

**Outline of Court Procedures, Trustee’s Policies and Procedures, and
Required Forms For Creditors’ Attorneys in Chapter 13 Cases
Administered by Trustee Herbert L. Beskin in the Western District of Virginia**

In an effort to assist creditors’ attorneys and other interested parties, this section will set out the Court’s procedures, the Trustee’s policies and procedures, and the forms to be used by creditors in Chapter 13 cases administered by Trustee Herbert L. Beskin. The outline will follow the path of a Chapter 13 case chronologically from beginning to end: filing of the case; creditors’ meeting; confirmation; post-confirmation; completion of plan payments, discharge, and closing of case; and miscellaneous matters. **This outline is a truncated, creditor-focused, version of a much longer and more detailed outline and set of forms in the Debtor Attorney Information section of this website. For a much more thorough explanation of the confirmation and post-confirmation process, and the issues that arise from the debtor attorney’s perspective, please see that longer outline.** Also to be found in the Debtor Attorney Information section is the full CLE outline from the most recent annual seminar for Western District Chapter 13 attorneys put on by Trustees Beskin and Rebecca Connelly each fall

Each section of the outline will consist of two parts. The first part will explain *what* the procedures and policies are and provide forms for each one. The second part, “Practice Pointers,” will provide the Trustee’s suggestions and recommendations as to *how* best to comply with the procedures and policies.

At the end of the outline is a list of all the Trustee’s forms referred to in the outline, organized chronologically from the beginning of the case until the end. These forms can be accessed either by double-clicking on the form within the outline itself, or on the form in the chronological list.

In order to help attorneys new to the Western District acclimate to the procedures required in Chapter 13 cases in this District, the Trustee is available to answer questions and encourages creditor attorneys and their staff to set up a time to visit his office and meet the Trustee’s staff.

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OUTLINE

I. **FILING OF THE CASE:**

- A. **Court website:** The Bankruptcy Court for the Western District of Virginia has a website which contains important information about procedures, Local Rules, personnel, forms, deadlines, etc. The website's home page can be found at <http://www.vawb.uscourts.gov/courtweb/enter1.html>. This entry point also contains a link to the Court's CM/ECF case look-up system, which requires a user name and password in order to access specific case information. A training area is available for attorneys who will be filing pleadings on CM/ECF. Attorneys who are new to the Western District should familiarize themselves with this site and the Court's requirements.
- B. **Trustee's office structure and whom to contact:** Beginning 10/01/2008, the staff contact person for a case will depend upon the stage of the case and the nature of the issue. Kathryn will process all 341 documents. Cassandra and Brett will prepare all cases for Court hearings. Ryan will handle closing of cases. Catherine will provide "customer service" and action item follow up for debtors, their attorneys, and creditors; she will also continue to conduct the debtor education program. All orders will be processed through the paralegal, R.C. Chris will handle claims-related issues. All court hearings and 341 meetings will be handled either by the Trustee or the staff attorney, Angela.

For clarification, "*action items*" are any issues that are not related to an upcoming court hearing or 341 meeting. This includes, but is not limited to, the following examples: payoff requests; notice of changes in a debtor's situation or contact information; processing insurance proceeds on a totaled car; monitoring compliance of orders suspending payments and resolving Trustee's motions to dismiss; coordinating review of no-provision issues; and all matters related to the debtor education program.

Contact information for each stage of a case is as follows:

1. **Pre-341 meeting:**
 - a. For matters relating to creditors' meeting documents ("341 docs"):

| | | |
|---------|--|---------|
| Kathryn | ch13docs@ntelos.net | ext. 12 |
|---------|--|---------|
 - b. For action items concerning a case:

| | | |
|-----------|--|---------|
| Catherine | catch13@ntelos.net | ext. 14 |
|-----------|--|---------|

2. **Between 341 meeting and confirmation of case:**
 - a. For issues or questions relating to matters which have been set for a Court hearing (including Trustee's Report issues or documents), or matters which may have to be set for hearing, contact:

| <u>Case #</u> | <u>Case Admin.</u> | <u>E-mail address</u> | <u>Tel.</u> |
|---------------|--------------------|--|-------------|
| -00 to -49 | Brett | brettc13@ntelos.net | ext. 17 |
| -50 to -99 | Cassandra | ccareych13@ntelos.net | ext. 16 |
 - b. For action items concerning a case:

| | | |
|-----------|--|---------|
| Catherine | catch13@ntelos.net | ext. 14 |
|-----------|--|---------|

3. **Post-confirmation:**
 - a. For issues or questions relating to matters which have been set for a Court hearing or may be set for hearing, contact Danielle or Cassandra as set forth in (2), above.
 - b. For action items concerning a case:

| | | |
|-----------|--|---------|
| Catherine | catch13@ntelos.net | ext. 14 |
|-----------|--|---------|
 - c. For issues or questions relating to the closing of a case, including wage release orders for completed plans:

| | | |
|------|--|---------|
| Ryan | ryanch13@ntelos.net | ext. 13 |
|------|--|---------|

4. **Orders:** All orders which require the Trustee's signature should be sent via e-mail to the paralegal, R.C., at:

| | | |
|------|--|---------|
| R.C. | beskinordc13@ntelos.net | ext. 20 |
|------|--|---------|

Please identify the order in the subject line of the e-mail by case number, debtors' names, type of hearing, and date of hearing. For example: "07-60579 T & E Johnson MTLT 1/20/08," where 1/20/08 is the date of the hearing that was held on the Motion to Lift Stay; or "07-60579 T & E Johnson TMTD 1/20/08," where 1/20/08 is the date of the hearing that was held on the Trustee's Motion to Dismiss.

C. **Chapter 13 Plan format and initial notices:**

1. **Standard Chapter 13 Plan format:** In the Western District,

debtors are required to use a standard Chapter 13 Plan format which has been approved by the Judges. This form can be found on the Court's website (Local Forms, Form 3015-1B).

2. **Special Notice:** The Court requires that if a secured creditor's lien is being avoided or modified (a "cram down," etc.) pursuant to paragraph 3.B or 7. of the plan, a "Special Notice" must be filed with the plan and served upon the creditor. This form can be found on the Court's website (Local Forms, Form 3015C). Lien avoidance under Code §506 will also require an adversary proceeding. Service on the lienholder's registered agent is required pursuant to Rule 7004.

3. **Adequate Protection Payments:** Section 1326 of the Code now requires that a Plan provide that adequate protection ("AP") payments be made to any creditor that is being paid through the plan and is secured by a purchase money security interest in personal property. These payments must commence within 30 days from the date the case is filed, and a case cannot be confirmed until the Court is satisfied that the plan has properly provided for such payments. A plan may propose that such payments be made directly by the debtors to the creditor, or they can be made to the Trustee as part of the debtors' plan payment and disbursed by the Trustee.

If such payments are made to and disbursed by the Trustee, there will be no need for the debtors to provide proof of payment or proof of receipt by the creditor. If the payments are made directly by the debtors to the creditor, the Trustee will have to obtain proof of payment by the debtors and proof of receipt by the creditor prior to confirmation. Because of the difficulties inherent in proving that the debtors have made these payments, virtually all of the plans filed in this area have proposed that AP payments be made by the Trustee rather than directly by the debtors.

The BAP & CPA Code changes do not specify the required minimum amount of the AP payments. The Court's required Chapter 13 plan form provides that the equal monthly payments provided in paragraph 3 to a secured creditor entitled to AP payments are deemed to be the creditor's AP payments unless the plan provides otherwise elsewhere.

If the plan proposes not to pay a creditor anything for AP payments, the creditor still needs to be noticed of this in the same fashion. Sec. 1326. Over-secured creditors are still entitled to AP payments.

The Court's **Standing Order #9** [see the Court's website] requires that a Notice of Adequate Protection Payments must be sent by the debtors' attorney to affected creditors within five days of the date on which the initial plan is filed. If the creditor fails to object to the proposed AP payments within fifteen days, the creditor is deemed to have accepted the proposed payments, and no separate Court order will be necessary. The required "**Notice of Proposed Adequate Protection Payments and Opportunity for Hearing on Objection**" is Form 4008-1A in the Local Forms section of the Court's website.

4. **Automatic Stay—Extension of [Code §362(c)]:** A hearing to extend the automatic stay beyond the initial 30 days [362(c)(3)] or to establish a stay

[362(c)(4)] must be held by the Court within 30 days of the date on which the case is filed, and the date and time of any hearing must be arranged beforehand with the Clerk's Office. Debtors' counsel must notice *all* creditors of any such hearing.

- a. Judge Krumm requires live testimony for such hearings, and has announced that he especially wants to hear evidence regarding the issue of good faith in the filing of the instant case.
 - b. Judge Anderson has approved the use of a form notice and order which allows (i) the temporary continuance of the automatic stay until a second hearing can be held, and (ii) the use of "negative notice" to creditors so that the second hearing will not need to be held if no creditors object to the continuation of the stay. **[FORM # 1]**.
5. **Noticing Requirements:** For noticing requirements for initial and amended plans, see the first page of the Form Plan and Local Rules 3015-1 and 3015-2. As stated above, for Special Notices see Bankruptcy Rule 7004.

D. **Payments, Pay Direct Orders, and Wage Deduction Orders:**

1. **Plan payments** are to be sent to a SunTrust Bank lockbox maintained by the Trustee in Memphis, Tennessee. **Payments are not to be sent to the Trustee's office in Charlottesville.** The address for payments is:

Herbert L. Beskin, Trustee
Chapter 13 Trustee's Office
P.O. Box 1961
Memphis TN 38101-1961

In every case, an order must be entered by the Court either ordering the debtors themselves to make the payments proposed in the Plan (a "*pay direct order*"), or ordering the debtors' employer to make the plan payments (a "*wage deduction order*"). The debtors' attorney is required to file the appropriate order with the Court. This order should be filed as soon as the case is filed so that the debtors will not fall behind right away. Studies show that automatic wage deduction cases are about five times more successful than direct payment cases.

Both Judges now require wage deduction orders in every case unless (a) there is a compelling reason why one should not be required, and (b) the Trustee endorses an order allowing a pay direct order. The Trustee is requiring any employed debtor to appear before the Judge to request an exception to this rule.

2. **Mortgage payments:** Sometimes extra precautions are advisable to keep debtors who have had trouble making their mortgage payments every month from defaulting on future payments. One possibility is for the plan to provide

that the monthly mortgage payment will be made through the plan by the Trustee; in this scenario, the Trustee will take his usual commission on each such payment.

A second method is to have the Court enter a second, separate, wage deduction order with the employer that will have the employer send a separate check directly to the mortgagee each month to cover the mortgage payment. This method has the advantage of saving the debtors the Trustee's commission each month, and getting the payment to the mortgagee more quickly.

A third option is to set up an automatic monthly draft from the debtors' checking account directly to the mortgagee. This can be done by the debtors without any Court order or hearing.

E. **Other matters**

1. **Attorney's Fees:** At this time (1/08) there is no Local Rule or Standing Order authorizing a standard fee for debtors' counsel in Chapter 13 cases. Currently the Trustee is not objecting to attorney's fees of up to \$2,500 for all ordinary services required through confirmation. If any attorney is requesting fees in excess of that amount, both the Court and the Trustee will expect to see contemporaneous time records and an explanation as to why such fees are being requested.

The Court has ruled that while attorneys fees may be paid *ahead* of unsecured claims, executory contracts, secured debt arrears, and priority claims other than support arrears, they come *behind* fixed monthly payments to secured creditors and at best can only be paid *pro rata* with support arrears being paid by the Trustee.

For attorney's fees for work performed after confirmation of the case, see the "Post-Confirmation" section of this Outline.

2. **Bankruptcy Link:** The Trustee's case management software provider, EPIQ Systems, maintains a website that allows debtors' attorneys and creditors to have 24/7 access to basic information about all the Trustee's pending cases: payments received, claims filed, disbursements to creditors, etc. Access to this website is free, and can be obtained by e-mailing to the Trustee a request for access to the system. The Attorney may be required to sign an access agreement. Please note that there is always a delay of 5 – 10 days between the date a payment is sent by the debtor to the Memphis SunTrust lockbox and the date it appears on Bankruptcy Link.
3. **Orders needing the Trustee's endorsement:** Almost all orders in a Chapter 13 case in this district require the endorsement of the Chapter 13 Trustee. At any time in the case if an order requires the Trustee's endorsement, please send it via e-mail to: beskinordc13@ntelos.net. Using this email address will ensure that the order is sent directly to the Trustee's paralegal, R.C., and that it will be reviewed promptly. As stated previously, the Trustee asks that orders be sent by e-mail instead of by fax or the postal service, and that they include the full case number, the name of the

debtor(s), the kind of order, and hearing date in the subject line of the email. (E.g. "07-62161 B Jones MTL 1/21/08").

4. **DSO Letters:** At the beginning of the case, the Trustee is required by BAP & CPA to send notice to any DSO (Domestic Support Order) payee and the state agency in charge of collecting child support to alert them to the case and certain information about the debtor. **[FORM # 11]**. In order to ensure proper noticing of such claims, the Trustee will not recommend confirmation unless all DSO payees are listed on Schedule E, and he recommends that the state child support agency be listed there as well.

F. **Practice Pointers:**

1. **CMI / Form B22C: Disposable income issues:**

- a. Line 47:

- (1) In Re McPherson, 350 B.R. 38 (2006), opinion by Judge Anderson: debtors cannot deduct amount of pre-petition contractual payments in cram down situations; they can only deduct the amount being paid by the Trustee in the plan on the secured portion of the debt.
- (2) In re Kermit and Terri Ball, Case #06-70154, 5/17/06 opinion by Judge Krumm: debtors cannot deduct the amount of pre-petition contractual payments if in their plan they are surrendering the collateral.
- (3) *Good faith requirement:* In In Re Earl and Robin Hylton, supra, Judge Krumm stated that the confirmation requirement of good faith [1325(a)(3) and (7)] still applies, and the Court will still examine such secured debt payments to determine "if the unsecured creditors are better off than they would be if the asset is excluded and the monthly payments on the secured debt are added into a monthly plan payment."

- (b) Line 58: Monthly Disposable income:

- (1) This is the net amount (after Trustee's commission) which must be paid to unsecured non-priority claims and attorney's fees in the plan. It does *not* include plan payments for priority claims, Trustee's commission, or secured debts.
- (2) When this figure is significantly different from the disposable income figure on the bottom of Schedule J, the Trustee may look closely at the feasibility and good faith of the proposed plan payments. See Hylton, supra.

2. **Issues regarding the Chapter 13 Plan:**

a. **Determining the Applicable Commitment Period (“ACP”):**

- (1) Above median: In Re Earl and Robin Hylton, 8/22/07 opinion by Judge Krumm, Case # 07-70320: 60 months of payments are required, unless the plan pays 100% in a shorter period of time, and the ACP is a temporal requirement. Code sec. 1322(d)(1).
- (2) Below median: 36 months of payments are required, unless 100% is being paid in a shorter period of time. Code sec. 1322(d)(2).

b. **Disposable income:**

- (1) Above median: Disposable income is to be determined using B22C, but good faith analysis still applicable (e.g., payment of luxury secured debts; see previous section of outline). In Re Earl and Robin Hylton, 8/22/07 opinion by Judge Krumm, Case # 07-70320. The Trustee may also seek an increase in the plan payment if the difference between the disposable income figures in Form B22C and Schedule J is very large.
- (2) Below median: The Trustee uses the disposable income figure as determined at the bottom of Schedule J, unless he believes that the numbers on Schedule I or J are incorrect or claimed expenses are greater than reasonably necessary.

c. **Computing percentage payout to unsecured creditors:** When computing plan payments, please assume a Trustee’s commission of 10%, as that is the maximum rate that can be charged and is the figure the Trustee’s staff will use in evaluating any proposed plan.

d. **Chapter 7 test calculations:** The Trustee follows the ruling of Judge Stone in In re Christopher and Angel Todd, Case #7-02-04451, 3/17/03 opinion in calculating the amount necessary to meet the “Chapter 7 test” of Code section 1325(a)(4). That decision held that in evaluating whether a plan meets this test, both reasonable costs of sale and the Chapter 7 Trustee’s statutory commission must be deducted from the fair market value of the property in question. The Trustee uses a 6% commission for improved real estate and a 10% commission for unimproved real estate and personal property; the Chapter 7 Trustee’s sliding commission rate can be found at Code section 326(a).

e. **Paragraph 3 of the form plan:** Note that if nothing is provided in paragraph 11 regarding Adequate Protection payments for these

creditors, the monthly payments in this paragraph will be the Adequate Protection payments required by Code section 1326.

(1) Paragraph 3A:

- (a) To be paid in full, a “910 claim” must satisfy *all* of the requirements of Code section 1325: it is purchase money, it is secured by personal property, it was purchased within 910 (or 365) days, and it was purchased for the debtor’s personal use. If the balance owed includes any “negative equity” from a trade-in that was part of the purchase, that portion of the balance may be subject to bifurcation because it is not part of the “purchase price.” E.g., In re John and Amy Pajot, 7/17/07 Opinion by Judge Tice, Case # 06-31446-DOT (Bank. E.D. Va.).
- (b) Interest rate: Rate should be in accordance with the Supreme Court’s Till decision. The Trustee uses the Wall Street Journal prime rate as of the first day of the month in which the plan was filed.
- (c) The monthly amount and the number of months should be specified; the plan should not say “pro rata”; the total amount to be paid should include applicable interest.

(2) Paragraph 3B:

- (a) Attorney must file a Special Notice (supra, section I. C.) for every creditor whose claim is being “crammed down” pursuant to this provision.
- (b) Interest rate: Rate should be in accordance with the Supreme Court’s Till decision. The Trustee uses the Wall Street Journal prime rate as of the first day of the month in which the plan was filed.

(3) Paragraph 3C:

- (a) The Fourth Circuit has recently ruled that “910 creditors” cannot be forced to accept surrendered collateral “in full satisfaction” of the underlying debt; such creditors retain their right to file an unsecured deficiency claim. Tidewater Finance Co. v. Kenney, No. 07-1664(L) (4th Cir. 6/27/08).

g. Paragraph 5 of the form plan:

- (1) Payment of arrearages:
 - (a) If provision is paying interest on arrears, Trustee will usually object unless the plan is 100% or has been extended beyond required ACP for that purpose.
- h. Paragraph 10 of the form plan: The Court requires that any sale or refinancing of real estate be noticed to all parties and approved by the Court (see section V. J., below)
- i. Paragraph 11 of the form plan:
 - (1) Intent of paragraph: Generally, anything not in the standard format of paragraphs 1-10 should go here. Paragraphs 1-10 are not supposed to be altered.
 - (2) Adequate Protection payments: If the Adequate Protection payments are to be different from the payments set forth in paragraph 3, they will be set forth in this paragraph.
 - (3) Providing substantive or future-problem-resolving provisions: Both Judge Anderson and Judge Krumm have restricted the use of this paragraph to affect substantive rights of creditors. The Judges struck down 18 proposed sub-paragraphs of paragraph 11 inserted by debtor's counsel. Many of these proposed provisions would have affected substantive creditor rights (e.g.: negating contractual arbitration provisions; how payments were to be applied; releasing of title). Read this decision before trying to use this paragraph in any new or creative ways. In re Susan Maupin, Case #07-61051, 11/1/07 opinion by Judge Anderson; In re Louis and Nikki Jones, Case #07-50446, 12/14/07 opinion by Judge Krumm reaching the same conclusion regarding the same provisions.

II. CREDITOR'S (SECTION 341) MEETING

- A. Conduct of the creditors' meeting: The debtors' testimony is under oath and is digitally recorded. The Trustee or his staff attorney will have questions for the debtors, and creditors attending the hearings will be allowed to ask questions. Debtors are encouraged to ask questions of the Trustee. There will also be a fifteen minute talk by the Trustee or staff attorney about the debtors' obligations in Chapter 13.

At the end of the creditors' meeting, the Trustee and the debtors' attorney will determine, as best they can, if the case can be ready at the originally scheduled confirmation hearing. If it appears that there are appropriate reasons why it cannot be ready, the Trustee and the

attorney may agree that the case should be set for a later confirmation date, and the Trustee's Report will so state.

- B. **Trustee's Report and Objections Following Meeting of Creditors (the "Trustee's Report")**: The day after the creditors' meeting, the Trustee will file with the Court, the debtors, and the debtors' attorney his Trustee's Report. [FORM # 12]. This is a detailed three page report which sets forth the Trustee's objections to confirmation, if any; any documents or information that still need to be submitted; any motions that need to be filed by debtors' counsel; and any other items that need to be resolved in order for the case to be confirmed.

Please note that: (a) this means that there is pending in every case a motion to dismiss until such time as the case is confirmed, and (b) the Trustee retains the right to ask at any subsequent confirmation hearing for dismissal of a case if either the debtors are not current in their proposed plan payments or the attorney fails to present appropriate reasons why matters in the Trustee's Report remain unresolved.

III. **PERIOD BETWEEN CREDITORS MEETING AND CONFIRMATION**

- A. **Debtors' Pre-Confirmation Affidavit**: This affidavit is to be submitted to the Court, with a copy to the Trustee, prior to confirmation. This form is available on the Court's website under "Trustee Forms." It provides the Trustee and the Court with information and certifications which under BAP & CPA must be obtained before a case can be confirmed. Specifically, the debtors must affirm to the Court that they are current on all post-petition tax payments, support payments, and secured debt payments; that they have filed all tax returns required in the past four years; and that all objections to confirmation have been resolved.

While this affidavit is not mandatory, the Trustee believes that it will save debtors and attorneys significant time and effort in the confirmation process. If the affidavit is not used, the debtors will either have to appear at the confirmation hearing and testify to the necessary facts, or provide other appropriate documents to achieve the same result. The *attorney must sign off on the affidavit* to show that he/she has reviewed it with the debtors.

The affidavit states that the information being certified by the debtors is true as of that date, and will also be true as of the date of the confirmation hearing, so the debtors have an affirmative obligation to notify the Trustee if, for example, they fall behind in support payments or secured debt payments after the affidavit is executed but prior to the confirmation hearing. The debtors' attorney needs to make sure the debtors understand this aspect of the affidavit. If a motion to lift stay is filed shortly after confirmation and it becomes clear that the debtors' affidavit was not correct as of the date of confirmation, the Trustee reserves the right to bring this problem to the Court's attention and ask for sanctions. For example, the Trustee may object to any modified plan that seeks to cure a post-petition mortgage default by reducing the payout to unsecured creditors.

- B. **Attorney's responsibility to complete all items on Trustee's Report, contact Trustee's office once case is ready, or confirm status of case prior to the confirmation hearing**:

“Six months/three strikes and you’re out” rule: If the case will not be ready to be confirmed at the initial confirmation hearing, it is the attorney’s responsibility to so advise the Trustee’s office as soon as that becomes evident. As long as the debtors are making their plan payments as proposed and the attorney is working to resolve the remaining issues, the Trustee will not object to a continuance beyond the initial confirmation hearing.

If a case is still not ready for confirmation at the second scheduled confirmation hearing, the Trustee will recommend to the Court a second continuance if (a) the debtors are current in their proposed plan payments, (b) the attorney is making progress towards resolving the remaining issues, and (c) there is a justifiable reason why the case is not yet ready.

If the case is still not ready at the third scheduled confirmation hearing, *unless there are extraordinary circumstances* presented to the Trustee justifying the continuation of the case, the Trustee will report the case to the Court as not ready and ask for dismissal of the case, and the debtors and their attorney should be present to the Court their reasons why the case should not be dismissed. It is the Trustee’s expectation that, **absent extraordinary circumstances, all cases should be confirmed within six months of filing**, so the third scheduled confirmation should take place within that six month time frame.

C. **Continuation of the confirmation hearing:** In the Western District, the Court has issued a standard Continuance Order form; see the Local Forms portion of the Court’s website, and look under Form B263. However, at present the continuance process differs somewhat between the Lynchburg and Harrisonburg Divisions of the Western District.

1. **Lynchburg Division:** In Judge Anderson’s Court, a confirmation hearing can be continued in one of two ways. If the case is continued “*with conditions*,” the attorney must submit to the Court the official Continuance Order and the attached Exhibit A (a total of three pages) for entry by the Court; such orders must be endorsed by the Trustee. The Exhibit A will contain a list of items that need to be completed or resolved for the case to be confirmed, and the Trustee will usually fill out this Exhibit A **[FORM # 13]** and hand it to the attorney in Court. If the attorney attaches the Trustee’s version of Exhibit A to the Order, the attorney may endorse the Order on the Trustee’s behalf and submit it to the Court.

A continuance “with conditions” means that, absent extraordinary circumstances, the case will be dismissed if it is not ready for confirmation at the next hearing, and the attorney will not be allowed to offer explanations as to why the case is not ready. If prior conditions have not been met but there are legitimate reasons why, debtors’ counsel can submit to the Court prior to the scheduled hearing an Order, endorsed by the Trustee, extending these conditions until a future Court date. **[FORM # 14]**. This will keep the case from being dismissed.

If a case is continued in Judge Anderson’s Court “*with expectations*,” the Trustee will informally hand the attorney the same Exhibit A, but the attorney will not be required to submit an Order of Continuance. The case can still be dismissed at the next hearing, since the Trustee’s Motion to Dismiss is still pending, but if the case is not ready as anticipated the attorney *will* be

allowed to offer explanations at the next hearing as to why the case is not ready and why it should not be dismissed.

- 2 Harrisonburg Division: In Judge Krumm's Court, only the first two pages of the Order of Continuance are used by the Court, and the Judge will announce from the bench which clauses in the Order are to be filled in by the attorney before it is submitted for entry. Each such Order must be forwarded to the Trustee for his endorsement before being submitted to the Court. (As with all other orders needing the Trustee's endorsement, it should be e-mailed to: beskinordc13@ntelos.net)

- D. **Dismissal of case pre-confirmation**: If a case is dismissed prior to confirmation, all funds on hand with the Trustee except accrued Adequate Protection payments will, as required by the Code, be returned to the debtors upon dismissal.

IV. **CONFIRMATION**

- A. **Confirmation Order**: There is a standard form for the Confirmation order in the Western District. [FORM # 17]. It is only one page long, and incorporates by reference the terms of the confirmed plan.

The last section, entitled "Other Provisions," is a versatile section which can be used at the confirmation hearing for a variety of purposes, including: correcting math mistakes or typos in the plan; clarifying that the plan must pay 100%; requiring the attorney to make sure a wage deduction order is working; or increasing plan payments to an amount greater than that set forth in the plan. Such uses of the "Other Provisions" allow confirmation of the plan without additional notice or hearing where the additional provisions do not prejudice creditors. Attached is a list of some of the standard "Other Provisions" used by the Trustee to expedite the confirmation of cases. [FORM # 18].

- B. **Continuation of the Trustee's motion to dismiss case**: In certain situations the Trustee may agree to recommend confirmation only if he is allowed to continue an objection (usually a Chapter 7 test or disposable income test objection under Code §1325) to a future date. In this event, the continuation of his motion to dismiss, the retention of his objection, and the next hearing date will be noted in the "Other Provisions" section of the Confirmation Order.

V. **POST-CONFIRMATION** (Note: The Court requires the Trustee's endorsement of any and all of the orders described below. Send any such proposed order to: beskinordc13@ntelos.net)

- A. **Trustee's objections to claims**: The Trustee will generally object to any filed proofs of claim that: (1) are filed late; (2) purport to be secured or priority, but do not have appropriate supporting documentation; or (3) are unsecured, have no appropriate documentation, and are not listed on the

debtors' schedules. The Trustee will not generally object to unsecured claims where (i) the claim has been listed on Schedule F, (ii) a proof of claim has been filed in approximately the same amount as that set forth in Schedule F, and (iii) the proof of claim does not have the usually-required documentation.

If a secured claim is filed late but the payment of the claim is important to the debtors' rehabilitation and plan success, the Trustee will generally not object to the *secured portion* of the late claim, but will object to any payments being made on the *unsecured portion* of the claim. A copy of the standard order on such an objection by the Trustee is attached. [FORM # 20].

- B. **Motions to lift stay: language required in consent orders:** In order to expedite the processing of creditors' motions to lift stay, the Trustee has developed certain language which must be included in any order resolving such a motion. The required language [FORM # 25] clarifies when the Trustee is to cease making payments on the creditor's secured claim for pre-petition arrearages; sets a time limit by which any unsecured claim for deficiency must be filed; and, if the stay is to be lifted at some future date without any further Court order, sets out a process for notifying the Court and Trustee if the creditor is enforcing its rights to liquidate the collateral. The Trustee will not endorse any order lifting stay unless it contains this language.
- C. **Motions to lift stay: fees for creditors' attorneys:** In March and April, 2008, Judge Anderson ruled that \$500 plus court costs will be the standard fee for creditors' attorneys in motions to lift stay where the motion is not contested and there are no unusual circumstances. In re Godsoe, 04-03189; In re Viar, 06-61526; In re Kidd, 07-61488. In re Horsley, 07-61657.
- D. **Sale or refinancing of debtors' property; early payoff of case:**
1. **Court permission required:** Debtors are required to seek Court permission, after notice to all parties, before selling or refinancing real estate. In these situations Local Rule 6004-3 requires that the notice must state: (i) the amount of sale / refinancing; (ii) the amount to be paid to the Trustee; (iii) whether the transaction will pay off the balance owed on the plan; and (iv) if the plan is not being paid off, the amount to be received by the debtors.
The Trustee requires that certain additional language be inserted into the order authorizing the sale or refinancing before he will endorse any such order. [FORM # 27].
The Court also requires prior authorization in the form of a Court order before selling, transferring, or refinancing other property. If the value of the property being transferred is small, the process may not require notice to all parties. Counsel should check with the Clerk's Office in such situations.
 2. **Notice to closing attorney:** It will be responsibility of debtors' counsel to ensure that the closing attorney has received a copy of the order authorizing sale or refinancing prior to closing, and that the Trustee receives a copy of the HUD-1 and the correct amount of funds from closing.

3. **Impact of 4th Circuit Murphy decision on debtor motions to sell real estate: Trustee’s motion to modify plan pursuant to Code §1329:** In In re Murphy, 474 F.3d 143 (4th Cir. 2007), the 4th Circuit held that a Chapter 13 Trustee may, using Code §1329, seek an increase in plan payments when the debtor experiences a substantial and unanticipated increase in his property and is selling it. The Trustee interprets this decision to mean that in situations where the debtors are seeking Court permission to sell real estate, the Trustee is obligated to determine (i) the amount the asset has appreciated since the case was filed, and (ii) whether or not the debtors’ plan should be modified to increase the total of plan payments and the payout to unsecured creditors.

- a. Please provide the Trustee with documentation of the current value of the real estate when the motion to sell is filed.

VI. **COMPLETION OF PLAN PAYMENTS, DISCHARGE, AND CLOSING OF CASE**

A. **Discharge procedure for cases filed under BAP & CPA (cases filed after 10/17/05):** Pursuant to Local Rule 4008-1, once the Trustee has certified to the Court in a BAP & CPA case that the debtors have completed their plan payments, the Court will issue to the debtors a “Notice to File Certification of Compliance.” The debtors will then have 60 days to execute and file with the Court and the Trustee the “Debtors’ Certification of Compliance with USC §1328” form that accompanies this Local Rule and which can be found on the Local Forms section of the Court’s website. [Form 4008-1A.] If the debtors fail to file this form within the 60 day period, the case may be closed by the Court Clerk’s Office without the issuance of a discharge.

(Note: In this Form the debtors are certifying, among other things, that they have taken the personal financial management course required by Code section 1328(g). If the debtors have not taken this course by the time they have completed their plan payments, the Court’s discharge procedure appears to give the debtors 60 additional days from the date on which the Notice is sent to them to complete the course.)

Once the debtors have filed the Certification form with the Court, the Clerk’s Office will set the case for a discharge hearing no less than ten days after the form is filed. Notice of the hearing is only sent to the debtors, their attorney, and the Trustee. The case will be called on the Court’s docket for that day, and as long as there are no objections by any party there will be no actual hearing and no need for the debtors to appear. The Clerk’s Office will proceed to issue the Discharge Order within ten days after the hearing. Of course, if objections to the discharge have been filed prior to the hearing, debtors’ counsel will need to be prepared to present appropriate evidence at that time.

B. **DSO Letters:** At the time of discharge, the Trustee is required by BAP & CPA to send notice to any DSO (Domestic Support Order) payee and the state agency in charge of collecting child support to alert them to the issuance of the discharge and certain information about the debtor and any of his/her non-dischargeable debts.

[FORM # 31].

- C. **Disposition of unclaimed creditor funds:** When a check has been sent by the Trustee's office to a creditor with an allowed claim, and the check is returned "undeliverable" or with a statement from the creditor that the identity of the debtor cannot be determined, the Trustee's claim clerk will first attempt to determine the creditor's correct address or provide the creditor with additional identifying information. If these steps are unsuccessful, the creditor's claim will be placed on hold and the check voided until such time as the necessary information has been provided. Once the necessary information has been provided, the Trustee will reissue the check to the creditor.

If such information is not provided within 90 days and the case is still open, the Trustee will file an objection to the creditor's claim. If this objection is sustained, the funds will be distributed to other allowed claims. If the case has been completed, the Trustee's financial officer will forward the funds to the Bankruptcy Court's Registry, where the funds will be held indefinitely. If you have questions about funds which may be in the Registry, please contact the Court's Clerk's Office.

VII. MISCELLANEOUS

- A. **Complaints about Trustee staff or communications:** The Trustee's office is committed to providing prompt, courteous, and accurate service and information to debtors, attorneys, and creditors involved in Chapter 13 cases. Any complaints concerning Trustee staff will be handled directly by the Trustee, Herbert L. Beskin, and can be transmitted to him using the phone, fax, or e-mail contact information found on the home page of this web site.

**TRUSTEE’S FORMS REFERRED TO IN THE OUTLINE OF COURT’S AND
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