

**Minutes of the Bankruptcy Bench Bar Committee
Remote Meeting Via Teams
March 22, 2024, 1:30 PM**

Attendees

Judge Berger: Judge Liaison to the Bench Bar Committee
J. Christopher Allman: Chair of the Bench Bar Committee
U.S. Attorney's Office Representative (ex officio)
Jordan Sickman: U.S. Trustee's Office Representative (ex officio)
Patricia Hamilton: Chapter 7 Trustee Representative
William Griffin: Chapter 13 Trustee Representative
January Bailey
Jill Michaux
Ryan Blay
Daydree Dopps
Sharon Stolte

Not Attending

Kathryn E. Sheedy

The meeting commenced at 1:35 pm.

Minutes

The Committee previously reviewed and approved the minutes of the November 3, 2023 meeting by email. They are posted publicly to the court's website.

I. Old Business Carried forward from the Fall 2023 Meeting

- A. Chapter 11 Subchapter V Plan Form Subcommittee Update: Ryan Blay, Sharon Stolte, Jordan Sickman*

During the Fall 2023 meeting, the Subcommittee was formed to propose a model form plan for Subchapter V cases. The Subcommittee reported that they met to discuss who should be part of the conversation but they had not decided whether a Subchapter V trustee should be included. The Committee encouraged them to do so.

The Committee continued this topic to the next meeting.

- B. Update on the Transition to Zoom for 341 Meetings*

Jordan Sickman shared how Zoom 341 Meetings will be rolled out in Kansas. By the end of June, the US Trustee's Office expects to have switched from telephonic 341 Meetings to Zoom. Training for trustees is scheduled for May 17. Training for attorneys is scheduled for

Jill Michaux shared her understanding that mortgage firm lawyers who objected to the provision being included in the Chapter 13 Plan seemed to be saying that their clients' software systems or protocols only allow them to turn their system on or off, so if they turn the system on to allow debtors to access online records then that would also turn the system on in ways that would open them to a host of violations, especially if the debtors were allowed to make electronic payments. She understood that mortgagees were concerned that turning the system on would trigger collection letters. Sharon Stolte said she could check with manufactured home creditors and mortgage servicers about their position.

Judge Berger asked David Zimmerman to share the comments filed about the published draft Plan language with the Committee. Sharon Stolte will investigate the concerns that were raised and consult with January Bailey to revise the language of the proposed rule. The Committee will then revisit the issue.

The Committee continued this topic.

B. Proposed Amendments to LBR 3015(b).2

January Bailey proposed changes to LBR 3015(b).2(c) and (e), as noted in the appended redlined copy. She proposed the changes because the amended Chapter 13 Plan form includes the debtor's authorization for lienholders on real property to release information to the trustee. With that in mind, she removed the debtor's obligation to provide that same information. Also, she removed the need for the Debtor to complete a Mortgage Creditor Checklist because it is either duplicative of what is on the claim or the information was often incorrect. Bill Griffin said removing subsections (e)(2) and (e)(3) was agreeable to the trustees and no one else on the Committee objected. She also recommended deleting subsection (e)(7)(i), and the Trustee agreed with this, also.

The Committee agreed unanimously to recommend these changes.

C. Proposed Amendment to LBR 3015(b).1

Standing Order 24-1 adds subsection (h) to LBR 3015(b).1. January Bailey recommended formally adding that provision to the Local Rules. Judge Berger said that was the court's intention.

The Committee unanimously recommended the addition.

D. Proposed Amendment to LBR 1007.1(a)(2)(C)

David Zimmerman noted that Standing Order 17-1 expressly required debtors to use the official local Chapter 13 Plan form, but that Standing Order was recently abrogated. He suggested adding a note to LBR 1007.1(a)(2)(C) under the Official Form column saying "See Forms page of court website for Official Chapter 13 Plan form."

The Committee unanimously recommended adding the note to 1007.1(a)(2)(C).

E. Proposed Amendments to Addendum to Chapter 13 Proof of Claim for Residential Home Mortgage Debt Paid through Chapter 13 Trustee

January Bailey recommended removing some of the lines from the “Addendum to Chapter 13 Proof of Claim for Residential Home Mortgage Debt Paid through Chapter 13 Trustee” form. (See the attachment highlighting lines that she suggested deleting.) Bill Griffin said these changes were fine because the necessary information is available to the trustee if the proof of claim is clear.

January Bailey explained that she left the lines relating to adjustable rates in the form but questioned whether they still should remain part of the form. Bill Griffin said variable rates are a nightmare and some creditors have converted to a locked rate to smooth the process, but he agreed it was best to leave those lines so variable rate information can be entered on the addendum.

The Committee unanimously recommended amending the form to remove the redlined lines.

F. Judge Julie A. Robinson Award Recipient for Law Day 2024

David Zimmerman reported that the Law Day 2024 program will be in the Wichita courthouse on May 3, 2024, 2:00-3:30 pm. After reviewing the nominations, the Committee selected the winner of the 2024 Judge Julie A. Robinson Award from the nominees. The recipient will be publicly announced during the Law Day program.

G. Other Topics

The Committee expressed interest in holding an in-person meeting in Lawrence in the late summer or early fall so any proposed Local Rule changes can be ready to take effect on December 1, 2024, contemporaneously with the national rule changes.

Judge Berger recognized January Bailey and Jill Michaux for their work on the revised Chapter 13 Plan form.

The meeting concluded at 2:38 pm.

LBR 3002.1.1

REQUIRED STATEMENTS FOR SECURED DEBTS ON A PERSONAL RESIDENCE

(a) Scope of Rule. This rule requires certain statements from creditors of consumer debtors who are directly repaying debt secured by a mortgage on real property or a lien on personal property the debtor occupies as the debtor's personal residence. This rule applies in Chapters 7, 12, and 13, applies only to consumer loan relationships, and applies only as long as the debtor is in bankruptcy and protected by the automatic stay.

(b) Purpose.

(1) The purpose of this rule is to maintain, to the greatest degree possible, the routine flow of information from secured creditors to debtors with respect to secured loans constituting secured debt (as that term is defined by [11 U.S.C. § 101\(8\)](#)) where the debtor is retaining possession of the collateral and continuing to make the regular installment payments directly to the secured creditor during a bankruptcy case. It is the intent of this rule to support the normal issuance of regular monthly statements typically issued by secured creditors to consumer borrowers who are not in bankruptcy and to provide consumer debtors with a creditor contact point so that a debtor can obtain specific information on the status of such loans, if needed.

(2) A creditor's good faith attempt to comply with this order in furnishing information to the consumer debtor shall not expose the secured creditor to claims of violating the automatic stay.

(c) Defined Term. For purposes of this rule, the terms:

(1) "Mortgage Creditor" shall include all creditors whose claims represent consumer debts secured in whole or in part by a mortgage on real property or a lien on a personal property interest in manufactured housing where the debtor occupies such real property or manufactured housing as the debtor's personal residence.

(2) "Retaining Debtor" shall include all Chapter 12 and Chapter 13 consumer debtors who have indicated an intent to retain the subject collateral in their plan, and to all Chapter 7 debtors whose statement of intention (Official Form 108) indicates an intent to reaffirm the debt secured by the subject collateral.

(d) Mortgage Creditor's Duties.

(1) Except as provided in paragraph (2) of this section, and except as provided in LBR 3015(b).2, if the Mortgage Creditor provided monthly statements to the consumer debtor pre-petition, the Mortgage Creditor shall continue to provide monthly statements to all Retaining Debtors. ~~Chapter 12 and Chapter 13 consumer debtors who have indicated an intent to retain the subject collateral in their plan, and to all Chapter 7 debtors whose statement of intention (Official Form 108) indicates an intent to reaffirm the debt secured by the subject collateral.~~ Such statements shall be provided directly to the debtor and a copy need not be provided to debtor's counsel. ~~a copy may also be provided to counsel prior to discharge but is~~ Such statements shall be provided unless and until the Mortgage Creditor is granted relief from the automatic stay under [11 U.S.C. § 362\(d\)](#). The monthly statements shall contain at least the following information concerning post-petition payments:

- (i) The date of the statement and the date the next payment is due;
- (ii) The amount of the current monthly payment;
- (iii) The portion of the payment attributable to escrow, if any;
- (iv) The post-petition amount past due, if any, and from what date;

- (v) Any outstanding post-petition late charges;
- (vi) The amount and date of receipt of all payments received since the date of the last statement;
- (vii) A telephone number and contact information that the debtor or the debtor's attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
- (viii) The proper payment address.

(2) If pre-petition the Mortgage Creditor provided the debtor with "coupon books" or some other pre-printed, bundled evidence of payments due, the Mortgage Creditor shall not be required to provide monthly statements under (1) of this section. The Mortgage Creditor shall, however, be required to supply the debtor with additional coupon books as needed or requested in writing by the debtor.

(3) If pre-petition the Mortgage Creditor allowed debtor access to account information through an online portal, the Mortgage Creditor shall continue to allow the Retaining Debtor access to such account. Access to the online account includes all abilities a nonbankrupt borrower has.

(3) The Mortgage Creditor shall provide the following information to the debtor upon the reasonable written, ~~or telephonic,~~ or electronic request of the Retaining Debtor, and the creditor does not need to obtain relief from stay or counsel's permission to provide to the requesting debtor:

- (i) The principal balance of the loan;
- (ii) The original maturity date;
- (iii) The current interest rate;
- (iv) The current escrow balance, if any;
- (v) The interest paid year to date; and
- (vi) The property taxes paid year to date, if any.

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[LBR 3015\(b\).2](#)

CONDUIT MORTGAGE PAYMENTS IN CHAPTER 13 CASES

(a) Scope of Rule. This rule applies to all Chapter 13 cases filed on or after September 15, 2017.

(b) Required Conduit Payments. Regular payments owed by a Debtor to a Creditor holding a claim secured by the Debtor's principal residence shall be made by the Debtor to the Trustee for payment through the Chapter 13 plan if the Debtor (i) is delinquent as of the petition date or (ii) becomes delinquent after the petition date. Such payments are referred to herein as "conduit payments."

(c) Definitions. As used in this rule, the following capitalized terms mean:

(1) The "Arrearage" is the total amount past due as of the petition date, as calculated on Official Form 410A, and shall be equal to the amount contained in the creditor's filed and allowed Proof of Claim, unless specifically controverted in the plan or by an objection to the claim as required by D. Kan. LBR 3015(b).1.

(2) "Debtor" or "Debtors" are hereafter referred to as Debtor.

(3) "Real Property Creditor" is the entity claiming a mortgage or a servicer of the mortgage on the real property that is the principal residence of the Debtor. This rule is intended to cover a loan secured by a security agreement in Debtor's principal residence (i.e., a promissory note on a manufactured or mobile home), and such lender will be referred to as a "Real Property Creditor" herein for the sake of simplicity, even if some specific references, e.g., to "mortgage" or "escrow analysis," are not strictly applicable.

(4) The Standing Chapter 13 Trustee is referred to as "Trustee."

(d) Other Rules Applicable. Nothing in this rule shall relieve any party from complying with any obligation under the [United States Bankruptcy Code](#), the [Federal Rules of Bankruptcy Procedure](#), the [Local Rules of the District and Bankruptcy Courts of Kansas](#), or any applicable Standing Orders. These procedures shall not be modified by any plan language without express order from the Court.

(e) Debtor's Duties.

(1) Debtor may be excused from complying with this rule only upon entry of a Court order upon a showing of circumstances justifying the same.¹

~~(2) Debtor must complete a Mortgage Creditor Checklist and an Authorization to Release Information to the Trustee Regarding Secured Claims Being Paid by the Trustee and forward those documents to the Trustee (not to the Court) within 14 days of the filing of the bankruptcy petition.~~

~~(3) Debtor or Debtor's attorney shall mail a copy to the Trustee of all correspondence, notices, statements, payment coupons, escrow notices and default notices concerning any adjustments to the monthly payments or interest rate immediately upon receipt of the same.~~

¹ See, e.g., *In re Perez*, 339 B.R. 385, 409 (Bankr. S.D. Tex. 2006) (Court lists 21 non-exclusive factors to be examined in determining whether to excuse debtors from conduit payment scheme or employer withholding orders). The additional cost associated with the trustee fee on the conduit payment will not, by itself, constitute good cause.

~~(4)~~(2) Debtor shall include the regular payment amount owing to the Real Property Creditor, inclusive of Trustee's fees, in the plan payment to be paid by Debtor to the Trustee.

~~(5)~~(3) Pursuant to provisions of Paragraph (f)(5) below, in the event the monthly conduit payment changes due to either changed escrow requirements or a change in an adjustable interest rate, Debtor's plan payment to the Trustee shall change by the same amount, plus the Trustee's fee.

~~(6)~~(4) For any Debtor who is employed and required to make mortgage payments through the Trustee, an employer pay order shall be promptly entered by the Clerk of the Bankruptcy Court as provided in Debtor's plan and served upon Debtor's employer. Until the employer begins to withhold bankruptcy plan payments from Debtor's pay, Debtor is required to make plan payments directly to the Trustee. A Debtor may be excused from complying with employer pay orders only upon the entry of a Court order upon a showing of circumstances justifying the same.

~~(7)~~(5) If Debtor modifies a previously confirmed Chapter 13 Plan that originally provided for Debtor to pay the on-going post-petition payments directly to a holder of the claim to bring all or some part of the on-going payments into the Chapter 13 Plan for payments, then any post-confirmation amendment to the Plan must spell out with specificity all of the following:

~~(i) the name, address, and redacted account number of the creditor to whom the payments are to be paid;~~

(i) the month for which the Trustee is to commence making the on-going post-petition payments;

(ii) the amount and treatment of the post-petition delinquency, including the gap between the date when Debtor proposed for modifying the Plan and the month for which the Trustee is to commence making the mortgage payment, if any.

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**ADDENDUM TO CHAPTER 13 PROOF OF CLAIM FOR RESIDENTIAL HOME MORTGAGE DEBT
PAID THROUGH CHAPTER 13 TRUSTEE**

I. Creditor Information

Loan No:

Creditor Name: _____

Servicer Name: _____

Address: _____

Contact Person: _____

Tel No: _____

Fax No: _____

Email: _____

Payments should be made payable to: _____

Address to which payments are to be sent: _____

Creditor Attorney Name: _____

Address: _____

Contact: _____

Tel No: _____

Fax No: _____

Email: _____

II. Loan Information

Type of Loan and rate as of petition date: _____

Fixed Rate: _____ % (State interest rate as of date of petition)

Adjustable Rate: _____ % (State interest rate as of date of petition)

Last Adjustment Date: _____

Next Adjustment Date: _____

Date of month payment due: _____

Date of month payment considered late under note: _____

Amount of late fee: \$ _____

Post-petition payments

Principal & Interest: \$ _____

Taxes: \$ _____

Insurance: \$ _____

Other: _____ \$ _____

Other: _____ \$ _____

Total post-petition payment: \$ _____