

# **CONSUMER BANKRUPTCY IN THE COVID-19 ERA**

**The Virtual Seminar will begin momentarily.**

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Access Code: 9873511#**

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# **WELCOME!**

**A Verification Code will be provided by the Presenters for each session of this seminar. Please write down each Code when you hear them. They are necessary to obtain the CLE credits and will not be provided after the seminar has concluded.**

# CARES ACT Changes to the Bankruptcy Code

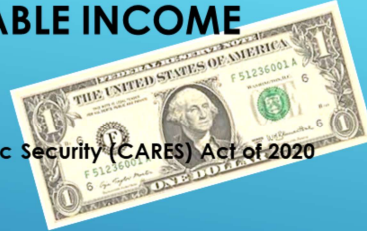
Presented by

John G. Jansing, Dayton Chapter 13 Trustee in Dayton  
Scott G. Stout, Attorney to the Dayton Chapter 13 Trustee  
Erin Renneker, Dayton Chapter 7 Trustee



1

## EXCLUSION OF STIMULUS PAYMENTS FROM INCOME AND DISPOSABLE INCOME



- Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (the "Act")
- §1113(b)(1) provides that "stimulus" payments paid under Federal law with respect to COVID-19 are excluded from the statutory definitions of current monthly income and disposable income
- Recovery rebates received within six months before the filing of a bankruptcy petition should not be included in calculating a debtor's CMI in a chapter 7 or chapter 13 case, and should be excluded from projected disposable income available to pay creditors through a chapter 13 plan

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## ALLOWANCE OF PLAN MODIFICATIONS DUE TO MATERIAL FINANCIAL HARDSHIP ARISING OUT OF CORONAVIRUS EPIDEMIC, INCLUDING EXTENSION OF PLAN COMPLETION TO 7 YEARS

- The CARES Act adds subsection (d)(1) to 11 U.S.C. §1329
- This amendment permits a debtor to modify a confirmed plan, after notice and a hearing, if such debtor is experiencing a “material financial hardship” due “directly or indirectly” to the COVID-19 pandemic. The affected debtor may modify the plan up to seven years (84 months) from the first payments under the original confirmed plan became due
- Can modify plans that were confirmed prior to the enactment date, which was March 27, 2020.



3

## DEFERRAL OF STUDENT LOAN PAYMENTS FOR 6 MONTHS THROUGH SEPTEMBER 30, 2020

- Secretary of Education is required to “suspend all payments due” for federally held student loans until September 30, 2020 and “interest shall not accrue” during that time
- The Secretary shall deem each month for which a loan payment was suspended under the CARES Act as if the borrower of the loan had made a payment for the purpose of any loan forgiveness program or loan rehabilitation program
- Affect of suspended payments on IDR's



4

## INCREASE OF SMALL BUSINESS REORGANIZATION ELIGIBILITY TO \$7.5 MILLION



- CARES Act expands eligibility under the Small Business Reorganization Act of 2019 (SBRA)
- §1113 amends SBRA to allow a business which has debt up to \$7.5 million to qualify for filing (original debt limit was \$2,725,625)
- The increase in the debt threshold to \$7.5 million will expire and return to the original debt limit after one year

## COVID-19 REBATE PAYMENTS NOT TO BE ADMINISTERED BY TRUSTEE PER UNITED STATES TRUSTEE

- CARES Act is silent as to whether recovery rebates are property of the bankruptcy estate
- In rare chapter 13 cases filed on or after March 27, 2020, the recovery rebate may be relevant to the confirmation standard of 11 U.S.C. §1325(a)(4). For chapter 13 cases filed before that date, the recovery rebate is excluded from that analysis
- Trustees have been directed to notify their UST prior to taking any action to administer recovery rebates or to object to a chapter 13 plan based on debtor's treatment of the recovery rebate



6



## 1-YEAR SUNSET OF CARES ACT PROVISIONS

- CARES Act temporarily modifies provisions of the bankruptcy code
- The modified provisions have a one-year sunset from the enactment of the CARES Act
- Affect on bankruptcy planning and advice

7



**ANSWERS TO PREVIOUSLY  
SUBMITTED QUESTIONS**

8

# **Local Bankruptcy Court COVID-19 General Orders, Chapter 13 Plan Amendments, and Mortgage Modification Mediation**

Presented by

The Honorable Guy R. Humphrey, United States Bankruptcy Court  
The Honorable Beth A. Buchanan, United States Bankruptcy Court



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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

FILED  
20 MAY -8 PM 12:33

CLERK OF COURT  
BANKRUPTCY COURT  
CINCINNATI, OHIO

GENERAL ORDER NO. 35-415

IN RE

ORDER REGARDING MATTERS  
SCHEDULED BEFORE THE COURT  
THROUGH JULY 1, 2020

The Court entered General Order 35-3 on April 13, 2020, setting forth the Court's procedures for conducting any trial, hearing, or conference (collectively, "Matter") scheduled through June 1, 2020. On April 30, 2020, the Director of the Ohio Department of Health issued the Director's Stay Safe Ohio Order (Stay Safe Order). Consistent with the Stay Safe Order, General Order 35-3 is amended and superseded as follows:

1) Until and including July 1, 2020, any Matter scheduled in a courtroom that does not involve the presentation of evidence (documentary or testimonial) shall be conducted telephonically. Each Chambers will address the logistics of any telephonic Matter. To the extent the parties intend to present evidence, each judge assigned a particular Matter will determine, by separate order, whether the Matter may proceed, or may post a notice on the judge's webpage stating whether such Matter will proceed, telephonically, in-person, or will be continued. All parties are encouraged to raise with the Court and all parties the ability to conduct any hearing for a Matter telephonically. Parties are directed to the individual judge's webpage on the Court's internet site for further information. Each judge retains the discretion to proceed otherwise by separate order entered on a case-by-case basis.

2) To the extent not addressed in this general order, all orders entered in individual cases or adversary proceedings, and all response dates for filing answers, responses, motions, other filings, or taking any other action provided by the Federal Rules of Bankruptcy Procedure or this Court's Local Bankruptcy Rules shall remain binding.


35-1

Unless amended by July 1, 2020, this General Order will lapse on July 2, 2020, and have no further effect.

IT IS SO ORDERED.

Dated: May 8, 2020

FOR THE COURT

  
Chief Judge Jeffrey P. Higgins  
United States Bankruptcy Court  
Southern District of Ohio

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

FILED  
20 APR -6 PM 2:16  
CLERK OF COURT  
U.S. BANKRUPTCY COURT  
COLUMBUS, OHIO

IN RE  
TEMPORARY SUPPLEMENTAL  
PROCEDURES FOR SUSPENSION OF  
CHAPTER 13 PLAN PAYMENTS

GENERAL ORDER NO. 42-1

This Court issues this General Order in response to the outbreak of Coronavirus Disease 2019 (COVID-19) in Ohio, the state of emergency declared by the Governor of the State of Ohio, Michael DeWine, and the interruption in employment that many Chapter 13 debtors are experiencing.

Effective immediately, and until further notice, Chapter 13 debtors who are experiencing a reduction or interruption in income due to COVID-19 may obtain the immediate suspension or reduction of Chapter 13 plan payments. Relief may be sought through either an agreed order or a motion and proposed order.

1. Agreed Order: Notwithstanding LBR 3015-2(a) (requiring the filing of a motion to initiate a request for a temporary suspension or reduction of Chapter 13 plan payments), debtor(s) counsel and the Chapter 13 Trustee may submit an agreed order temporarily reducing or suspending plan payments. The agreed order must include the following:

(a) A statement that the reduction or suspension in payments is necessary because of a change in financial conditions as a result of COVID-19;

(b) A provision that all creditors and parties in interest shall have 21 days from the date of service of the order within which to file objections.

2. Motion: The debtor may file a motion to suspend or reduce plan payments. The motion must include a statement that the reduction or suspension in payments is required because of a change in financial conditions as a result of COVID-19. Notwithstanding

LBR 9013-1(a)(1)(C), a proposed order granting the motion may be uploaded simultaneously with the motion. The proposed order must include a provision that all creditors and parties in interest shall have 21 days from the date of service of the order within which to file objections.

IT IS SO ORDERED.

Dated: April 6, 2020

FOR THE COURT

  
Chief Judge Jeffrey P. Hopson  
United States Bankruptcy Court  
Southern District of Ohio

42-1

**UNITED STATES BANKRUPTCY COURT**  
SOUTHERN DISTRICT OF OHIO

2020-11-05 08:34:13

GENERAL ORDER NO. 41-2  
(Effective May 11, 2020)

**IN RE**  
**REVISED TEMPORARY FILING PROCEDURES**

The Court issues this General Order in response to the continuing concerns pertaining to the Coronavirus Disease 2019 (COVID-19) in Ohio, and the Director's Stay Safe Ohio Order (Stay Safe Order) issued by the Director of the Ohio Department of Health on April 30, 2020.

Given the continuation of COVID-19 in the United States and the community health objectives of the Stay Safe Order, it is hereby ORDERED that:

- Attorney Filings.** Attorneys shall continue to file documents with the Court electronically through CM/ECF. These revised temporary filing procedures do not affect attorney filings and payments.
- Intake Status Remains Closed.** The intake desks of the Clerk's Office shall remain closed to the public until further notice.
- Drop Boxes Reopened.** The Clerk's Office shall make a drop box available in the lobby of each courthouse to receive conventional filings and payment submissions during normal business hours. Filings and payments will be processed the same business day.
- Mail Filings.** Conventional filings, including filers that are not represented by an attorney, and anyone mailing treatment alternatives, are urged to submit filings and payments by mail to any of the following addresses:
  - U.S. Bankruptcy Court, 221 E. Fourth Street, Columbus, Ohio 43215
  - U.S. Bankruptcy Court, 175 North High Street, Columbus, Ohio 43215
  - U.S. Bankruptcy Court, 120 West Third Street, Dayton, Ohio 45402

- Filing Date of Mail Filings.** Filings and payments submitted by U.S. Mail shall be treated as filed on the date that the mailing is received by the Clerk's Office.
- Payments by Cash or Personal Check Prohibited.** All payments and filing fees must be made by money order or cashier's check. Payments by cash or personal check are prohibited.
- Emergency Filings Requiring Immediate Relief.** If the proceedings bring relief of a document is required in which immediate relief, the document must be filed by email. ~~Unnecessarily delay on the part of the filer does not constitute an emergency. The filer shall mail the document to the Clerk's Office immediately.~~
- Emailing Documents to the Court.** Prepare an email message that clearly states the reason for the emergency filing and the deadline that needs to be met. The filer must attach the document to be filed, in PDF format, to an email addressed to the Clerk's Office at [EmergencyFilings@sdoh.uscourts.gov](mailto:EmergencyFilings@sdoh.uscourts.gov). If the email is successfully delivered, the filer will receive a copy email within four business hours confirming the email has been received.
- Required Follow Up Procedures.** The complete original document with any required fee must be mailed to the Clerk's Office and postmarked within that business day. The mailing must include a copy of the email confirmation showing the document was submitted via email. It is not the responsibility of the Clerk's Office staff to make this notification.
- Date and Time Filed.** Upon email receipt of the document, the clerk will stamp or notate the following on the document: "This document is deemed filed on \_\_\_\_\_ (date/time) pursuant to the court's Emergency Filing Procedures." The document will be deemed filed on the date and time appearing on the email system of the Clerk's Office. If the original document is not mailed to the Clerk's Office and postmarked within the business days of the email transmission, it will be nullified. Failure to comply with these procedures may result in denial of the relief requested or dismissal of the case.
- Bankruptcy Case Numbers.** A filer who files a bankruptcy petition by mail or drop box may include a self-addressed, stamped envelope and request that the case

number assigned to the petition be provided by mail. Alternatively, a debtor may contact the Clerk's Office for this information by calling any of the following phone numbers.

Cincinnati (513) 584-2572	Columbus (614) 468-8638	Dayton (937) 225-2818
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**Superseding Order.** To the extent this Order differs from previous orders of the Court on this subject, including but not limited to General Order 41-1, this Order supersedes and replaces those orders.

**Duration of Order.** This Order is effective May 11, 2020 and shall remain in effect until further order of the Court.

**IT IS SO ORDERED.**

Dated: May 5, 2020

**FOR THE COURT**

*[Signature]*  
Clara J. Miller, Clerk  
United States Bankruptcy Court  
Southern District of Ohio

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF OHIO**

**FILED**  
 20 MAR 25 AM 10:55  
CLERK OF COURT  
 U.S. BANKRUPTCY COURT  
 CINCINNATI, OHIO

**GENERAL ORDER NO. 37-2**

**IN RE**  
**DEBTOR SIGNATURES ON**  
**ELECTRONIC FILINGS**

This Order, effective March 25, 2020, supersedes all prior Orders of this Court on Debtor Signatures on Electronic Filings.

This Court issues this General Order in response to the outbreak of Coronavirus Disease 2019 (COVID-19) in Ohio and the state of emergency declared by the Governor of the State of Ohio, Michael DeWine.

Effective immediately, and until further notice, the electronic filing of a verified paper under Fed. R. Bankr. P. 1006, including the voluntary petition, is permitted if the debtor's attorney either:

- (1) secures the debtor's original, physical signature prior to filing; or
- (2) chooses to electronically file the verified paper without the original signature in his/her possession provided that such electronic filing constitutes a certification by the debtor's attorney that the debtor has signed it and that, at the time of filing, the debtor's attorney is in possession of an image format or other facsimile of the signature pages received either electronically (including by email or text) or by facsimile machine from the debtor.

If the verified paper is filed electronically without the original signature in his/her possession, the verified paper shall be filed with the signature in image format and such filing constitutes a representation and certification that the debtor's attorney transmitted the entire verified paper to the debtor for review and signature, communicated with the debtor regarding the substance and purpose of the verified paper, received the signature

pages back from the debtor electronically, and received express authorization from the debtor to file the verified paper.

If the debtor has no means to transmit a signature electronically, the attorney should explain the circumstances with the filing, verify that permission was obtained from the debtor to sign the document on their behalf, and obtain the signature as soon as possible after the filing through another means.


The debtor's attorney must file a certification within 30 days of filing the verified paper as per section two above, that he/she has received the entire verified paper, including the debtor's original signature and will maintain it in accordance with ECF Procedure 7(a).

A redline version of the original order (General Order 37-1) is attached to illustrate the amendments reflected in this Order (General Order 37-2).

**IT IS SO ORDERED.**

Dated: March 25, 2020

**FOR THE COURT**

  
Chief Judge Jeffrey P. Hopkins  
 United States Bankruptcy Court  
 Southern District of Ohio

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**FILED**  
20 MAR 25 AM 7:48  
CLERK OF COURT  
U.S. BANKRUPTCY COURT  
COLUMBUS, OHIO

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO**

**GENERAL ORDER NO. 46-1  
(Effective March 25, 2020)**


**IN RE**  
**EXTENDING DEADLINE FOR  
COMPLETION OF FINANCIAL  
MANAGEMENT CERTIFICATION**

Considering the state of emergency declared by the Governor of the State of Ohio, Michael DeWine, and his recently issued Director's Stay At Home Order requiring Ohio residents to remain in their place of residence, except as specifically allowed in the order, it is hereby ORDERED that, effective Wednesday, March 25, 2020, the following deadlines for completion of an instructional course concerning personal financial management ("Financial Management Course") and to file the certification required under Federal Rule of Bankruptcy Procedure 107(b)(7) are extended in all pending cases and in all future cases filed in this District until such time as this General Order is amended or vacated.

- 1) The deadline set under Rule 107(b) to file the Financial Management Course certification in an individual chapter 7 case is EXTENDED to 90 days from the completion of the meeting of creditors.
- 2) The deadline set under Rule 107(b) to file the Financial Management Course certification in an applicable individual chapter 11 case, or 13 case is EXTENDED to 30 days after completion of all payments required by the plan or the filing of a motion for discharge.
- 3) The Clerk shall continue to notify individual debtors of the failure to file the Financial Management Course as required by Federal Rule of Bankruptcy Procedure 509(b), however, the Clerk shall not close any individual case for the failure to file a Financial

Management Course unless and until the amended deadlines in this General Order have passed.  
This General Order shall remain effective until amended or vacated.  
**IT IS SO ORDERED.**

Dated: March 25, 2020

**FOR THE COURT**  
  
Chief Judge Jeffrey P. Hopkins  
United States Bankruptcy Court  
Southern District of Ohio

10-1

**14**



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

FILED  
20 MAR 24 AM 11:14

RECORDS ADMIN.  
CLERK OF COURT  
UNITED STATES BANKRUPTCY COURT  
CINCINNATI, OHIO

IN RE  
FEDERAL INCOME TAX RETURN  
EXTENSION

GENERAL ORDER NO. 39-115  
(Effective March 24, 2020)

The Treasury Department and Internal Revenue Service have automatically extended the due date for filing federal income tax returns from April 15, 2020 to July 15, 2020. In light of this extension, any motions by Chapter 7 or Chapter 13 trustees seeking to require debtors to file tax returns shall direct the filing of the returns no later than the due date of July 15, 2020. Trustees shall make a similar adjustment in the event that the State of Ohio or local taxing authorities extend the tax filing deadline. Trustees do not need to amend pending motions but should ensure that their proposed orders reflect the new filing date for tax returns.

IT IS SO ORDERED.

FOR THE COURT

  
Chief Judge Jeffrey P. Hopkins  
United States Bankruptcy Court  
Southern District of Ohio

39-1

15

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

FILED  
7TH APR 22 AM 7:33  
CLERK OF COURT  
U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

IN RE  
ADOPTION OF AMENDED INTERIM  
BANKRUPTCY RULE 1020

GENERAL ORDER NO. 34-2

On January 6, 2020, the Court entered General Order 34-1, adopting interim bankruptcy rules to facilitate uniform implementation of the changes mandated by the Small Business Reorganization Act of 2019. Interim Bankruptcy Rule 1020 was recently amended to facilitate the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The amendments to Interim Bankruptcy Rule 1020 are reflected in the redline attached hereto. The Committee on Rules of Practice and Procedure, with the expedited approval of the Judicial Conference of the United States, recommends that courts adopt amended Interim Bankruptcy Rule 1020 immediately.

THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, amended Interim Bankruptcy Rule 1020 is adopted without change by the judges of this Court, effective immediately.

IT IS SO ORDERED.

Dated: April 22, 2020

FOR THE COURT

  
Chief Judge Jeffrey P. Hopkins  
United States Bankruptcy Court  
Southern District of Ohio

34-2

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Attachment

1 Rule 1020. Chapter 11 Reorganization Case for Small

2 Business Debtors ~~as Debtors Under Subchapter V~~

3 (a) ~~SMALL BUSINESS~~ DEBTOR

4 DESIGNATION. In a voluntary chapter 11 case, the debtor

5 shall state in the petition whether the debtor is a small

6 business debtor ~~or a debtor as defined in § 1182(1) of the~~

7 ~~Code and, if the latter so~~, whether the debtor elects to have

8 subchapter V of chapter 11 apply. In an involuntary chapter

9 11 case, the debtor shall file within 14 days after entry of the

10 order for relief a statement as to whether the debtor is a small

11 business debtor ~~or a debtor as defined in § 1182(1) of the~~

12 ~~Code and, if the latter so~~, whether the debtor elects to have

13 subchapter V of chapter 11 apply. The status of the case as

14 a small business case or a case under subchapter V of chapter

15 11 shall be in accordance with the debtor's statement under

16 this subdivision, unless and until the court enters an order

17 finding that the debtor's statement is incorrect.

18 (b) OBJECTING TO DESIGNATION. The United

19 States trustee or a party in interest may file an objection to

20 the debtor's statement under subdivision (a) no later than 30

21 days after the conclusion of the meeting of creditors held

22 under § 341(a) of the Code, or within 30 days after any

23 amendment to the statement, whichever is later.

24 (c) PROCEDURE FOR OBJECTION OR

25 DETERMINATION. Any objection or request for a

26 determination under this rule shall be governed by Rule 9014

27 and served on: the debtor; the debtor's attorney; the United

28 States trustee; the trustee; the creditors included on the list

29 filed under Rule 1007(d) or, if a committee has been

30 appointed under § 1102(a)(3), the committee or its

31 authorized agent, and any other entity as the court directs.

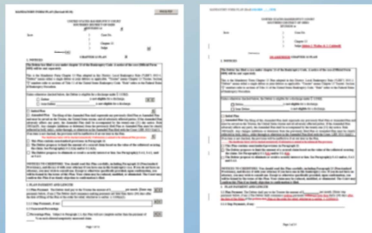
Committee Note

The interim rule is amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. That law provides a new definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Subdivision (a) of the rule is amended to reflect that change. This amendment to the Code will terminate one year after the date of enactment of the CARES Act.

# Local Bankruptcy Court COVID-19 General Orders, Chapter 13 Plan Amendments, and Mortgage Modification Mediation

Presented by

The Honorable Guy R. Humphrey, United States Bankruptcy Court  
The Honorable Beth A. Buchanan, United States Bankruptcy Court



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# Chapter 13 Trustee Procedures in the COVID-19 Era

Presented by

John G. Jansing, Dayton Chapter 13 Trustee in Dayton  
Scott G. Stout, Attorney to the Dayton Chapter 13 Trustee



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## TELEPHONIC §341 MEETINGS

- The United States Trustee has directed trustees to conduct telephonic §341 meetings for all cases filed through July 10, 2020
- This means Telephonic meetings may run through the end of August, 2020
- There may be an issue knowing whether a meeting is being held telephonically or if debtors are to attend the meeting in person

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## PAYMENT ISSUES



- Due to COVID-19 pandemic, the Chapter 13 Office in Dayton has extended its review of plan delinquencies from 60 days to 90 days
- Contact Scott with questions regarding this procedure

## INFORMAL REQUEST FOR DEBTOR REFUNDS

- Debtors can make a request for refund of monies paid into their plan
- Requests must be due to a financial hardship directly or indirectly related to the COVID-19 pandemic
- Send the request letter to Gina in our office



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LAW OFFICE, LLC  
Dayton, Ohio

**REQUEST FOR REFUND DUE TO CORONAVIRUS PANDEMIC**

April 8, 2020

John G. Jansing, Chapter 13 Trustee  
Scott Stout, Staff Attorney  
131 N. Ludlow Street, Suite 900  
Dayton, OH 45402

Re: Bankruptcy Case No. \_\_\_\_\_  
Debtors

Dear Trustee:

This case is below median income, with 100% of unsecured claims to be paid.

The monthly Plan payment is \$3,385.00, and the Plan is in month twenty-three.

The Wife's main income was as a hair stylist, and she has been off work for weeks due to the pandemic, and has received no unemployment benefits as of yet. The Husband is continuing to work, but his hours are down considerably, and his health insurance deduction increased by about \$150 per month in 2020.

The minimum monthly Plan payment for secured claims is about \$2,079 [being the mortgage (\$610.93), 2012 Toyota Camry (\$305.00), 2017 Harley motorcycle (\$206.00), 2016 Harley (\$466.00), 2015 Toyota Camry (\$355.00), and the Trustee fee.]

There is currently \$1,496.93 on hand, with \$781.15 being withheld from Husband's payroll weekly.

The Debtors are requesting a refund of \$1,100.00, which is the approximate amount needed for food and utilities this month (cell phone and water have increased about \$45.00 from the initial Schedule J figures).

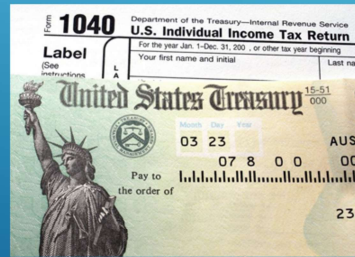
Sincerely,

/s/ \_\_\_\_\_

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## TAX REFUNDS, RETURNS AND MOTIONS TO RETAIN TAX REFUND MONIES

- Suspended unwritten rule of only 1 motion to retain tax refund
- Motion must show proof of need
- Requirement of status report after monies are spent



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## MORTGAGE FORBEARANCE

- §4022(b) of CARES Act allows a borrower of a federally back mortgage loan to seek a 6 month forbearance



- Know the difference between Forbearance and Deferral. Talk to your debtor and have a plan in plan
- Expect and email from the Chapter 13 Office when a forbearance notice is filed on a Trustee disburse mortgage
- Watch for notices being filed by mortgage lenders without debtor requests

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**EMAIL RESPONSE-FORBEARANCE**

To: Attorney of Record

Re: Case name and number-Notice of Forbearance

Body: Counsel your client or the mortgage company on behalf of your client has filed a Notice of Forbearance of the mortgage payments. The Mortgage is currently being paid by the Trustee through the Plan. The Forbearance Notice is for ## of months starting on \_\_\_\_\_ through \_\_\_\_\_. Since the mortgage is Trustee disburse, we will continue to calculate the mortgage payments due during the forbearance period but will not reserve any money for the mortgage and will use any monies paid into the Plan on other claims based on the priorities as set forth in the Plan. Sometimes, the timing of the order would allow us to disburse on the mortgage. If you want us to so disburse and start the forbearance the following month, you must contact the undersigned immediately, otherwise we will follow the dictates in the Forbearance Notice.

Once the forbearance is completed, we will then cause the mortgage to be paid again and will, not only pay the conduit monthly payment but will then begin to catch up on the missed payments. If it appears that your Plan will not timely complete, then it will be necessary for you to modify the plan to provide for timely completion or avail yourself of the expanded length of the Plan under the CARES Act (up to 84 months with the Applicable Commitment Period remaining at 36/60 months).

If the Debtor did not request the forbearance (for example Wells Fargo has been filing some Forbearance Notices without the Debtors so requesting) or if the Debtor's situation has changed such that the Forbearance is no longer needed, you need to contact us immediately, preferably by filing a Status Report and telling us when you want us to begin making payments on the mortgage. Also, if the Forbearance will be continued for another term, that needs to be noticed as well.

Any questions concerning forbearances, contact John or Scott.

## 341 DOCUMENTS



- Documents are being emailed to attorneys prior to the §341 docket
- Obtaining debtors' authorization to sign payroll and tax orders at the §341 meeting
- Make sure to return documents to the Chapter 13 Office in a timely fashion



## CHALLENGE TO THE CARES ACT



Equal protection

Confirmed  
v.  
Non-Confirmed  
Cases

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**ANSWERS TO PREVIOUSLY  
SUBMITTED QUESTIONS**

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# BREAK



We are taking a 15 minute break and will resume at 3:00 p.m. Please stay with us for *Chapter 7 Trustee Procedures in the COVID-19 Era* and *Tips on Filings and Submissions*.



# Chapter 7 Trustee Procedures in the COVID-19 Era

Presented by

Paul Spaeth, Dayton Chapter 7 Trustee  
Erin Renneker, Dayton Chapter 7 Trustee

- Telephonic 341 Meetings
- Providing Documentation to the Chapter 7 Trustees
- Other Trustee Issues and Procedures



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# Tips on Filings and Submissions

Presented by

Colleen Militello, Law Clerk to Judge Buchanan  
Neil Berman, Law Clerk to Judge Humphrey  
Ryan Cunningham, Law Clerk to Judge Buchanan



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AMERICAN BANKRUPTCY LAW FORUM

## TIPS ON FLINGS AND SUBMISSIONS



Neil Berman, Law Clerk to Judge Guy R. Humphrey  
Ryan Cunningham, Law Clerk to Judge Beth A. Buchanan  
Colleen Militello, Law Clerk to Judge Beth A. Buchanan

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## A. General Docketing Issues

- When filing an ECF document with the Court, the attorney who signs the document must be the one who files that document in ECF. You cannot use another attorney's login and password. This applies even when the attorneys are in the same firm.
- Use of the correct docketing event is important for reporting and noticing purposes.
  - Improper use of the "Generic Motion" docketing event. Very few motions or applications should be docketed using the "Generic Motion" docketing event.
  - Documents filed using a generic docketing event must include additional language identifying the nature of the filing (e.g. Application to Settlement Personal Injury Claim and for Compensation of Special Counsel).
- A list of docketing events sorted by event type is available on the Court's website at <https://www.ohsb.uscourts.gov/pdffiles/AttorneyDocketingEvents.pdf>

## B. Chapter 13 Plan Issues

Most Commonly Occurring Plan Issues that Lead to Court Action (Email to Counsel or Sua Sponte Objection from the Court)

- Check Boxes on Front Page
- Failure to Fill in the Cramdown / Lien Avoidance Provisions Fully
- Attempting to Cramdown Government Claim By Plan
- Attempting to Avoid Government Lien Before Claim Filed / Deadline Expired
- Failure to Indicate Proper Rule 7004 Service



## Check Boxes on Front Page

- Cramdown, lien avoidance, or use of Paragraph 13
- “If an item is not checked, the provision will be ineffective if set out later in the Plan”

If an item is not checked, the provision will be ineffective if set out later in the Plan.

- This Plan contains nonstandard provisions in Paragraph 13.
- The Debtor proposes to limit the amount of a secured claim based on the value of the collateral securing the claim. See Paragraph(s) 5.1.2 and/or 5.1.4.
- The Debtor proposes to eliminate or avoid a security interest or lien. See Paragraph(s) 5.4.1 and/or, 5.4.2 and 5.4.3.

**NOTICES TO CREDITORS:** You should read this Plan carefully, including Paragraph 13 (Nonstandard Provisions), and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. Except as otherwise specifically provided, upon confirmation, you will be bound by the terms of this Plan. Your claim may be reduced, modified, or eliminated. The Court may confirm this Plan if no timely objection to confirmation is filed.

## Failure to Fill in the Cramdown / Lien Avoidance Provisions Fully

- Creditor's name must be specified.
- Check the box for procedure to effectuate cramdown or avoidance.
- Information should match what is in the motion or claim objection.

### 5.1.4 Claims Secured by Personal Property for Which § 506 Determination is Applicable ["Cramdown/Personal Property"]

The following claims are secured by personal property not described above in Paragraph 5.1.3. To the extent that a claim is in excess of the value of the property, the balance in excess of the value of the property shall be treated as a Class 4 nonpriority unsecured claim. See Paragraph 4 for more information.

	Name of Creditor / Procedure	Property Description	Purchase/ Transaction Date	Value of Property	Interest Rate	Minimum Monthly Payment including Interest	
	Consumer Portfolio Services <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Plan <input type="checkbox"/> Claim Objection	2013 Hyundai Sonata	3/2016	\$6,725	5.5%	\$100	
	Eagle Financial Services <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Plan <input type="checkbox"/> Claim Objection	Assorted Household Goods	4/2016	\$500	5.5%	\$20	

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**5.4.1 Wholly Unsecured Mortgages/Liens**

The following mortgages/liens are wholly unsecured and may be modified and eliminated. See *In re Lane*, 280 F.3d 663 (6th Cir. 2002). See Paragraph 4 for additional information. Preferred form motions and orders are available on the Court's website at [www.ohsb.uscourts.gov](http://www.ohsb.uscourts.gov).

	Name of Creditor / Procedure	Property Address	
1	Wells Fargo <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Plan	123 Main Street Fairfield, Ohio 45014	
	Value of Property	SENIOR Mortgages/Liens (Amount/Lienholder)	Amount of Wholly Unsecured Mortgage/Lien
1	\$102,680	\$127,181 Rushmore Loan Management Serv	\$28,685

  
Fill out  
Table



## Attempting to Cramdown Government Claim By Plan

### Attempting to Avoid Government Lien Before Claim Filed / Deadline Expired

- Both are prohibited by Rule 3012(c) and Plan Para. 4.2

4.2 *Governmental Unit Secured Claims.* A request to determine the amount of the secured claim of a governmental unit or to modify and eliminate the secured claim of a governmental unit may be made only by motion or claim objection. Rule 3012(c). Any motion or claim objection that includes a request to determine the amount of the secured claim of a governmental unit (including any such motion or claim objection that also includes a request to determine the amount of the secured claim of a non-governmental entity) may be filed only after the governmental unit files a proof of claim or after the time for filing one has expired. Rule 3012, advisory committee note (2017 Amendments).



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## Failure to Indicate Proper Rule 7004 Service

- Cramdown / avoidance creditor must be served per Rule 7004
- If by motion (or by claim objection for cramdown), only the motion or claim objection requires Rule 7004 service
- If by plan, then the plan requires Rule 7004 service
- Certificate of service must demonstrate proper Rule 7004 service of plan

And on the following by **certified U.S. Mail** addressed to:

Wells Fargo  
Attn: CEO Charles Scharf  
420 Montgomery St.  
San Francisco, CA 94104

## C. Lien Avoidance Issues >



- Rule 7004 service required
- Differences between:
  - motions to avoid a wholly unsecured mortgage under § 506;
  - a motion to avoid a judicial lien that impairs exemptions under § 522(f)(1)(A); and
  - a motion to avoid a non-PMSI in certain exempt personal property under § 522(f)(1)(B).
- All information demonstrating entitlement to relief should be set forth
- Fillable form motions & orders on the court's website - strongly encouraged!
- Under "Rules and Forms" / "Local Form Motions and Orders"

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Motion M/L Void (01/20)

Print to PDF

Press one of the buttons, indicating the city where the case was filed.

Cincinnati Columbus Dayton

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO

In re [redacted] ) Case No. [redacted]  
[redacted] ) Chapter [redacted]    
Debtor/s ) Judge [redacted]

MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS  
WHOLLY UNSECURED AND VOID

[redacted] (the "Debtor," whether individually or collectively)  
moves the court, pursuant to 11 U.S.C. §§ 506, [redacted], and Federal Rules of  
Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of  
[redacted] (the "Creditor")  
is wholly unsecured and void.

Memorandum In Support

(1) The Debtor filed a voluntary petition under chapter [redacted] of the Bankruptcy Code on

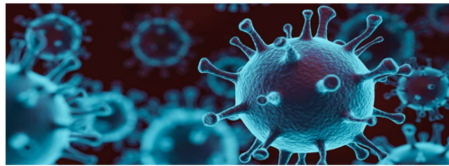
## D. Order Submission Issues and Agreed Orders

- Agreed Orders
  - Make sure all interested parties sign the agreed order!
    - Marge Burke's requirements for Motion to Modify
  - In a Chapter 13 case, usually the Chapter 13 trustee should sign the order, particularly if it impacts distribution or administration of the plan.
  - Judges Buchanan and Humphrey will allow agreed orders without the filing of an underlying motion or AP if all affected parties sign off on the agreed order.



- Be sure that agreed orders pursuant to General Order 42-1 for suspension of Chapter 13 plan payments have the necessary information: a statement that a change in payments is needed because of COVID-19 and a negative notice.

- Also, remember that getting a forbearance from the lender is only the first step. Debtor counsel needs to work with the 13 office to determine how a forbearance impacts distributions and whether an agreed order for a suspension of payments is needed.



## E. Motions for Relief and to Extend or Impose the Stay

- **Motions for Relief from Stay**
  - Identify the ground for which your client is seeking relief from stay, e.g. § 362(d)(1) for cause or § 362(d)(2) lack of equity and not necessary for an effective reorganization.
  - Attach the appropriate documentation under LBR 4001-1.
  - Mandatory form motions are coming soon for most routine relief from stay motions in Chapters 7 and 13!
- **Motions to Extend the Stay or to Impose the Stay**
  - Update the schedules before you file a new case—don't just file the same schedules filed in a prior case, even if the dismissal was very recent.
  - Explain why the circumstances are different, leading to the debtor's ability to successfully complete a Chapter 13 case.

## **F. Motions to Retain Funds in Chapter 13 from Tax Refunds, Personal Injury Settlements, and Other Sources**



- Obtain court approval before the debtors spend the funds
- Document the proposed expenditures to the extent appropriate
- If there has been a change in circumstances creating a specific need, amend the schedules or otherwise bring to the court's attention the change in the circumstances
- The court reviews the schedules and docket to assess how the proposed expenditure fits with the rest of the case
- COVID-19 situation: How long has the debtor been unemployed or underemployed, and what, if any, replacement income from unemployment or other sources has the debtor received.
- Attached estimates for work that needs to be completed is helpful and may avoid a hearing or the need to supplement the motion

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### G. Expedited Relief (Shorten Time / Expedited Hearing)

- Local Bankruptcy Rule 9073-1
- Separate motion from underlying filing
- Identify:
  - proposed shortened notice / response time / expedited hearing date
  - reasons needed
  - parties affected
  - method of notification
- Per General Order 12-3:
  - no 21-day notice on motion to shorten time / expedite hearing (so upload proposed order granting expedited relief immediately)
  - 21-day notice should be included on underlying filing
- If granted, file certificate of service evidencing expedited notice
- Check Judge's specific procedures on court website if want expedited review of motion, contact chambers



## H. Motions to Vacate Dismissal in a Chapter 13 Case

- Generally, a motion to vacate a dismissal of a Chapter 13 case should cite to Federal Rule of Civil Procedure 60(b).
- Provides the specific factual circumstances in the case that would justify vacating a dismissal order.
- Do not simply ask to “reinstate the case.”
- Seek to extend a deadline or modify a plan to avoid dismissal whenever possible. Vacating a dismissal should be a last resort.

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## I. Fee Applications

- Include descriptions of work performed and time spent on each matter, in 1/10 of an hour increments
- Provide sufficient detail, but do not include client confidential information and communications
- Identify the person doing the work and what that person's position is (e.g. attorney, paralegal) and that person's hourly rate
- Assess the reasonable value of the work performed and reduce if appropriate.



- Submit fee applications after work is completed on a discrete matter, but not later than six months from the work being done. See LBR 2016-1(b)(3).
- A fee application in a case dismissed prior to confirmation must be filed within 14 days of the entry of the dismissal order. LBR 2016-1(b)(5).
- A fee application of more than \$1,000 must be served on all creditors and parties in interest.
- If you opt out of the no-look fee, you must submit a fee application itemizing all fees within 60 days of the entry of the confirmation order. LBR 2016-1(b)(2)(C).



## J. Other Motion and Application Issues

- Motions to Avoid Liens Pursuant to § 522(f)
  - Make sure you identify the exemption being impaired, including the appropriate Ohio Revised Code section
- Motions to Avoid Wholly Unsecured Liens Pursuant to § 506
  - Do not combine with § 522(f) concepts. Exemptions are not relevant for a § 506 analysis.

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- *Preference actions* 11 U.S.C. § 547
  - Must file an AP to avoid liens based upon a preference theory (or enter an agreed order.)
  - In a Chapter 13, state as a special plan provision that you are going to file an AP seeking to avoid the lien on that basis, but you cannot provide for the lien removal through the plan

- *Redemption Motions*

- Redemption motions must be served pursuant to Rule 7004. Consider using the court's optional form motion and order. Disclose any separate attorney fee you are receiving.

- *363 Sale Motions*

- Serve sale motions on all creditors and parties in interest. Attach relevant documents on the payout of any settlement. If the sale is free and clear of any interest in the property, clearly indicate that is the case and cite which sub-sections of § 363(f) apply.

- *Rule 9019 Compromise Motions*

- Settlements that affect all creditors must be filed pursuant to Rule 9019 and served on all creditors and parties in interest.



- *Retention of Special Counsel*

- Chapter 13

- Must be filed by Chapter 13 Trustee or the Debtor's counsel - cannot be filed by special counsel
- File Application to Retain Special Counsel sooner rather than later. Don't wait until a personal injury, workers compensation, or other litigation claim is resolved to obtain approval of counsel

- Chapter 7

- Trustee files application to retain special counsel. Debtor can only pursue such an action if the Trustee abandons it, and then there is no need to file a retention motion with the court.

- Information Needed:

- Application
- Affidavit of Counsel
- Terms of Employment

**INFORMATION  
REQUIRED**

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- *Responses to Motions or Applications:*

- Avoid “place holder” objections or responses such as “I object” or “The claim is correct in all respects.”
- Must state the substantive or procedural basis for objecting to the motion or application, including any factual and legal basis for objecting to the relief being sought.



## K. Reaffirmation Agreements



- The reaffirmation agreement must be accompanied by Official Form 427 (Cover Sheet).
- Make sure the debtor and the creditor have each signed the reaffirmation agreement before it is filed.
- Make sure one of the boxes on the top of the first page of the reaffirmation checked indicating whether there is or is not an undue hardship is checked.
- If counsel signs the reaffirmation agreement also make sure the box above counsel's signature is checked indicating that although there is a presumption of undue hardship exists counsel feels the debtor can make the payment.
- If debtor's budget is running a deficit, explain how the debtor is going to make the payments.
- The payment for the reaffirmed debt must be included in debtor's Schedule J. If the debtor's income or expenses have changed file amended schedules I or J as appropriate.



## L. Claim Objections and Responses: Rule 3007

- 30-day notice
- Serve claim objection on notice address
- Additional Rule 7004 service required when:
  - Claim of United States or its officers / agencies - Rule 3007(a)(2)(A)(i)
  - Claim of an insured depository institution - Rule 3007(a)(2)(A)(ii)
  - Using claim objection for cramdown - General Order 22-2 and Plan ¶ 4.3
- Relief in claim objection and proposed order should match
- Do not request disallowance in full if not warranted
- Difficulties arise when creditor files an amended claim rather than a response

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## M. Adversary Issues: Complaint, Answer and Default Motions

- Complaint
  - Differentiate between §727 and §523(a)
    - E.g., separate count for § 523(a)(2)(A) (fraud) and §523(a)(6) (willful and malicious injury)
  - Separate count for each separate claim for relief
    - Necessary to survive motion to dismiss under *Twombly & Iqbal*
  - Include sufficient facts
    - Necessary to survive motion to dismiss under *Twombly & Iqbal*
  - Ensure that prayer for relief is consistent with claims



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- Answer (Rule 7008 / FRCP 8)
  - Cannot state general denial of all allegations unless in “good faith”
  - Otherwise should separately address each paragraph of the complaint.
  - May also indicate denial for “lack of knowledge or information sufficient to form belief about the truth of the matter asserted.
  - Include all affirmative defenses (fraud, res judicata, statute of limitations, etc.) FRCP 8(c)
  - Include Rule 12 defenses

- Motion for Default Judgment

Requires:

- If defendant is an individual, an affidavit stating:
  - Whether defendant is in the military.  
(Servicemembers Civil Relief Act).
    - May search records at the Servicemembers Civil Relief Act Website:  
<https://scra.dmdc.osd.mil/scra/#/login>
  - Whether defendant is a minor or incompetent person. Rule 7055(b).

## N. Summary Judgment Issues

- Rule 7056 / FRCP 56
- Standard of review
  - Granted if “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FRCP 56(a)
- All assertions of fact must be supported by citing to particular parts of materials in the record:
  - Examples: affidavits, documentary evidence, stipulations, admissions, interrogatory answers, depositions or other materials
  - A party opposing summary judgment cannot rest on its answer
- Summary judgment does not embrace default judgment principles

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## O. 7004 Service

- Generally, you need Rule 7004 service when a creditor is being directly affected.
- Specifically, it is always required in these circumstances:
  - A claim objection involving the United States or an FDIC Bank. The notice address of the proof claim AND 7004 service is required to be served.
  - Avoiding a lien or a cramdown of a secured claim in a Chapter 13 Plan.
  - Motions to Avoid a Lien
  - Motions to Redeem
  - Motions seeking extraordinary relief, such as damages for contempt or a stay violation



- *How do I serve certain parties?*

- United States: Serve by either first class, certified or registered mail addressed to:
  - the civil-process clerk at the United States attorney's office;
  - Attorney General of the United States at Washington, D.C.;
  - **and**
  - the agency.
- Corporate Entity: Serve either:
  - to the attention of an officer or agent of the corporation by first class mail
  - **or**
  - by certified or express mail to any of a corporation's usual places of business.

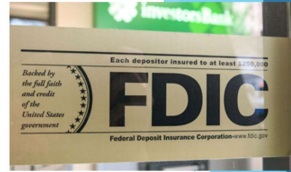
FDIC Bank:

Is the entity an FDIC Bank?:

See <https://research2.fdic.gov/bankfind>

Serve to the attention of a specific officer of the bank by certified mail. List the name and title of the officer.

Exception if attorney for the bank has appeared in the case. Serve the attorney by U.S. mail. Do not rely on ECF Service.



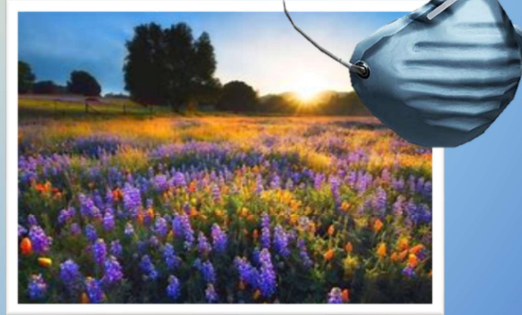
GENERAL PRACTICES AND PROCEDURES BEFORE HON. GUY R. HUMPHREY  
—  
REVISED MARCH 2, 2020

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**THANK YOU FOR  
JOINING US!**



**STAY SAFE**