the trustee and to be added to the plan base. This means the tax refunds become additional funds distributed to creditors.
- j. **Child Support Payments** - Unless the creditor agrees to different treatment, plans must pay child support arrears in full, with equal monthly payments. Local Rule 3015-2(D)(2). **Note:** The DSO Certification form can be found on the Court's web site under Chapter 13 Local Forms as a Miscellaneous Form titled "Domestic Support Certification Form."

How can a creditor receive the proper payment on an adjustable rate, non-principal residence claim through the plan?

Please see Local Rule 3021(C).

How can a non-principal residence mortgage holder make sure that the debtor and/or the trustee receives accurate post-petition billing and account information without violating the automatic stay?

Please see Local Rule 3021(F).

For provisions relating to notices of payment changes and notices of fees, expenses and other charges related to a claim secured by the debtor's principal residence, please see Fed. R. Bankr. P. 3002.1.

3. **Wage Order** - Local Rule 2015-2(A) suggests that the debtor file a wage order with the plan. An ECF virtual motion for wage order can be filed, and the Court's system will automatically create the order the following day. Use of a wage order permits the debtor's employer to send the monthly plan payment directly to the Chapter 13 trustee. Bankruptcy Code Section 1326(a) requires the debtor to commence making proposed plan payments to the trustee within 30 days after the plan or the petition is filed (whichever is earlier). All subsequent wage orders entered in the case will supercede the prior wage orders.
4. **Meeting of Creditors** - The Chapter 13 trustee cannot conduct the § 341 meeting if the debtor's Chapter 13 plan is not filed and served on the trustee with sufficient time for the trustee to review the plan prior to the scheduled creditor's meeting. The plan is due 14 days after filing the petition. The § 341 meeting is generally scheduled 21 to 50 days after the petition is filed. **NOTE:** The trustee desires (fourteen) 14 days to review the plan.
5. **Confirmation Hearing** - The Court schedules the confirmation hearing and mails notice of the hearing to all parties on the debtor's matrix in the Court's Order and Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. Creditors and the trustee have 21 days after the § 341 meeting to file objections to confirmation. Local Rule 3015-4(G). If there are no objections to confirmation, the trustee will submit a proposed order confirming the plan prior to the scheduled hearing and the case will be removed from the Court's confirmation calendar. If there is an objection to confirmation, the Court will hear the objection or the debtor may file an amended plan curing the objection. The amended plan must be served on the trustee and all parties on the matrix at least 21 days before the confirmation hearing. L.R. 3015-4(H).
6. **Amended Plans - Post Confirmation** - Pursuant to Local Rule 3015-5, any debtor who seeks to amend a plan after confirmation must do so by filing a motion. The amended plan must be filed with a link to the original plan. The motion to amend the plan must be filed after the amended plan in order to create a link between the motion and the amended plan. The notice of hearing is to be linked to the amended plan. The motion must include a specific statement of the reason for the amendment and must be accompanied by an amended plan and either (1) an amended budget or (2) a statement that there has been no change in the debtor's income and expenses. The amended budget or statement shall be signed by the debtor. Hearing information in the caption should include the date, time, and location.

On whom must the post-confirmation amended plan be served?

- General Service: Chapter 13 trustee and all parties in interest.
- Limited Service: Service of the motion, amended plan and either the amended budget or statement that there has been no change in income or expenses may be limited to the Chapter 13 trustee if the proposed amended plan meets either of the following criteria:
- 1) The proposed plan only changes the terms of the confirmed plan by increasing the amount of the plan payment; or
 - 2) The proposed plan changes twelve or fewer months of payments; lowers the plan payment by less than twenty-five percent of the original plan payment; is the first amendment to the Debtor's first confirmed plan; and does not waive any missed plan payments. (Local Rule 3015-5(B)(2)).

Is a hearing and notice of hearing required to confirm the amended plan?

Note: A notice of hearing must be sent out for all post-confirmation amended plans.

Although Local Rule 3015-5(C) provides for negative notice of hearing on any objections to a post-confirmation amended plan, the Court's preference is to have ALL motions to amend and amended plans scheduled for hearing on the Court's confirmation calendar when the amended plan is filed. Debtor's counsel should file the notice of the hearing with sufficient time to give all parties on the matrix 21-days notice. If there are no objections to confirmation, the Court may approve the amended plan without a hearing on submission of a proposed order from the Chapter 13 trustee granting the motion and confirming the amended plan.

7. **Dismissals** - As with cases under all chapters, a Chapter 13 case will be dismissed for debtor's failure to file schedules and statements, failure to make the plan payment, or attend the 341 meeting. Unique to Chapter 13 case dismissals, however, is the fact that the Chapter 13 trustee will file a motion to dismiss a Chapter 13 case if the debtor fails to make plan payments under a confirmed plan. Such motions are filed on negative notice, so that unless the debtor files a response to the motion to dismiss, the motion may be granted without hearing. The debtor has 21 days from service of the trustee's motion to dismiss to file a response. L.R. 1017-1(D).

If a response is filed, the trustee will set the motion for hearing on the next Chapter 13 docket, giving at least fourteen (14) days notice of the hearing to the debtor, counsel and secured creditors.

8. **Reinstatements Following Dismissals for Failure to File Required Documents , Attend the 341 Meeting, or Pay the Filing Fee** - Please refer generally to Local Rules

1017-2 and 1017-3. The general procedure for seeking reinstatement of a case following dismissal for failure to file required documents, attend the 341 meeting, or pay the filing fee, is covered in these materials on dismissal. Relevant to Chapter 13 practice, however, is the procedure that the Chapter 13 trustee will typically only consent to a motion to set aside dismissal for failure to make plan payments and reinstate the case if the debtor submits funds necessary to cure the underlying reason for dismissal. Debtor's counsel should represent in the motion to reinstate that counsel holds sufficient money (stating a specific dollar amount) to bring the debtor current with the trustee. The trustee will file a response indicating the trustee either recommends reinstatement, objects or states that trustee has no objection. With the trustee's consent, the Court will reinstate the case without further hearing if the reinstatement is requested before the case is closed. If reinstatement is granted, the Court may order the debtor to send notice of reinstatement to all creditors and direct debtor to re-set any matters pending at the time of dismissal for hearing.

B. ATTORNEY FEES IN CHAPTER 13 CASES

How does an attorney get paid in Chapter 13 cases?

In this district, attorneys have two options for payment of attorneys' fees in Chapter 13 cases. Local Rule 2016-3(A) and page 12 of the Procedures Manual provide that an attorney may elect either a "flat fee" option for payment for all services rendered throughout the Chapter 13 case, or a lower initial fee option which affords the opportunity for counsel to make application for subsequent fees. The present "flat fee" authorized in this district is \$4,000.00 (or \$4,281.00 if the filing fee is advanced). The fee application option, permits an initial fee of \$2,300.00 (or \$2,581.00 if the filing fee is advanced) plus any amounts authorized on later application.

Debtors may pay attorneys' fees through the Chapter 13 plan as follows:

In cases filed on or after October 17, 2005: The debtors' attorney's fees shall be paid by the Trustee after monthly payments to secured creditors. However, a maximum of \$2,000 in attorney fees, minus any attorney fees paid directly by the debtor, may be paid after monthly payments for post-petition real estate contract payments, post-petition executory contract payments, and unassigned domestic support obligation payments. Such fees shall be paid in equal monthly payments over 12 or more months. Any attorney fees owed and not paid or payable in equal monthly payments as stated above shall be paid as a lump sum at a disbursement level after all secured claims. If an attorney chooses to amend a confirmed plan to add a provision for payment of some fees in equal monthly payments, the Trustee shall establish the monthly payment by dividing the fees remaining to be paid under the paragraph by the remainder of the repayment period in the paragraph.

(a) Attorney Fee Election Form - The Chapter 13 trustee will object to confirmation of any plan if the debtor's counsel fails to file the virtual event titled "Attorney Fee Election Form."

(b) Attorney Fee Disclosure Statement - As discussed in the materials on commencement of the case, every debtor's attorney must file a Rule 2016 disclosure statement, reciting the amount of money the debtor has agreed to pay

counsel for services related to the bankruptcy case and the amount already tendered to counsel.

(c) Service of Applications for Additional Attorney Fees - Local Rule 2016-1(B) specifies the format and detail of information counsel must include in all applications for attorneys' fees.

Unless service is limited by Fed. R. Bankr. P. 2002(a)(6) (for limited-amount applications) or otherwise, a professional seeking compensation or reimbursement of expenses shall serve either a copy of the application or a summary of the application using Local Form 4 upon the debtor (if not represented by an attorney), the debtor's attorney (if any), the Trustee, and all creditors and parties in interest. In Chapter 13 cases, a complete copy of the application shall be served on the Trustee. Any summary of the application shall explain how copies of the full application may be obtained by others for review without charge.

DISCHARGE AND DISMISSAL

A. DISCHARGE

What does the Clerk's Office look for before closing a COMPLETED Chapter 13 case?

The Clerk's Office looks for the following in cases filed on or after October 17, 2005:

- ▶ All filing fees have been paid, including installment payments;
- ▶ All schedules, statements, and statistical summary of certain liabilities are filed;
- ▶ The Certificate of Credit Counseling has been filed;
- ▶ The first meeting of creditors has been held and concluded (or the trustee's waiver);
- ▶ Certification of Financial Management (Official Form 23) or an Order Granting Waiver of Certificate of Financial Management has been filed or entered;
- ▶ An order confirming the plan has been entered;
- ▶ Debtor certifies that all domestic support obligations have been met (Misc. Local Form);
- ▶ An order has been entered granting a Motion to Return Excess Funds to the Debtor;
- ▶ A discharge has been entered;
- ▶ There are no pending motions or applications;
- ▶ There are no pending adversary proceedings; and
- ▶ There are no pending objections to the debtor's discharge based on Bankruptcy Code § 522(q)(1).

What are the circumstances when a Chapter 13 case is closed without a discharge?

One or more of the following have not been filed:

- ▶ Statistical Summary of Certain Liabilities;
- ▶ Financial Management certificate; and
- ▶ Domestic Support Obligation (DSO).

B. DISMISSAL

On what grounds does the Court dismiss a Chapter 13 case?

The Court will dismiss a Chapter 13 bankruptcy for the reasons set forth in Bankruptcy Code § 1307, including:

- failure to make installment filing fee payments when due (§ 1307(c)(2));
- failure to file schedules or the statement of financial affairs or the Chapter 13 plan when due, or timely cure any other deficiency in the initial filing, or failure to take any other action that is prejudicial to creditors in the case (§ 1307(c)(1),(3),(9),(10));
- failure to commence payments under a Chapter 13 plan (§ 1307(c)(4));
- denial of confirmation of a Chapter 13 plan (trustee's oral motion to dismiss at confirmation hearing) (§ 1307(c)(5));
- failure to pay any post-petition domestic support obligation when due; (§ 1307(c)(11)); and
- failure to make payments under a confirmed plan (trustee's written motion to dismiss) (§ 1307(c)(6)).

Additionally, the Court will dismiss a Chapter 13 case on request of the debtor at any time, provided the case has not been previously converted from Chapter 7, 11 or 12. (§ 1307(b)).

What is the procedure if a Chapter 13 case is dismissed?

If the debtor fails to file schedules or other documents as required or fails to make any installment fee payment when due, the Court will generally dismiss the case automatically by issuing its standard dismissal order, denoting the reason for dismissal by marking the applicable paragraph. In other instances, the Court will issue its standard order of dismissal on request (motion) of the debtor for voluntary dismissal, or on request of the Chapter 13 trustee either at confirmation hearing or by other written motion for failure to perform duties under the Chapter 13 plan. The Court serves dismissal orders upon the trustee and all parties on the matrix.

How are funds paid to the Chapter 13 trustee distributed when a Chapter 13 case is dismissed?

If the case is dismissed before confirmation, the dismissal order directs the Chapter 13 trustee to retain an administrative fee, pay any unpaid filing fees, pay other timely filed administrative expenses, and then return proceeds to the debtor.

If the case is dismissed after confirmation, the dismissal order directs the Chapter13 trustee to distribute proceeds under terms of the confirmed plan. In either case, the trustee files a final report showing distribution in the case, and, thereafter, the Court closes the case.

When and how are dismissals in a Chapter 13 case issued with prejudice to re-filing?

On request of a party in interest, if a case is dismissed either:

- (1) for willful failure of the debtor to abide by the orders of the Court; or
- (2) at the debtor's own request following the filing of a motion for relief from the automatic stay --

the Court may issue a prohibition against the debtor proceeding under a subsequent petition for 180 days pursuant to 11 U.S.C. § 109(g). If a case is dismissed with section109(g) sanctions, the final paragraph of the dismissal order will indicate the prohibition against filing a subsequent case. Please see the Court's Procedures Manual, pp. 8-10, for the Court's policy regarding section 109(g) sanctions for failure to pay the filing fee.

Can a dismissed case be reinstated and what is the procedure?

Debtors may seek reinstatement of a dismissed case only by filing a motion for reinstatement within fourteen (14) days of entry of the order of dismissal. The Court will usually only grant reinstatement if the debtor cures any deficiency that led to dismissal. Please see L.R.s 1007-2, 1017-2. The Court will usually not reinstate a case that was dismissed for failure to pay the filing fee, attend the 341 meeting of creditors, or provide the documents required by Bankruptcy Code § 521. L.R. 1017-2. If the Court grants reinstatement, the Court will direct the debtor to take certain actions in the order of reinstatement depending on the status of the case at the time it is reinstated.

Do I have to re-schedule a motion for relief from the stay for hearing if a case is dismissed while the motion is pending and the case is then reinstated?

Yes. Contact the appropriate Courtroom Deputy.

AUTOMATION HIGHLIGHTS

A. VCIS - VOICE CASE INFORMATION SYSTEM

What is VCIS?

VCIS is an automated telephone system that provides access to bankruptcy case information. VCIS requires the use of a touch-tone phone and telephone key pad to search using the case name. By spelling the debtor's name, VCIS will provide the following information for open or closed bankruptcy cases:

- ✓ Case number
- ✓ chapter
- ✓ date of filing
- ✓ debtor's full name
- ✓ trustee
- ✓ judge
- ✓ case status
- ✓ discharge date
- ✓ closing date
- ✓ name of debtor's counsel & phone number
- ✓ date and location of 341 meeting

The telephone numbers to access VCIS are: (314) 244-4999, and toll free (888) 223-6431.

B. PACER-NET - PUBLIC ACCESS TO COURT ELECTRONIC RECORDS

What is PACER?

PACER is a national electronic public access service available to registered PACER account holders providing electronic case and docket information from the federal courts. PACER access is available through both the internet (PACER-NET service) and through standard dial-up modem communications (PACER). Registration for PACER services is available by contacting the PACER Service Center at (800) 676-6856, or through the internet at www.pacer.psc.uscourts.gov which is available as a link from the Bankruptcy Court's home page. Subscribing to PACER is free, but there is a fee of \$.08 (\$.10 as of April 1, 2012) per viewed or printed page when accessing PACER via the web. The maximum fee per document is \$2.40.

Note: There is a 30 page document cap per report. If all information needed is not captured within the 30 pages, adjust the date range and run another report.

What information is available through PACER?

PACER service provides access to case information including:

- the names of all parties - - attorneys, judges, case trustees;
- the case docket sheet showing the chronology of events and pleadings filed;
- the claims registry; and
- images of documents (when available).

Case data is available the day after it is entered on the Court's docketing system.

PACER also provides various compilation reports, including a daily listing of all new cases filed in this Bankruptcy Court and a listing of all parties in any litigation under a combined U.S. Party/Case Index.

Where do I find the Court's CM/ECF Administrative Procedures?

These have been integrated into the Court's Procedures Manual. They begin on page 18 of the Procedures Manual.

C. WEB SITE RESOURCES

What information is available on the Court's web site?

The Court's web site (www.moeb.uscourts.gov) provides the following information:

- **News and Events** - current announcements and public notices and from the Court. *The Court encourages counsel to check this site on a weekly basis.*
- **General Court Information** - hours of operation, Court location and telephone numbers, and filing fees.
- **Filing Information** - summary of basic filing procedures.
- **Hearing Dates** - available hearing dates set forth separately for each of the judges, together with instructions on how to schedule matters for each judge.
- **Court Calendar** - electronic access to the Court calendar for upcoming hearing dates.
- **Public Notices** - copies of official public notices.
- **Local Rules** - access to the Court's local rules for printing or downloading.
- **Official Forms** - link to Official Bankruptcy Forms which may be printed or downloaded.
- **Local Forms** - access to forms required by this Court (i.e. summons, subpoenas, fee election form, etc.)
- **U.S. Trustee/341 Meetings** - the United States Trustee's calendar for 341 meetings and other announcements from the Office of the United States Trustee.
- **Statistics** - Court statistical information in both table and narrative format as well as links to national filing statistics.
- **CM/ECF Electronic Learning Modules (CM/ECF Training Seminars)**
- **Court Information, Divisions** - Divisional Map of Missouri
- **Links to other Sites**
- **Web PACER (Public Access to Court Electronic Records)** - registration and information on receiving electronic notices from the Court.
- **CM/ECF News and Information**

- **Pro Se Information**

D. ELECTRONIC CASE FILING

How does the ECF system work?

Attorneys are able to file documents directly with the Court over the internet using standard computer hardware, an internet connection and browser. To use ECF, attorneys prepare documents using standard word processing software and convert the files to PDF format. After registering for ECF access, counsel then logs onto the Court's web site with an assigned login and password, fills out several screens of preliminary information relating to the case, party and document, and then attaches the file and transmits it to the Court. A notice verifying Court receipt of the filing is generated automatically by the Court and e-mail notice of the filed document is transmitted automatically to other parties in the case. Counsel pays filing fees electronically through debit to the attorney's pre-authorized credit card account.

If I change my e-mail or mailing address, do I need to notify the Court?

Every ECF filer has the duty and ability to maintain his/her e-mail and address via the "Maintain Your ECF Account" feature in the ECF system. See Local Rule 2092. To change your ECF password, follow the CM/ECF pathway of: Utilities, Change Your Password.

Is a Help Desk service provided by the Clerk's office regarding electronic case filing issues?

Yes. A Court staff member is available during normal office hours (Monday - Friday, 8:30 a.m. to 4:30 p.m.) for anyone who may need assistance with filing a document. The Help Desk telephone number is 1-866-803-9517.

I'm not quite sure where to find an event in CM/ECF. How do I search the available events?

Once you have logged into CM/ECF, select the Search tab at the top of the screen. Type a key word or words into the space that pops up and click on the magnifying glass icon. This will pull up a list of events with the key word or words in them.

What are some common mistakes to avoid?

- Make sure you view the PDF before attaching it to an event for filing so that you are sure you are attaching the correct document.
- Timely process your filing fees.
- At case opening, select the correct county code. There are different codes for St. Louis City and St. Louis County.
- Review your signature block to make sure that it complies with L.R. 9011.

*******END*******