

THE CHAPTER 13 REPORTER

WINTER 2011

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

Office Procedure Update



The Chapter 13 Trustee's Office would like to announce that starting January 1, 2012, we will be consolidating our office procedures for both courtrooms. Currently, the procedures we follow with regards to motions to dismiss, objections to plans and orders confirming plans have been different based on the courtroom. As a way to create uniformity in our office and to avoid confusion with the legal bar, we will be applying the following policies and practices in both courtrooms.

Motions to Dismiss

Beginning January 1, 2012, we will bring all motions to dismiss for unreasonable delay on 28 days notice pursuant to Local Rule 9014(f)(1). This local rule requires a **written response filed and served 14 days prior to the hearing. Failure to timely file and serve a written opposition may result in the dismissal of the case or the imposition of sanctions.**

This is consistent with our practice in courtroom B, but will be new to our practice in courtroom A. Not all motions to dismiss will be brought on 28 days notice, therefore, please pay close attention to all notices received from our Chapter

13 Office.

Unreasonable Delay: The Trustee will bring a Motion to Dismiss for unreasonable delay for the following failures.

- Failure to File a Plan
- Failure to Set a Plan for hearing
- Failure to provide documents to the Trustee in a timely manner
- Failure to file and/or provide to the Trustee most recent federal and state Tax Returns
- Failure to timely confirm a plan.

The Trustee will not withdraw a valid motion to dismiss and will request that the court rule at the hearing even if the above defect is cured.

Objections to Plan:

All objections to court noticed plans, must be filed within 7 days of the first creditors meeting. If the Trustee does not have all the documents necessary to complete the audit or must continue the meeting for any reason, the Trustee's objection will simply inform the court and the parties in interest that the plan cannot be confirmed because the Trustee has not completed his audit and the meeting has not been concluded. The Trustee will seek that the court continue the matter to a date after the continued meeting of the creditors.

Additionally, all objections to confirmation set for hearing by the Trustee will seek that the first

hearing be a preliminary hearing. If matter cannot be resolved prior to the preliminary hearing the Trustee will request, unless the objection is withdrawn or the case dismissed, that the court order Debtor(s) to file a response or modified plan 14 days prior to the final hearing.

Orders Confirming Plans:

The Trustee will not submit orders confirming that restate provisions already listed in the plan, nor will he agree to additions that will delay or diminish the return to any creditor already stated in the plan. Lastly, the Trustee will not submit orders that add creditors that were not included in the plan without a signature of the creditor so added.

If the Trustee does not receive a requested order within 4 weeks of the request, the Trustee will submit its own order without an award of attorneys fees listed therein.

Failure to submit an order may also be grounds for a motion to dismiss for unreasonable delay.

*Happy
New Year!*



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Legal Team Assignment

Many of you are aware, the Chapter 13 Trustee's Office now has three Staff Attorneys: Deanna K. Hazelton, Senior Staff Attorney; Kristen M. Gates, Junior Staff Attorney; Sarah R. Velasco, Junior Staff Attorney.

In order to provide the most consistent and thorough work possible on all Chapter 13 cases, the three staff attorneys will be dividing the legal assignment as follows:

Deanna Hazelton: Fresno, Courtroom A

Kristen Gates: Fresno, Courtroom B

Sarah Velasco: Bakersfield, Courtrooms A and B

While each attorney will be in charge of their own assignment, these assignments are by no means permanent and are subject to change. However, we will

inform the legal bar when these changes occur.

The staff attorneys, however, do not work independently on their assigned cases. The staff attorneys and the Trustee discuss objections, motions to dismiss, and other miscellaneous matters and assist one another on all legal matters to insure uniformity in application of the BAPCPA law and application of our office procedures to the courtrooms.

While the staff attorneys will assist you to the extent that they can in any given case based on the specific facts, they will not give advisory instruction, nor can they review or pre-approve debtor filings.

The legal team staff is also always glad to assist you with your questions as well. However, keep in mind that the legal staff is not made up of attorneys and

cannot provide you with any legal assistance.

If you wish to discuss general office or legal team procedures the legal team staff will be more than happy to assist you with those questions. However, any questions that you may have of a legal nature should be directed to our staff attorneys.

If you have any questions, comments or concerns, please feel free to direct them to Deanna K. Hazelton at :

dhazelton@meyer13.com



Trustee Packets

Please pay close attention to the Trustee's first letter sent to both the Debtors and their counsel.

In addition to providing the Debtor with information regarding their first payment, and what to bring to the meeting of the creditors, it also contains a very important Document Checklist and a due date upon which the Trustee must have your documents in order to process those documents in time for the first meeting of the creditors.

This due date is fifteen days after the petition is filed.

Since these documents must be received by the attorneys in order to perform their due dili-

gence order to perform their due diligence prior to filing the petition, we believe that this request is reasonable.

If the documents are not received by our office in a timely manner so that we may audit the documents prior to the meeting of the creditors, then the Trustee will be forced to continue the meeting of the creditors and file both a motion to dismiss for unreasonable delay and an objection. The Trustee cannot recommend confirmation without completing the meeting of the creditors and/or his own audit. The Trustee will also request that the court issue an order to show cause why attorney fees

should not be disgorged, if it appears that the failure to produce documents was caused in part by Debtors' counsel.

Therefore, please make sure that you send your trustee packets timely.

Please send all trustee packets to our ftp site. Contact Kelly Groth at kgroth@meyer13.com for more information regarding access to our ftp site.



Brown Bags

The Chapter 13 Trustee's Office and the Judges of the Fresno Division would like to resume regular brown bag meetings to enhance the collegiality and the knowledge of our bankruptcy bar.

The Chapter 13 Trustee and the Judges' first topic will be the changes in the Federal Rules of Bankruptcy Procedure, as well, as any questions that will arise from the changes in the Local Rules of the United States Bankruptcy Court, Eastern District.

The new local rules will substantially change how we all practice Chapter 13.

General Order 05-03, which currently controls Chapter 13 procedures in the Eastern District, will be entirely replaced by the Local Rules. Hopefully, you all read the proposed rules carefully and made comments regarding the changes therein.

The Chapter 13 form plan has undergone substantial changes. Moreover, many procedures in the General Order were dropped in the proposed rules.

Our office understands that many comments were taken into consideration which resulted in further changes to the proposed rules.

In that we are all anxiously awaiting the new local rules, we anticipate that there will be numerous questions and comments that may arise from these changes.

Therefore, the Trustee's office and the Fresno Division Judges will be holding a brown bag meeting with regards to this topic.

The Chapter 13 Trustee's Office will send out a flier regarding the date, time and location of the brown bag meeting.

If you have any topics that you would like to discuss at a Brown Bag meeting, please contact Michael H. Meyer at mmeyer@meyer13.com.

