SO ORDERED.

SIGNED this 11th day of June, 2014.

Janice Miller Karlin
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:	**Case No. 12-40210**
Lisa Marie Church,	**Chapter 13**
Debtor.	

Order Continuing Debtor's Motion for Entry of Discharge

Debtor Lisa Marie Church's attorney has requested this Court abrogate the requirement in this division that debtors file and serve on creditors a motion for entry of discharge upon completion of plan payments in Chapter 13 bankruptcy cases. Because the Court finds that both the Bankruptcy Code and Federal Rules of Bankruptcy Procedure generally require notice of such a motion to creditors with an opportunity to object, and a hearing if an objection is filed, this request is denied.

I. Background and Procedural Facts

Debtor's Chapter 13 bankruptcy petition was originally filed in the Kansas City division of this court in October 2009, as a joint case with her then-husband, Jeffrey

Church.[1] About two years later, Debtor and her husband divorced, and Debtor's case was transferred to the Topeka division.[2] On March 6, 2014, the Clerk of the Court issued its routine Notice to Chapter 13 Debtor(s) to Verify Filing of Statement of Completion of Personal Financial Management Course ("FMC").[3] This Notice was the Court's third reminder to Debtor that if she failed to file the statement, she would not receive a discharge, notwithstanding any later completion of plan payments.[4]

Soon thereafter, on March 10, Debtor did complete the course, but did not contemporaneously file the required Certificate to demonstrate that fact.[5] On March 27, she filed a "Certification of Compliance and Motion for Entry of Discharge,"[6] certifying that "[all] payments have been completed under the terms of Debtor's confirmed Chapter 13 Plan;" the motion omitted any reference to her completion of the required course.

The Trustee objected to Debtor's motion, claiming it was premature as the case

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[1] Doc. 1.

[2] Doc. 33; Doc. 37; Doc. 43.

[3] Doc. 100.

[4] Doc. 7 was the first such notice, dated October 20, 2009. Doc. 18 was the second such notice, dated April 19, 2010. Doc. 100, dated March 6, 2014, is the third notice. These redundant notices have been formulated because the Court never wishes to have a debtor complete a plan but be denied a discharge because of failure to complete the myriad procedural steps required by Congress.

[5] Debtor finally filed that Certificate of Debtor Education, whereby Hummingbird Credit Counseling and Education certified Debtor had completed the required course, on May 20, 2014. *See* Doc. 112.

[6] Doc. 104.

was "not yet complete."[7] At the hearing that followed, Debtor's attorney admitted he filed the motion prematurely and "inadvertently," since payments were not complete and Debtor had failed to file her FMC certificate.[8] Notwithstanding the Trustee's willingness to simply continue the hearing on the Debtor's Motion until such time as she had completed plan payments and filed her FMC certificate, Debtor's attorney wished to instead advance the argument that he was either not required to file the Motion for Entry of Discharge that was already on file, and of which he had already provided notice, or that he was not required to give notice of that Motion to Debtors' creditors.

Although the issue is clearly moot here, because counsel has already done what he claims he is not required to do—send notice to the matrix, the Court asked for the parties to brief the issue so that it could consider this potentially recurring issue. Briefing is complete, and this side issue is ripe to allow the Court to provide guidance to the parties.

II. Analysis

There is no dispute that Debtor seeks a discharge under 11 U.S.C. § 1328(a),[9] which states in pertinent part:

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[7] Doc. 105.

[8] Doc. 113.

[9] All citations are to the Bankruptcy Code, 11 U.S.C. 101 et seq. Due to an apparent mis-cite, both parties initially discussed a discharge under subsection (b) of § 1328, which deals with so-called "hardship discharges." The parties appear to now agree that discharge in this case is sought under § 1328(a).

> . . . as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title . . .

In order to receive a discharge under § 1328(a), debtors must complete all payments due under their Chapter 13 plans and file the appropriate certification concerning domestic support obligations. Additional prerequisites to receiving a discharge are found in § 1328(f), which sets limits on the time periods for receiving a discharge,[10] and in § 1328(g), which requires that a debtor complete an instructional course in personal financial management.[11]

As noted, Debtor admits she did not qualify for discharge under § 1328(a) when she filed her motion because she had not yet completed all payments required by her chapter 13 plan. Once Debtor completes her plan payments, however, the Trustee apparently has no opposition to Debtor's motion for discharge.

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[10] § 1328(f) ("[T]he court shall not grant a discharge . . . if the debtor has received a discharge– – (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter; (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order."). The Trustee does not argue this subsection controls here.

[11] § 1328(g)(1) ("The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111."). Because Debtor has finally filed the required certification, the Trustee no longer contends this subsection controls here.

Debtor's attorney, however, raises a larger issue—he believes that no debtor should have to ever file a motion for discharge, or that the Trustee should not be allowed to object to the motion—contending that the motion "is a nuisance and a waste of time and resources." Counsel argues, as a practical matter, that many of the notices sent to the mailing matrix at the end of a case are returned as undeliverable, as creditors are sold, merge, or change their addresses over the course of a chapter 13 plan. Debtor's attorney contends, as a legal matter, that neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure require a debtor to file such a motion, or notify creditors, and that this Court should so decree to save time and money for future debtors.

The Trustee responds by citing to § 1328(h), which contains additional restrictions to granting a discharge. It states that

> The Court may not grant a discharge under this chapter unless the court **after notice and a hearing** held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that – –
>
> (1) section 522(q)(1) may be applicable to the debtor; and
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> (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(B).[12]

Under this subsection, a discharge cannot be granted until the Court determines the applicability of § 522(q)(1). Section 522(q)(1), added to the Code with the broad BAPCPA revisions in 2005, places a monetary cap on a residence, burial exemptions

[12] Emphasis added.

and homestead exemptions when certain qualifying factors are met.[13] Subsection (h), therefore, requires the Court to make a determination regarding the applicability of § 522(q) before it can enter a discharge. But no Court can make this determination without assistance from debtors, trustees, and creditors. The Court simply does not have the facts necessary to support such a determination without input from these parties. And, more pertinent to the discussion at hand, the way these parties receive notice that the Court needs to make such a determination is by providing those interested parties with notice and an opportunity to object, which is provided when a

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[13] The text of § 522(q) reads:

> (q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $155,675 if--
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> > (A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or
> >
> > (B) the debtor owes a debt arising from--
> >
> > > (I) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;
> > >
> > > (ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;
> > >
> > > (iii) any civil remedy under section 1964 of title 18; or
> > >
> > > (iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.
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> (2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

(internal footnote omitted).

debtor schedules a hearing on a motion for entry of discharge, if anyone objects.

Debtor's attorney argues that no debtor should be burdened with providing this notice, and further argues that it is unlikely creditors would have access to § 522(q) information. From those arguments, Debtor's attorney concludes that providing notice to all creditors is therefore wasteful in these circumstances. But the Code requires that the Court make this determination. Although it is true that generally the motion for discharge, and the § 522(q) certifications made therein, go unchallenged, the Court has no ready access to this kind of information, and cannot easily determine on its own whether a debtor's certification should be challenged. The only way to potentially discover whether, for example, a debtor has been convicted of an intentional tort that caused physical injury, is to notify all creditors and see if any creditor steps up to say the debt owed them arose from those circumstances. The same applies to each of the categories contained in § 522(q). And who would be better than the creditors a debtor presumably listed in her schedules, hoping to discharge those debts, to provide the value of debtor's homestead, or information about a debtor's conviction history, securities violations, etc.?

In addition, as the Trustee notes, Federal Rule of Bankruptcy Procedure 2002(f)(11), which was added in 2008, also requires notice by mail of "the time to request a delay in the entry of discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h)." Rule 2002(f)(11) requires that this notice be given to "the debtor, **all creditors**, and

indenture trustees."[14] And the notice that is required can either be given by "the clerk, or some other person as the court may direct." In this district, the debtor has been directed to give this notice by filing, and serving notice of, the motion for entry of discharge.

Debtor's attorney does not seriously dispute that Rule 2002(f)(11) requires notice to creditors; he merely argues that such rule is not fair. This argument is not well taken.

First, Debtor is the party seeking a discharge. It is wholly logical that Debtor be the one required to take the necessary steps (and incur the expense, unfortunately) to obtain that discharge. Second, Debtor is the party required to create a creditor matrix at the beginning of the case. It again is logical for Debtor to use the matrix she created (and updated throughout the case if she is advised that her own creditor addresses are defective or no longer valid) to send notice of her motion for entry of discharge, as she has easy access to the addresses. Burdening the Court, and by extension, the taxpayers, with the cost of such a notice to creditors is untenable.

Both the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure require notice prior to entry of discharge. Although oftentimes that notice to creditors will not yield an objection, the Code and Rules mandate that opportunity to object be provided.[15] While the attorney's desire to keep costs low for his future clients is both

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[14] Emphasis added.

[15] As the commentary to Federal Rule of Bankruptcy Procedure 1007(b)(8)—another Rule dealing with the § 522(q) proscriptions—states, creditors must be given the opportunity to challenge a debtor's § 522(q) certification. *See* Fed. R. Bankr. P.

admirable and understandable, reduction of expenses cannot be achieved through a degradation of the requirements Congress has imposed.[16]

III. Conclusion

The Trustee requests that the Court overrule Debtor's Motion for Entry of Discharge because even Debtor admits it was prematurely filed since she had not finished her plan payments or filed her FMC certificate when she filed the motion. Alternatively, the Trustee requests continuance of Debtor's Motion for Entry of Discharge until such time as the Trustee dockets a Notice of Completion of Plan Payments. The Court elects to continue Debtor's Motion to a hearing on July 1, 2014, at 9:00 a.m., at which time the issue will be whether the Motion is still premature. If the Trustee, the only objecting party in interest, believes Debtor has completed all steps to obtain a discharge by that date, he may elect to place the matter on the "no-call" list, with Debtor submitting the agreed order.

Although Debtor has already filed and served on her creditors the motion for entry of discharge upon completion of plan payments, her request for a declaration that she need not similarly notify her creditors in any future cases she may file is denied.[17]

1007, 2008 Amendments, cmt. to subdivisions (b)(3) to (b)(8) ("Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.").

[16] The Trustee cites examples from other districts where a motion for entry of discharge is required, and calls the practice "prevalent nationwide."

[17] Before ultimately praying for a complete bar, Debtor's attorney seemed to suggest a lesser remedy—that when a debtor is not exempting the kinds (and amounts) of property listed in § 522(q), that a debtor should not have to mail notice to the entire matrix because §

It is so ordered.

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1328(h) does not come into play. An analogous situation is found in Fed. R. Bankr. P. 3015(g), when a debtor can file a motion to obtain permission to limit notice of a modified plan only to those creditors impacted by the modified plan. Although nothing similar is provided in the Rules related to motions for entry of discharge, if a debtor was claiming none of the exemptions contained in § 522(p)(1), such that a contest about property values or the debtor's criminal or other history would never come into play, the Court may consider entertaining a motion to limit notice of the motion for entry of discharge, if accompanied by a sworn declaration or affidavit signed by the debtor, swearing that he does not seek to exempt any of the property listed in § 522(p)(1). This is not the case to decide if such an exception is appropriate, both because the notice has already been provided and because this Debtor has claimed one of the exemptions listed in § 522(p)(1).