

**Minutes of the Bankruptcy Bench Bar Committee**  
**In Person, Grand Central Hotel, 215 Broadway, Cottonwood Falls, KS 66845**  
**November 3, 2023**

**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  
Kathryn E. Sheedy  
January Bailey  
Jill Michaux  
Ryan Blay  
Daydree Dopps  
Sharon Stolte

David Zimmerman, Clerk of the Bankruptcy Court

The meeting commenced at 8:38 am.

**Introductions**

The Committee members introduced themselves.

**Minutes**

The Committee previously reviewed and approved the minutes of the April 7, 2023 meeting by email. The minutes are posted to the court's public website.

**I. Old Business Carried Forward from the Spring 2023 Meeting**

*A. Mortgage Modification Mediation Program*

During previous meetings, a subcommittee (January Bailey, Ryan Blay, and former member Nancy Skinner) had proposed a rule change and two new forms to expedite mortgage modifications. The topic was continued to this meeting to allow the Committee to seek additional community input and evaluate proposed changes to the program.

Based on feedback received from trustees and attorneys, January Bailey and Bill Griffin suggested that this topic be tabled.

*The Committee unanimously decided to table this topic.*

*B. Proposed Changes to LBR 3002.1.1(d)(4) and LBR 4070.1(b)*

Because mail delivery has become slower and less reliable, it was proposed that the local rules should be amended to require a creditor to send a notice of mortgage default or a written demand for proof of insurance to the debtor's attorney by email.

**LBR 3002.1.1**  
**REQUIRED STATEMENTS FOR SECURED DEBTS ON A PERSONAL RESIDENCE**

...  
**(d) Mortgage Creditor's Duties.**

...

(4) If the case is a Chapter 12 or 13 case where the secured consumer debt is not modified or paid through the plan, and the Mortgage Creditor believes the debtor is in default, the Mortgage Creditor shall send a letter alleging such default to the debtor and debtor's attorney, **and also by email to debtor's attorney**, not less than 14 days before taking any steps to modify the automatic stay. Such written notice of default shall not be required in instances where the debtor has filed with the Court a plan or plan modification in which the debtor makes known the intent to abandon or surrender the property securing the Mortgage Creditor's claim.

**LBR 4070.1**  
**INSURANCE ON MOTOR VEHICLES**

...

**(b) Proof of Insurance.** Except as provided in [§ 1326\(a\)\(4\)](#), proof of insurance against physical damage and loss for any motor vehicle belonging to or leased by the debtor or the estate that is subject to the lien of a creditor holding an allowed secured claim must be furnished to the trustee and the creditor at or before the meeting held under § 341, or on written demand of the creditor. Written demand by the creditor for proof of insurance must be served on the debtor by first-class mail and on debtor's attorney by first-class mail **and by email**, or ECF notification. Failure to furnish proof of insurance at or before the meeting held under [§ 341](#) or on written demand as provided by these rules is presumed to mean there is no insurance in effect. Any written "binder" must be followed by proof of permanent insurance.

*The Committee unanimously decided to recommend the rule changes.*

The Committee also discussed how greater reliance on electronic noticing and electronic service in the future would be an improvement.

*C. Chapter 11 Subchapter V Plan Form*

Prior to the meeting, Ryan Blay provided the following written update about the Attorney Advisory Group's work on a model Subchapter V Plan for the Western District of Missouri:

Our subgroup, which included Chris Borniger, formerly of the US Trustee's office in Kansas, reviewed model plans from across the country and found the Delaware plan to be the most comprehensive. Accordingly, we brought the plan (with some revisions to reflect the correct jurisdiction) to the AAG [i.e., Attorney Advisory Group]. The group voted to adopt the plan with certain changes. The plan, which will go into effect soon, can be found at <https://www.mow.uscourts.gov/sites/mow/files/BK-SubchapterVFormPlan.pdf>.

It is voluntary but a helpful starting point. I would propose that our district enact the same (subject to changes making it Kansas specific) and have the group review for any proposed changes. . . . There are going to be more filings soon, often by people who may be more familiar with Chapter 13 practice (or regular Chapter 11) and this should provide some guidance on what the court wants.

During the meeting, Mr. Blay reported that the Judges in Missouri made some corrections to the Delaware plan and customized it for Missouri. He recommended that a form plan would be an effective tool for Kansas practice. The goal of providing a model plan is to reduce objections based on form so the focus can be on substantive issues such as feasibility. Ryan Blay recommended that the Committee set up a group to review the plan and that the plan be adopted as a resource for practitioners to use rather than as a mandatory plan. Judge Berger said it can be helpful to have a well-conceived form as a resource, as long as it is not mandatory. Sharon Stolte added that a model plan is likely to be adopted in Missouri Western, and the group that worked on it was careful to recommend that it not be mandatory. Jordan Sickman observed that Kansas attorneys would have access to Missouri and Delaware form plans regardless of whether Kansas has a form plan, so it would be helpful to have it customized to Kansas. Sharon Stolte said it was unlikely to require a great deal of effort to customize Missouri's form for Kansas practice and recommended that, as was done in Missouri, the draft plan should be circulated for comment among local practitioners who handle subchapter V cases.

It was proposed to organize a subcommittee to refine Missouri's draft plan and circulate it among subchapter V practitioners, post it for public comment, then adopt it as a resource but not make it mandatory.

The Committee discussed whether this form plan should be a resource posted to the court's website and referenced by the Local Rules or whether it should be incorporated as a part of the Local Rules themselves. That question will be considered further as the plan is being drafted.

During the discussion, Judge Berger emphasized that first day motions need to be filed on the first or second day, rather than filing them a week later with a request for an emergency hearing.

***The Committee organized a subcommittee to propose a model form plan for subchapter V cases. Subcommittee members are Sharon Stolte, Ryan Blay, and either Jordan Sickman or another US Trustee's Office representative.***

*D. Drop Dead Dismissal Deadlines Governing Resumption of Payments after Abatements*

Bill Griffin has had problems with debtors timely resuming payments after they file motions to abate. The Committee discussed whether a court order granting an abatement of plan payments should include a drop dead dismissal deadline that would apply if payments do not resume on time. Bill Griffin reported about his discussion of this topic with trustee Carl Davis and recommended that these issues be addressed on a case-by-case basis.

Kathryn Sheedy observed that Topeka attorneys are in the process of learning and adjusting to the way trustee Davis handles abatements. January Bailey shared that there are benefits to trustee Davis's approach because it sometimes reduces noticing and attorney fees. Jill Michaux observed that Judge Somers has been loathe to include drop dead provisions in his orders.

*After discussion, the Committee unanimously agreed to remove this topic from the agenda.*

*E. Noticing Addresses Listed in LBR 2002.2*

During the last meeting, the Committee unanimously agreed to recommend that noticing addresses for federal and state entities in Local Rule 2002.2 should be removed from the Local Rules and posted to the court's public website, and that Local Rule 2002.2 be amended to direct people to the court's website to view those addresses. To implement that recommendation, David Zimmerman proposed language for LBR 2002.2 and a new appendix.

**LBR 2002.2**

**SCHEDULING, LISTING, AND NOTICING THE UNITED STATES AND AGENCIES OF THE STATE OF KANSAS AS A CREDITOR**

**(a) Departments, Agencies, and Instrumentalities of the United States.** When a department, agency, or instrumentality of the United States is a creditor, the schedules and matrix must list that agency at the address provided in subsection (a) of Appendix 1-01 to LBR 2002.2 posted on the court's public website at [https://www.ksb.uscourts.gov/local-rules/\[precise page\]](https://www.ksb.uscourts.gov/local-rules/[precise page]). Any notice or service given to an address listed pursuant to this rule will be in addition to any notice required by statute, rule or regulation. *See also* D. Kan. LBR 7004.1 and Fed. R. Bankr. P. 7004(b)(4) and (5) regarding service in adversary proceedings and contested matters.

**(b) Departments, Agencies and Instrumentalities of the State of Kansas.** When any department, agency, or instrumentality of the State of Kansas is a creditor, the schedules and matrix must list that agency at the address provided in subsection (b) of Appendix 1-01 to LBR 2002.2 posted on the court's public website at [https://www.ksb.uscourts.gov/local-rules/\[precise page\]](https://www.ksb.uscourts.gov/local-rules/[precise page]). Any notice or service given to an address listed in this rule will be in addition to any notice required by statute, rule or regulation. *See also* D. Kan. LBR 7004.1 and Fed. R. Bankr. P. 7004(b)(6) regarding service in adversary proceedings and contested matters.

**(c) Responsibility to Update Addresses.** A federal or state department, agency, or instrumentality with a noticing address listed in Appendix 1-01 to LBR 2002.2 is responsible to promptly inform the Clerk of any change to that address.

\* \* \*

As amended 3/17/24, 3/17/23, 3/17/21, 3/17/20, 3/17/19, 3/17/18, 3/17/16, 3/17/15, 3/17/14, 3/17/13, 3/17/12, 3/17/11, 3/17/08.

**Appendix 1-01 to LBR 2002.2**  
**Noticing Addresses for the United States and Agencies of the State of Kansas as a Creditor**  
(Rev. 3/17/2024)

**(a) Departments, Agencies, and Instrumentalities of the United States.**

(1) United States Attorney's Office. When any department, agency, or instrumentality of the United States is a creditor, the schedule of creditors and matrix must also list the United States Attorney's Office located in the division headquarters where the petition for relief is filed. The addresses are:

A. Office of United States Attorney  
Robert J Dole US Courthouse Suite 360  
500 State Avenue  
Kansas City KS 66101-2433

B. Office of United States Attorney  
US Courthouse Suite 290  
444 Southeast Quincy Street  
Topeka KS 66683-3592

C. Office of United States Attorney  
1200 Epic Center  
301 N Main  
Wichita KS 67202-4812

(2) Addresses for certain Departments, Agencies and Instrumentalities of the United States. When one of the following departments, agencies, or instrumentalities of the United States is a creditor, the schedule and matrix must list the agency at the address indicated:

A. DEPARTMENT OF AGRICULTURE (except for Farm Service Agency and Rural Development, which are individually listed)  
Office of the General Counsel  
United States Department of Agriculture  
PO Box 419205 Mail Stop 1401  
Kansas City MO 64141-6205

Farm Service Agency  
3600 Anderson Avenue  
Manhattan KS 66503-2511

USDA Rural Development  
PO Box 66879  
St Louis MO 63166

**B. DEPARTMENT OF EDUCATION (DOE)**

For noticing on schedules and the matrix:

US Department of Education  
PO Box 16448  
St Paul MN 55116-0448

US Department of Education  
Business Operations/Federal Student Aid  
50 United Nations Plaza  
Mailbox 1200 Room 1176  
San Francisco CA 94102

For service of process, such as adversary  
proceedings:

Education Department  
Office of General Counsel  
400 Maryland Ave NW Room 6E353  
Washington DC 20202-2110

**C. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

US Dept of Health and Human Services  
Office of the General Counsel  
601 East 12th Street Room N1800  
Kansas City MO 64106

**D. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)**

Regional Counsel  
Dept of Housing and Urban Development  
Gateway Tower II Room 200  
400 State Avenue  
Kansas City KS 66101-2406

**D. INTERNAL REVENUE SERVICE (IRS)**

Internal Revenue Service  
PO Box 7346  
Philadelphia PA 19101-7346

E. SMALL BUSINESS ADMINISTRATION (SBA)

District Counsel  
US Small Business Administration  
10675 Bedford Ave Suite 100  
Omaha NE 68127

F. SOCIAL SECURITY ADMINISTRATION

SSA OGC Office of Program Lit Bankruptcy  
6401 Security Boulevard  
Baltimore MD 21235

G. UNITED STATES POSTAL SERVICE

Law Department  
US Postal Service  
9350 South 150 East  
Suite 800  
Sandy UT 84070-2716

H. VETERANS ADMINISTRATION (VA)

VA DMC  
PO Box 11930  
St Paul MN 55111-0930

**(b) Departments, Agencies and Instrumentalities of the State of Kansas.** When one of the following departments, agencies, or instrumentalities of the State of Kansas is a creditor, the schedule and matrix must list the agency at the address indicated:

A. Kansas Department of Administration

OSM Payroll Garnishments  
ESOB Suite 300  
700 SW Harrison St  
Topeka KS 66603

B. Kansas Dept for Aging and Disability Services

c/o Chief Counsel  
New England Building  
503 S Kansas Ave  
Topeka KS 66603-3404

C. Kansas Department of Agriculture

Office of Chief Counsel  
1320 Research Park Dr  
Manhattan KS 66502

- D. Kansas Department of Commerce  
Attn Legal Department  
1000 SW Jackson  
Suite 100  
Topeka KS 66612-1354
- E. Kansas Department of Education  
Landon State Office Building  
900 SW Jackson Street Suite 102  
Topeka KS 66612
- F. Kansas Dept of Health and Environment  
Office of Legal Services  
1000 SW Jackson Suite 560  
Topeka KS 66612-1368
- G. Kansas Department of Labor  
Attn Legal Services  
401 SW Topeka Blvd  
Topeka KS 66603-3182
- H. Kansas Department of Revenue  
Civil Tax Enforcement  
PO Box 12005  
Topeka KS 66601-2005
- I. Kansas Dept for Children and Families  
Office of the Secretary  
555 S Kansas Ave 6th Floor  
Topeka KS 66603
- J. Kansas Department of Transportation  
Eisenhower State Office Bldg  
3rd Floor West  
700 SW Harrison  
Topeka KS 66603-3745
- K. Kansas Department of Wildlife and Parks  
1020 South Kansas Ave  
Room 200  
Topeka KS 66612-1233

\* \* \*

Jill Michaux suggested that existing addresses be modified to comply with the matrix rules that limit the number of characters per line. [Editor's note: One address was abbreviated to meet the 50-character-per-line limit in the name line. (*See* LBR 1007.2(i), which limits the name line to 50 characters and limits address lines to 40 characters.)] Jill Michaux asked if there is also a second list of noticing addresses on the court's website. [Editor's note: Pursuant to 11 U.S.C.



§ 505(b) and Fed. R. Bankr. P. 5003(e), the court maintains (1) a register of mailing addresses for federal and state government units in LBR 2002.2, and (2) a register of governmental units responsible for collecting taxes if those entities designate an address for service of requests under 11 U.S.C. § 505(b), *see* <https://www.ksb.uscourts.gov/register-government-mailing-addresses.>]

*The Committee unanimously agreed to recommend the rule changes and appendix as drafted.*

## **II. New Business**

### *A. Proposed Clarification for LBR 4004.1*

January Bailey and Jill Michaux proposed the following amendment to LBR 4004.1(a):

**LBR 4004.1  
DISCHARGE IN CASES UNDER CHAPTER 11 SUBCHAPTER V,  
CHAPTER 12, AND CHAPTER 13**

**(a) Chapter 12 and Chapter 13 Cases.** Debtor shall file with the Court a combined Certification of Debtor and Motion for Entry of Discharge in order to obtain a discharge ~~upon completion of all plan payments under 11 U.S.C. §1228(a) or §1328(a).~~

...

Jill Michaux explained that the purpose of the proposed change is to make it clear that the local rule applies only to discharges under 11 U.S.C. § 1228(a) or § 1328(a) and does not govern hardship discharges under 11 U.S.C. § 1228(b) or § 1328(b).

Judge Berger observed that the *Kinney* decision may motivate people to seek a hardship discharge more frequently because of the strict 60-month limit.

*The Committee unanimously recommended the rule change.*

### *B. Comprehensive Amendments to the Federal Rules of Bankruptcy Procedure*

David Zimmerman reported that general restyling of all Bankruptcy Rules is scheduled to take effect on December 1, 2024. Though changes are largely stylistic, the language and subsection numbers have been extensively changed. Attorneys would be well advised to review their forms to conform them to the new rules. See <https://www.uscourts.gov/rules-policies/pending-rules-and-forms-amendments> for the pending rule changes.

The Local Rules will need to be updated to conform them to the restyled national rules. David Zimmerman said he plans to recommend Local Rule changes to conform citations to the revised national rules. The goal is to make the Local Rule updates effective contemporaneously with the national rule changes on December 1, 2024.

*C. Proposed Deletion of LBR 9011.4(d)*

January Bailey asked whether LBR 9011.4(d) should be deleted because those provisions are encompassed by District Court Local Rule 5.1(b). Committee members commented that it would be clearer for bankruptcy practitioners to have the instructions all in the Local Bankruptcy Rules rather than being required to parse Local District Court Rules and Local Bankruptcy Rules.

***The Committee unanimously decided not to recommend the deletion.***

*D. Updating the Chapter 13 Form Plan*

Judge Berger invited the Committee to comment on proposed amendments to the Chapter 13 Plan.

The Committee discussed changes to the following sections of the plan and made recommendations. Red text highlights modified language, and subsection numbers listed in these minutes refer to the subsections after proposed revisions are made (unless otherwise indicated).

Section 2: Two changes to this section were discussed. First, the Committee considered adding language stating “**Default of the debtor to make direct payments to a creditor, with the exception of domestic support obligations, shall not bar entry of discharge or completion of the case.**” This language is already included in the standard confirmation order and including it in the plan puts creditors on notice and gives them an opportunity to object to it.

Second, Judge Berger invited the Committee to comment on proposed language crafted in response to *Kinney v. HSBC Bank USA*, 5 F.4th 1136 (10th Cir. 2021), a case in which the debtor’s only default was on mortgage payments being made directly by the debtor. The debtor was denied a discharge because the direct payments were considered to be provided for by the plan. Judge Berger proposed a sentence be added to Section 2 saying “**A creditor to whom payments are made directly is not provided for or paid under this plan; however, as to such creditor, the automatic stay under sections 362(a) and 1301 shall remain in effect.**” He reported that his research led him to conclude that a debtor may opt to not provide for a claim under the plan and yet automatic stay provisions could remain in place. He observed that *Kinney*’s ruling was driven by the language of the plan, which in that case was not explicit with respect to direct payments. He also noted that there is a supposition permeating bankruptcy practice that payments provided for under the plan are payments made to and distributed by the trustee. Jill Michaux suggested that this provision could apply to payments other than mortgages, such as direct pay car loans that extended for 72 or 84 months.

Bill Griffin conveyed Carl Davis’s concerns about the proposed language. He questioned why debtors are being encouraged to make payments directly rather than being encouraged to make payments through the trustee, he suggested that these issues should be decided based on the circumstances of the individual case, and said when the debtor defaults there should be consequences. He also observed that debtors who miss making direct payments do not voluntarily account for the funds they did not pay. He thought the proposed language should not

be in the confirmation order. Judge Berger disagreed that the language encourages direct pay. He also noted that he is concerned about how to deal with a direct pay issue when it arises because *Kinney* was a harsh ruling. Judge Berger also noted that the debtor in *Kinney* did not raise a number of salient issues on appeal so they were waived.

There was a robust discussion about whether or not payments made directly to the creditor are payments “provided for under the plan” and what the consequences would be if they are not. Some questioned whether a plan that contemplates direct payments is still providing for payments under the plan. Some wondered whether stating that a creditor is not provided for under the plan might remove the plan’s protections for the debtor. Some opined that including the proposed language does not prejudice mortgage creditors who are receiving direct payments because a discharge does not affect the mortgage. And some opined that a debtor’s failure to make direct payments would not prevent a trustee from filing a motion to dismiss because, for example, the trustee could argue that by failing to make the direct payments the debtor would have disposable income.

The Committee also discussed whether the language could be modified to address these complex issues in a clear way.

During the discussion, January Bailey suggested a local rule be adopted to require a lender to send a warning letter before filing a motion claiming default of direct pay car loans, similar to the mortgage default warning letter.

**The majority of the Committee voted in favor of adding this sentence to Section 2: “Default of the debtor to make direct payments to a creditor, with the exception of domestic support obligations, shall not bar entry of discharge or completion of the case.” Jordan Sickman abstained and Bill Griffin voted against it.**

**The Committee also agreed to table the proposal to add this sentence to Section 2 so it could be revised and discussed further: “A creditor to whom payments are made directly is not provided for or paid under this plan; however, as to such creditor, the automatic stay under sections 362(a) and 1301 shall remain in effect.”**

The Committee also discussed the other sections of the form plan where amendments were proposed.

Section 3.1: The below median option is amended to add: “For cause, the plan period may extend beyond 3 years, to the extent necessary to make the payments specified in this plan, but no longer than 5 years.” This avoids the need to add non-standard provisions for a below-median plan that runs longer than three years.

The final sentence of the above median option is amended to state: “For the above the median debtor, plan payments include the following total projected disposable income paid pursuant to Official Form 122C-2 (include any Part 3 change): \$\_\_\_\_\_.”

Section 3.3: The language is amended to allow the debtor to propose payments that can come partly from the debtor directly and partly from an employer pay order (EPO):

- 3.43** Plan payments shall be made by:
- debtor-pay order directed to debtor, \$\_\_\_\_\_ per month; ~~OR~~and/or
  - employer-pay order directed to:

(Note: The per “month” language is a drop-down that allows the debtor to select various time frames such as per week, bi-weekly, etc.)

Section 4.2: A new line is added to the table so the total attorney’s fees can match the amount on Form 2016. Jill Michaux explained that this is to solve a local practice difference in Topeka.

Fees for the case:	\$
Case closing fees:	\$
<b>Total case fees allowed absent further application:</b>	<b>\$ 0.00</b>
Total fees paid to date:	\$
<b>Balance of fees to be paid through the plan:</b>	<b>\$ 0.00</b>
Number of months over which fees shall be paid:	

Sections 5 and 6: These are reformatted slightly to move check boxes to a single line to use less room.

Section 7.5: The word “all” is removed from this section: “Debtor must pay ~~all~~ DSO arrearages and all ongoing DSO payments in accordance with this plan to be eligible for a discharge.” There is not a requirement in every case for DSOs to be paid in full. This change allows partial DSO payments to be made if funds are available.

Section 10.2: This is a new subsection intended to make it easier to process conduit cases by including in the plan an authorization to release mortgage information to the trustee.

**10.2 Authorization to Release Information to the Trustee.** The debtor authorizes any and all lienholder(s) on real property of the bankruptcy estate to release information to the standing Trustee in this bankruptcy filing. The information to be released includes, but is not limited to, the amount of the post-petition monthly installment, the annual interest rate and its type, the loan balance, escrow accounts, amount of the contractual late charge, and the mailing address for payments. This information will only be used by the Trustee and the Trustee’s staff in the administration of the bankruptcy estate and may be included in motions before the Court.

The language is the substantially the same as the current authorization form. The question was asked whether this release would be sufficient when the attorney signs the plan and a debtor does not. The debtor is not required to sign the plan, though many do. If the debtor does not sign the plan, then the debtor might be asked to submit a separate authorization. The question was asked whether this imposes another burden on the attorney to verify that the debtors have authorized the release. It was observed that the attorney signs the plan pursuant to the agreement for the attorney to represent the client and there is an expectation that the debtor and attorney have spoken about the plan. Sharon Stolte suggested that this provision would satisfy most creditors without the need to have a separate authorization. Bill Griffin explained that lenders have not raised concerns about communicating with his office when an authorization form using this language is submitted.

Section 10.3: This language is new: “**Debtor’s Principal Residence is: \_\_\_\_\_.**” It was added so check boxes indicating that real estate is a principal residence could be removed from

subsections 10.2 and 10.4 of the 2017 version of the plan (i.e., subsections 10.4 and 10.6 in these minutes).

Section 10.4: It was proposed to remove the last sentence that says: “If a mortgage note is in default on debtor’s Principal Residence, post-petition payments shall be made through the Trustee in accordance with D. Kan. LBR 3015(b).2, which is incorporated herein. To the extent any provision of this plan conflicts with LBR 3015(b).2, the provisions of LBR 3015(b).2 shall control as to the Principal Residence.” This provision is already in the Local Rules and deleting the language would make this section shorter. Many Committee members wanted the sentence to remain in the plan to make it clear to creditors. The Committee decided to leave the language.

Section 10.5: The subsection heading is changed for style purposes to:

**Real estate claims subject to § 506 valuation (cramdown) is applicable.**

10.6: This language is being changed to clarify that property tax claims are to be included in this section rather than in Section 8 (Priority Claims). Language stating that “Post-petition property tax claims shall be paid directly by debtor” is being included so it does not need to be added as a non-standard provision. It also helps clarify that the trustee will only pay pre-petition property tax claims and not post-petition property tax claims.

Section 12: The language governing student loan obligations is revised to make the language clearer and to indicate that payments on student loan debt will be applied to the pre-petition claim first. There was a question about whether the plan could require payments to be applied to principal first. The Committee deleted draft language that would have required payments to be applied “first to principal, then to interest and fees.” Instead, the language only requires payments to be applied to “the prepetition claim.” Judge Berger agreed with the Committee’s decision to delete the language from the form plan, but suggested that the issue might be raised in a test case. The Committee also agreed to add “by the creditor” after “applied.” The Committee decided to recommend this language:

**Student loan debt that is not dischargeable under §523(a)(8) remains not dischargeable, absent the debtor prevailing against the creditor in an adversary proceeding. If the student loan is not discharged, interest will continue to accrue on the prepetition principal. Any payments disbursed by the Trustee through the plan will be applied by the creditor to the prepetition claim.**

Section 14: A new phrase is added to the end of the section as follows:

General unsecured claims will be paid after all secured claims and all other unsecured claims, including administrative, priority, and separate class claims, not less than the greater of: the amount those creditors would receive if the estate of debtor were liquidated under chapter 7 **or the amount the claims are entitled to under Form 122-C.**

Section 15: This section is amended to clarify that the value includes the total liquidation value, without first reducing it by the amount of priority claims (which are sometimes unknown at the time the plan is created). This section had been used differently in Topeka versus Wichita and the change provides clarification. Carl Davis wants the total value listed, not the amount reduced by the estimated priority claim amount. Bill Griffin reported that Carl Davis is fine with

this change. In the draft considered by the Committee, the Word document contained a formula that automatically calculates the net distribution amount. It was suggested that the final form not include formulas to avoid confusing attorneys.

The Committee commented that the line “Less estimated chapter 7 fees and costs” includes any fees or costs that would reduce the net distribution to priority and general unsecured creditors (e.g., advertising or auctioneer costs to sell an asset, real estate commissions for selling real estate, or expenses to liquidate a bank CD). The space for the “Explanation of calculation and list of property” should include details about the administrative costs that were considered.

After significant discussion, the Committee agreed to change the phrase “nonexempt property listed below” to “property to be distributed under the plan,” delete the word “specified,” and add “set forth below.” This was to better mirror statutory language. The Committee also decided it is helpful to keep the information in table format.

Debtor represents that the ~~nonexempt property listed below~~ property to be distributed under the plan would have the ~~specified~~ liquidation value set forth below if it were administered in a chapter 7 case. ~~[List property and explain how the computation of the liquidation value was made or attach a separate document explaining computation.]~~

Total liquidation value of case:	\$
Less estimated chapter 7 fees and costs:	\$ 0.00
Equals net distribution to priority and general unsecured claims:	\$ 0.00

**Explanation of calculation and list of property:**

Section 16: This section is reformatted slightly to use less room.

Section 17: “Disbursed by” columns are added to indicate whether the “Trustee” or “Debtor” is disbursing funds to the separate class creditors. During the discussion, Bill Griffin said that he and Carl Davis object to many separate class creditors being paid directly by the debtor because by default claims should be paid through the trustee, although exceptions do sometimes make sense.

The creditors listed below are separate class creditors:

Creditor	Debt	Disbursed by:	
	\$	<input type="checkbox"/> Trustee	<input type="checkbox"/> Debtor
	\$	<input type="checkbox"/> Trustee	<input type="checkbox"/> Debtor

The Committee also agreed that column headings in the tables in Section 10.4 and 10.6 under the “Disbursed by” heading should be changed from “Direct” to “Debtor” to make them consistent with the table in Section 17.

Section 18: This section is reformatted to add a table for non-standard provisions to be listed along with their corresponding section numbers.

This plan has Non-Standard Provisions as follows:

Section Number	Nonstandard Provision

**The Committee unanimously recommended the changes made to Sections 3 through 18 of the plan.**

*E. Informational Update about 341 Meetings by Zoom*

Jordan Sickman informed the Committee that the precise schedule for rolling out 341 meetings by Zoom is unknown, but as soon as he knows more information he will share it. He also said that training will be provided for trustees and attorneys separately.

*F. Informational Update About Adversary Cases Seeking Student Loan Discharge from the United States*

Chris Allman shared an update about how the Department of Education and US Attorney’s Office (USAO) are handling adversary cases that seek discharges of student loans. He briefly explained various programs that exist for debtors to seek a discharge of student loans. They can seek discharge if they are permanently disabled. They can seek discharge if the school closes before providing the full education that the student paid for. He also reported that income contingent repayment plans are available.

The attestation program is another avenue debtors can pursue. He encouraged debtors to explore this flexible tool. The USAO wants to avoid burdening debtors with discovery that can be avoided through the attestation program. He expects these cases will be resolved by an agreed order. He reported that in Kansas to date there have been three attestation cases: one (a pro se case) was granted, one was a partial discharge as a compromise, and one was administratively denied and was headed for trial. He reported that the USAO will likely fight a discharge if the debtor appears to have disposable income that could be used to pay the student loan in full or in part.

Jill Michaux asked if a 90-day stay is sufficient to allow an attestation to be processed. Kathryn Sheedy reported that there are only seven DOJ litigation specialists in the country available to review attestation cases, so they are overwhelmed, but there is an expectation that additional specialists will be hired to speed up the process.

The meeting was adjourned at 1:14 pm.