

CHAPTER 13 RECOMMENDED PRACTICES IN THE WESTERN DISTRICT OF KENTUCKY VERSION 3.0



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8 THINGS YOU MUST KNOW IF YOU ARE A DEBTOR'S ATTORNEY IN THE WESTERN DISTRICT OF KENTUCKY

1. **WHEN IN DOUBT – FILE A MOTION – OBTAIN A COURT ORDER** – This one is still #1 on the list.
2. 341 DOCUMENT COMPLIANCE. Please email a copy of last year's tax return to this email address → **341_Docs@louchapter13**. If we need anything else, we will let you know.
3. EXAMINE THE CLAIMS – The day before the 341 meeting, log onto ECF, print out a copy of the Claims Register, and OPEN UP each claim filed. The numbers that are on the ECF Claims Register are not necessarily the amount of the claim. If you do this, you will be able to participate in a meaningful manner at the 341 meeting.
4. 341 MEETING – Client must have the following 3 things...
 - ___ Picture ID
 - ___ Proof of **full** (all 9 digits) social security number (social security card, W2, Medicare Insurance Card). **A Tax Return DOES NOT WORK**
 - ___ First Chapter 13 plan payment – preferably a check from your escrow account
5. SCHEDULE OF ALLOWED CLAIMS – within 30 days after the claims bar date, you must file the Schedule of Allowed Claims with the Bankruptcy Court. Every claim filed by the Bar Date must be affirmatively addressed by you, either on the Confirmation Order (if the claim is secured or a priority), or on the Schedule of Allowed Claims (if unsecured). If you think the claim is not valid or has the wrong amount, you should file a Claims Objection with the Court.
6. TAX REFUNDS – During the life of the Chapter 13, all tax refunds (except for Earned Income Credit EIC) must be turned over to the Chapter 13 Trustee (unless the plan pays 100%). If your client spends the tax refund without Court permission, the Court is generally receptive if you file a Motion to Repay the tax refund in equal installments over a 12 month period.
7. SHOW CAUSE HEARING FOR NOT MAKING PLAN PAYMENTS – If your client falls 2 months behind, the Chapter 13 Trustee will file a Show Cause motion with the Court. Those are automatically given a court date, at which time you will meet with the Staff Attorney for the Trustee and resolve the motion.
8. **WHEN IN DOUBT – FILE A MOTION – OBTAIN A COURT ORDER.** This tip is so good, I feel like it should be mentioned again.

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CHECKLIST OF THINGS TO DO BEFORE THE 341 MEETING

On the same day that you file the bankruptcy, do these 4 things....

1. Email your client's last federal tax return to the Chapter 13 Trustee to this email address
341_Docs@louchapter13.com. If we need anything else, we will let you know.
2. If your client had a prior Chapter 13 in the last 180 days, file your MOTION TO EXTEND THE AUTOMATIC STAY. IF your client had TWO (or more) bankruptcies in the last year, file your MOTION TO IMPOSE THE AUTOMATIC STAY.
3. If your client's second (or third) mortgage has no equity to attach to, file your MOTION TO STRIP SECOND MORTGAGE WITH NO EQUITY (See Local Form M, and also read the published opinion In re: Bennett 312 B.R. 843 (Bkrtcy.W.D.Ky. 2004).)
4. Send a letter or an email to your client. Remind them of the following...
 - _____ The date, time, and place of the 341 meeting
 - _____ Bring a government issued Picture ID to court
 - _____ Bring Social Security Proof to Court
 - _____ Bring their first Chapter 13 Plan payment **to your office** for you to place into your escrow account (per Local BK Rule 3070-1).

PLAN PAYMENTS FOR THE 341 MEETING

QUESTION: Why do I have to escrow my client's plan payments? Why can't they just bring their payments themselves?

ANSWER: If you are 100 percent positive your client will show up with their payment in good funds, then we will accept their check or money order. However, if your client doesn't have their payment, we cannot ask the Court to confirm their case (and creditors won't be paid, and YOU won't be paid). If you aren't following Local Rule 3070-1 and 11 USC 1326(a)(1), you are doing that at your own risk.

QUESTION: How much money does my client have to have with them to have their case confirmed?

ANSWER: They should have a plan payment to turn over to the Trustee for every pay period that has passed since filing. Most 341 meetings are held about a month after filing, so usually one month of payments is the right amount. HOWEVER, if your client's case was DELAYED in confirmation for some reason (because we had to adjourn the 341 meeting one or more times), then the Trustee should receive ALL of the payments that were due since the filing of the petition. (Example – 4 months pass from filing to confirmation, the Trustee should receive 4 payments AT CONFIRMATION). See also 11 USC 1326(a)(1). In fact, if you have a case where the 341 is adjourned, it is even more important for you to escrow their plan payments, so that you aren't short when the time comes to confirm your client's case.

QUESTION: Why does the Trustee and the Court insist on payroll deduct orders?

ANSWER: Because they work! Because employers don't care that your client is in a Chapter 13. If they do care, it is a violation of Federal Bankruptcy Law for an employer to terminate employment or discriminate against someone solely because they filed bankruptcy. See 11 USC 525(b).

There are 2 code sections in particular that give the Trustee statutory authority to do payroll deducts. They are...

11 USC 1325(c) – After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the Trustee.

11 USC 1302(b)(4) – The trustee shall ... advise, other than on legal matters, and assist the debtor in performance under the plan.

DOMESTIC SUPPORT OBLIGATIONS (DSO'S)

QUESTION: What about court ordered child support and alimony (aka Domestic Support Obligations - DSO)?

ANSWER #1: Your client can't discharge that in bankruptcy.

ANSWER #2: The Chapter 13 Trustee MUST send notification of the Bankruptcy Filing to the holder of any DSO. The name and address of the holder of the DSO should be listed on Schedule E/F of the Petition. Please put that information there so that the Chapter 13 Trustee can send notice of the bankruptcy filing to the holder of the DSO

CHAPTER 13 PLAN

The Western District of Kentucky has adopted The National Chapter 13 Plan, which consists of 9 parts.

Meet the new boss – same as the old boss.

Pete Townshend – The Who.

Remain calm. All is well. Do not be intimidated.

It's still Chapter 13. The more things change, the more they remain the same.

Question: How do you eat an elephant?

Answer: One bite at a time. OK, let's chow down on this pachyderm in 9 easy bites..



Part 0

I lied. There are 10 bites to take, but this first bite is very, very tiny (an appetizer). There is a box that you have to check if this plan is an Amended Plan, and if it is an Amended Plan, you have to list the sections of the Old Plan that have changed.

Part 1 - Notices

There are 3 subparts – if your plan does something in one of these subparts, you check “☐ included.” If not, you check “☐ not included.”

1.1 Check this one if there are any claims that are secured that are not being paid in full in your plan.

1.2 Check this one if you are avoiding any judicial liens, or any non-possessory, non-purchase money liens (AKA finance company liens).

1.3 Check this one if you are doing anything that is “non-standard.” Non-standard is anything that is not covered by the Form Plan. You should try to stay away from non-standard provisions.

Congratulations. You finished Part 1. That wasn't too bad, was it?

Part 2 – Plan payments and how long is your plan

2.1 Amount of the plan payment per MONTH for (36-60) months.

If there are step payments, put these in here, too.

2.2 How will you pay the Chapter 13 Trustee? This is where you tell us if there will be a payroll deduct. Using a payroll deduct GREATLY increases your client's chance of success at their Chapter 13.

2.3 Income tax refunds

If your plan pays less than 100% to unsecured creditors, then you MUST check the second box (which says that your client will turn over all tax refunds during the plan). See also Local Rule 6070.

2.4 Additional payments

This is the place for lump sum payments.

Part 3 - Secured Creditors

3.1 Maintenance of payments and curing of defaults – this is for all payments that your client will pay “outside” the plan (home mortgages, car leases, or cars that they are going to pay direct because they have a good interest rate or if the car is a recent purchase).

3.2 Request for valuation of security, etc. – this is for secured debt that you can modify (“cramdown”) under 11 USC 506. You list the following...

Name of the creditor

Amount of the total claim

Name of the collateral

The value of the collateral (be reasonable – pigs get fat, hogs get slaughtered)

The interest rate

3.3 Secured claims excluded by 11 USC 506 – This is where you put your 910 claims.

3.4 Lien avoidance – this is the section where you deal with judgment liens on real estate that impair your client's exemption.

3.5 Surrender of collateral – surrender is a 2 way street. The new thing in the National Plan is that confirmation of the plan terminates the automatic stay as to the collateral. In the Western District of KY, that's important because that also starts the 120 day clock ticking for the creditor to file their deficiency claim with the BK Court.

Part 4 - Treatment of Fees and Priority Claims

4.1 General – boilerplate language. You don't have to do anything. It's like landing on FREE PARKING in Monopoly.



4.2 Trustee fees. Our current trustee fee for 2018 is 4.5%. If we change our Chapter 13 Trustee fee, it usually happens on October 1 of each year, and this number is always on our website. www.louchapter13.com.

4.3 Attorney fees. To take the flat fee for doing a Chapter 13, you can't take a retainer in the Western District of KY. If the total plan payments are \$10,000 or greater, you can take a flat fee of up to \$3,750. If the total plan payments are less than \$10,000, you can take a flat fee of \$2,000. You are always welcome, if you like, to track your time records from the beginning of the case, and submit a fee application to the Court (in tenths of an hour). Most Chapter 13 lawyers don't like to do that, though.

4.4 Priority claims – if there are priority claims (like the IRS or Kentucky Revenue Cabinet) this is where you put the total estimate amount of those claims.

4.5 DSO owed to the government and NOT paid in full.

Part 5 – The Unsecured Creditors

5.1 **YOUR PLAN PERCENT GOES HERE.** In the Western District, we do not do pot plans or pool plans. You will ALWAYS choose the box that tells the creditors approximately what percent they will receive. Cases assigned to Judge Lloyd that pay 70% or more do not go to confirmation. Cases assigned to Judge Stout and Judge Fulton that pay 50% or more do not go to confirmation.

5.2 Paying unsecured creditors direct (“outside”) the Plan. This is for student loans that are going to be direct or “outside” the plan. This is also for unsecured creditors that a non-filing cosigner is going to continue to pay.

5.3 Other special classes of unsecured creditors. This is for 11 USC 1322(b)(1) claims. If you discriminate, you can't be unfair. The closer your plan percentage gets to 1 percent, the greater the chance of a creditor complaining that the discrimination is unfair.

Part 6 – Executory contracts and leases

If your client has a car lease, or a rent-to-own-lease on furniture, or an apartment lease, that goes here. If they are curing a default on the lease, you put the amount to be cured here.

Part 7 – Vesting of Property of the Estate

This is easy – a tap in 2 inch gimmee putt. In the Western District of KY, check the box that vests the property of the estate upon plan confirmation.

Part 8- Nonstandard Plan Provisions

You should be checking the box here that says NONE. If for some reason you want to do something “special”, you had to check Box 1.3 way back in Part 1, and this is where you put your “special” stuff. Also, any plans that have special plan provisions will go to confirmation to be reviewed by the Judge (even if the plan proposes to pay 70% or more for Judge Lloyd, or 50% or more for Judge Fulton and Judge Stout).

Part 9 – Signature

This is also easy, but important. Your client has to sign and date the plan, and you do too.

EXHBIT – Total Amount of Estimated Trustee Payments

If you did Parts 1 through 9 correctly, Best Case or whatever software package you are using should produce this page for you automatically.

CONGRATULATIONS! You have finished the Chapter 13 Plan. Now file it so that creditors can get their objections filed!



HOW DO I FILL OUT SCHEDULE J



Give your client a blank household budget with no dollar figures on it. (I've included an example here in the materials). Ask them to fill it out so that they can get a better idea of where they are spending their money each month. Make sure they put a dollar figure on all of the following...

- Mortgage / Rent
- Property Taxes if not paid out of house payment escrow
- Home/Renter's Insurance
- HOA fees or Condo Fees
- Home Maintenance
- Electricity
- Water and Sewage Bill

- Food
- Housekeeping/Target/Walmart Bill

- Car Payment
- Car Insurance
- Gas for the car
- Maintenance for the car

- Child Support – court ordered and voluntary
- Daycare/childcare

- Medical Insurance
- Medical Expenses

- Telephone
- Cable TV
- Internet

I've tried to list these expenses in order from really important to less important. See if you can get your clients thinking about the difference between needing something and wanting something. The mortgage and the rent is a "need", the internet and cable TV and a smart phone are a "want."

Tell them that they are filling out this budget for a perfect world where they don't have credit card payments anymore, or finance company payments anymore, or payments on late medical bills, or late phone bills, or late utility bills, or late mortgage payments.

Once they've filled that out, you have them invested now in the process. They've committed to paper what they spend (or what they think they spend) on household expenses. That should help you when preparing with them the Schedule J budget that they will be filing with the Court - the budget they will live with for the next 3-5 years.

MONTHLY HOUSEHOLD BUDGET

1. SHELTER - Need

Mortgage or rent	\$ _____
Property taxes	\$ _____
Home or renter's insurance	\$ _____
HOA fees or Condo Fees	\$ _____
Home Maintenance	\$ _____
Electricity	\$ _____
Water and Sewage	\$ _____

2. FOOD - Need

Food	\$ _____
Housekeeping/Target/Walmart	\$ _____

3. TRANSPORTATION - Need

Car Payment	\$ _____
Car Insurance	\$ _____
Gas for the car	\$ _____
Oil change and car maintenance	\$ _____
Bus fare	\$ _____

4. CHILD CARE - Need

Child Support	\$ _____
Daycare/childcare	\$ _____

5. MEDICAL - Need

Medical Insurance	\$ _____
Medical Expenses	\$ _____

6. OTHER STUFF - Want

Student Loans	\$ _____
Telephone	\$ _____
Clothing and dry cleaning	\$ _____
Cable TV	\$ _____
Internet	\$ _____
Charitable Contributions	\$ _____
Anything else?	\$ _____

TELEPHONE

Line 6C – Telephone, Cable TV, Satellite TV and Internet. Judge Lloyd has an absolute rule that this expense must be less than 5 percent of your client's Net Income, unless they need it for work or medical reasons. (That need must be supported by filing an Affidavit of Necessity with the BK Court).

FOOD

Food above \$400 for 2 people, \$600 for 3, or \$800 for 4 or more will be looked at closer by the Court.

TRANSPORTATION

If your client's gas expenses are higher because they drive a longer distance to work, put that information in the detailed information section at the bottom of Schedule J.

CHARITABLE CONTRIBUTIONS

Your clients are entitled by law to give 15 percent to their church. See 11 USC 1325(b)(2)(A)(ii). A copy of the previous year's Schedule A filed with their taxes will suffice. However, with the recent changes to the tax laws, experts estimate that only about 10% of Americans will still itemize their deductions, so if your clients are giving \$250 a month or more to charity, you should have them obtain written proof from the charity of their giving for the past year. If your clients can't prove there is a track record for the charitable giving, that money is DISPOSABLE INCOME that should be paid into the plan.

PRIVATE SCHOOL TUITION

In cases that have to go to confirmation, in general, the Court will not allow an expense for private school tuition unless it is for a documented medical reason.

MEDICAL EXPENSES

If your client has what you would consider to be higher than normal out of pocket medical expenses (say above \$200 per month), please use the explanation section at the bottom of Schedule J to explain this to the Court.

TOBACCO AND ALCOHOL

It is advisable to not have a specific line item for either of these two expenses. If your client chooses to partake in either or both of these activities (which are legal), they should use their money from either their food budget or their entertainment budget to pay for this.

PLEASE NOTE: The above numbers are not absolute upper limits. If you have a client that has an expense that seems higher than normal, it is helpful to the Court, Creditors, and the Trustee to explain the need for the expense at the bottom of Schedule J.

THE 341 MEETING



Review the Claims Register BEFORE you come to Court. Please log onto ECF and exam each claim that creditors have filed.

During the 341 meeting, the person conducting the creditor's meeting will ask you how you want to treat all of the secured creditors in your client's case. You need to know....

Is the creditor "inside" the plan or "outside" the plan?

If it is inside the plan, how much of the claim is secured, and what interest rate is the Trustee going to pay on the claim?

If there are mortgage arrearages to cure, how much are they?

If there are any student loans, we need to know if they are in the plan or outside the plan?

Has your client filed all tax returns that are due for the previous 4 years?

What is the name and address of any holder of a Domestic Support Obligation owed by your client? For privacy reasons, this information needs to be on Schedule E. You are not allowed to give us the DSO holder's address on the record.

BE ON-TIME!!!!

Tell your clients to BE ON-TIME!!!

Tell your clients to sit towards the front of the room. They can watch the meetings that happen before their meeting to see "how it is done." This will also make your clients feel more at ease when it is their turn.

Use the time before the Trustee calls your case effectively. Look around the room and see if there are any creditors there for your case. If they are, see if you can resolve their objections or problems with your client's case BEFORE you sit at the 341 table.

Make sure your clients have a picture ID and something with their Social Security number on it (like a social security card or a Medicare Insurance Card or a W2 – we

CANNOT accept a tax form as verification). Make sure they have it out of their wallet and ready to go before they come up to the table.

Have your client's plan payment ready to hand to the Trustee. We do not accept cash. Please put your client's CASE NUMBER on the check, and make sure their name is on the check.

Be prepared to stay and meet with your clients after their 341 meeting to answer any additional questions they may have.

THE CONFIRMATION HEARING

Judge Stout and Judge Fulton review all cases below 50%. Judge Lloyd reviews all cases that pay less than 70%. If a Confirmation Hearing is necessary, these take place **the same day** as the 341 meeting, at the conclusion of the 341 docket.

However - MOST CASES DO NOT ACTUALLY HAVE A CONFIRMATION HEARING. The Court will probably confirm your case early, before the scheduled confirmation hearing time, if there are no pending objections.

If the Court confirms your case early, and if a break occurs during the 341 Docket, the person conducting the 341 Meeting will try to let you know that your client's plan has been confirmed so that your client can leave Court and go about their business of earning money so that they can make their Chapter 13 Plan payments.

If your case is presented for confirmation, the Trustee **will** make a recommendation to Court regarding Confirmation. See 11 USC §1302(b)(2)(B). Almost always, the Trustee **will** recommend confirmation.

If the Trustee **is not** recommending confirmation, the Trustee or his representative will tell you why at the 341 table, and we will offer you an opportunity to correct the problem.

If we think that the Judge will think that your client's plan payment is not their "Best Effort", we will tell you so. While we cannot read the judiciary's minds, we have been doing this long enough to know the particular plan provisions and Schedule J expenses that will not "fly" in a Chapter 13 Plan.

The Trustee wants your client to obtain a confirmed plan. We have a statutory duty to "assist" your clients in performance of their plan, and we take this duty very seriously. See 11 USC 1302(b)(4).

THE SCHEDULE OF ALLOWED CLAIMS (THE SAC)

As of December 1, 2017, the Bar Date for claims in Chapter 13 has changed. It is now 70 days from the filing of the petition. Government entities have 180 days from the filing date. This means creditors have a lot less time to file claims. However, it also means Debtor's attorneys are going to be filing the Schedule of Allowed Claims (The SAC) much sooner.

After the Claims Bar Date has passed, you need to review each and every claim filed.

UNSECURED CLAIMS

On the Schedule of Allowed Claims, if the claim is good/ok, state that the claim is allowed and should be paid by the Chapter 13 Trustee.

SECURED CLAIMS

DO NOT PUT THE TREATMENT OF A SECURED CLAIM ON THE SAC.

Why? Because the SAC is not served on creditors – due process and all of that fairness “stuff” we learned back in law school. If the Confirmation Order does not say how to address a filed secured claim, you will need to file a Motion to Amend the Order of Confirmation to tell the Trustee (and the creditors) how to handle the secured claim.

CLAIMS OBJECTIONS

If you want to OBJECT to a claim

1. Say so on the Schedule of Allowed Claims
2. File an Objection to the Claim, and serve the objection upon the creditor.

MAKE SURE YOUR PLAN STILL WORKS (THIS IS VERY IMPORTANT)



ON THE SAME DAY that you prepare and file the Schedule of Allowed Claims, you need to make sure that your client's plan still “works.” (ie – does the plan still pay unsecured creditors the percentage they were promised in the Confirmation Order?)

If your client's plan doesn't "work" any more (because claims were higher than you thought, or your client forgot to tell you about 10 creditors, etc.), you will need to file a Motion to Amend the Order of Confirmation (pursuant to 11 USC 1329) to "fix" your plan. You will need to serve the Motion on all creditors.

Also, your Plan still must comply with the Chapter 7 Liquidation Analysis. If lowering the Plan percentage makes this happen, you can't do that. You will have to come up with a way to increase the funding in the plan.

If you do not fix your confirmed plan when you file the SAC, the Chapter 13 Trustee will file a Show Cause Motion for the Attorney to come to Court and show cause why they have not fixed their client's confirmed plan.

LOCAL RULE 6070 and TAX REFUNDS AFTER CONFIRMATION



If the plan pays 100% to unsecured creditors, this rule does not apply. Move on and do something else. If the plan pays less than 100%, the Local Rule applies. If you want to read the Local Rule, it is located on the BK Court's website.

QUESTION: When is the first year I have to comply?

ANSWER: If the first 341 meeting date for the case is June 30th or earlier, they have to comply that first year (So in a 5 year plan, they would have to comply in years 1-4). If the first 341 meeting is July 1 or later, then their first year of compliance is the next year (so in a 5 year plan, they would have to comply during years 2-5). In a 5 year plan, we are looking for 4 years of compliance from everyone in a less than 100% plan.

QUESTION: **How much** of the federal and state refund do I have to turnover?

ANSWER: All of it, less the following...

They CANNOT keep their Federal Child Tax Credit.

They CAN keep their Earned Income Credit (EIC).

They can keep the amount paid to prepare their tax forms.

If they receive a refund from one entity, but owe the other entity money for taxes, they can net that out. For example, if the Federal Refund is \$1,000, but they owe the state \$200, the Chapter 13 Trustee is looking for \$800.

PRO TIP: When you meet with your client at the 341 meeting, you should tell them that if they are paying less than 100%, the Trustee gets your federal and state tax refunds, your federal and state tax forms, and a new updated budget every year. Included in these materials is a handy form to go through with them and have them sign for your file, so that when they tell you later that no one told them about the tax refund, you'll have the form. (Many thanks to attorney Rick Schwartz for sharing this form).

IMPORTANT DATES FOR LOCAL RULE COMPLIANCE

In January of each year, we mail a friendly reminder letter to your client at their last known address reminding them about sending the tax forms, the refunds and the budget by May 15th.

By May 15th of each year, the following **MUST** be received by the Trustee:

1. Their federal tax refund
2. Their state tax refund
3. Their federal tax form
4. Their state tax form
5. An updated Budget

If we receive all 5 of those things by May 15th, your client is in compliance with the Local Rule. If you are not sure if your client is in compliance, call our office at (502) 581-9042. Hit ZERO. Anyone that answers the phone will be able to check very easily to see if they have complied.

Around mid June, that is when the Chapter 13 Trustee begins to file Motions to Show Cause for failure to comply with Local Rule 6070. After we file our Motion, in one to two days, the Court will enter an Order giving your client 20 more days to comply with the Local Rule for Tax Compliance. If you are not sure what your client is missing to comply, either you or your client should call our office to see what we are missing.

QUESTION: My client has filed an extension with the IRS and/or KY. What do we do?

ANSWER: We need a copy of the extension. Your client will then be expected to comply with the Local Rule by the extension date.

QUESTION: My client's refund was intercepted by the IRS, or by a child support agency, so that can't turn it over. Now what?

ANSWER: We need written proof that the refund was intercepted (like a tax intercept letter).

QUESTION: It's May 15th, and my client doesn't have their refund yet. What do we do?

ANSWER: If your client filed their taxes on April 15th, we know they won't receive the refund for a month or 2. If they still don't have it by June 15th, either you or your client should call our office and explain the reason for the delay.

QUESTION: My client wants to use their refund to "pay ahead" for next years taxes. Can they do that?

ANSWER: No.

QUESTION: My client spent the refund. Now what?

ANSWER: The Trustee still needs the money, or we need a Court Order saying that the client doesn't have to turn over the refund. Typically, the Court will allow someone to keep their refund if they haven't spent it yet, and if they need the money for medical

reasons or for an “extreme emergency.” If your client has spent their tax refund without Court permission, the Bankruptcy Court and the Chapter 13 Trustee are generally receptive to Motions to Repay the Refund in 12 monthly installments. If your client is on a payroll deduct, we will want to increase the amount of the payroll deduct to pay back the refund. **PLEASE PUT LANGUAGE IN YOUR RESULTING ORDER ASKING THE TRUSTEE TO INCREASE THE DEDUCT TO PAY IN THE REFUND.**

The published case that supports Local Bankruptcy Rule 6070 is In re: Risher, 344 BR 833 (Bankr. W.D.Ky. 2006). See also In re: Freeman, 86 F. 3d 478 (6th Cir. 1996).

LOCAL RULE COMPLIANCE AGREEMENT

Pursuant to the local rules for the Western District of Kentucky, Debtors who file a Chapter 13 Plan that proposes to pay less than 100% to unsecured creditors are required to provide the Chapter 13 Trustee with certain additional documentation each year following confirmation of their Chapter 13 Plan:

1. Copy of state and federal tax returns.
2. An updated budget (a form will be mailed to you each year by the trustee). If there are no changes, you may simply write “No changes” on the form.

You are also required to turn over any refunds to the trustee immediately upon receipt.

The only deductions that are allowed are tax preparation fees (attach the bill) and Earned Income Credit (not child care credit).

IT IS IMPERATIVE THAT YOU NOT SPEND YOUR REFUND.

If you have an extraordinary expense that was not anticipated or budgeted for that you need the refund for, you must contact us PRIOR to spending the money and we will attempt to obtain a waiver so that you can use the funds for that purpose. Use of the refund for medical expenses will be allowed but only if prior approval is obtained. If you seek approval to use your refund after it has already been spent, the Court will in all likelihood require you to pay it back or dismiss your case.

The deadline for compliance with this agreement is May 15th of each year, beginning May 15, _____.

If you have any questions about your obligations under the Local Rule, including the amount that must be turned over, please contact our office and we will be glad to assist you.

Please also keep in mind that the tax refunds that you turn over do not cause your plan to end early. These funds are to be paid in addition to your regular plan payments.

HAVE SEEN AND AGREED:

Debtor

Co-Debtor

ATTORNEY FEES – HOW DO I GET PAID TO DO A **CHAPTER 13?**



Your client DOES NOT pay you your attorney fee directly to you. You receive your attorney fee from the Chapter 13 Trustee (and not from your client) each month when the Trustee mails checks out on the first of the month. Some attorneys prefer to pick their check up at our office. If you want to do that, please call us and let us know so that we don't mail your check.

The flat fee for doing a Chapter 13 is \$3,750 if the case pays in \$10,000 or more, and \$2,000 if the case pays in less than \$10,000. That flat fee covers ALL work for the life of the Chapter 13.

If you decide that you want to take a retainer to do a Chapter 13, you are not allowed to participate in the flat fee. You must file a fee application with the Court, documenting all of your time in tenths of an hour for all work that you do for the whole case.

You also have the option of doing a Fee Application for all of your work in the Chapter 13, if the case is particularly contentious or complicated. If you do a fee application, you cannot also take the flat fee for payment of your fees.

SHOW CAUSE HEARINGS FOR FAILURE TO MAKE PLAN PAYMENTS

If your client falls 2 months behind – THE TRUSTEE WILL FILE A SHOW CAUSE MOTION, which the Court will automatically set for hearing.

Tell your client about the hearing.

Attend the Show Cause Hearing, unless you file a Written Response with a Resulting Order 5 BUSINESS DAYS before the hearing (not the day before). You can also email me at csydenstricker@louchapter13.com up to the day before the hearing if you want to work out a resolution ahead of time.

BRING THE NEW PAYROLL DEDUCT INFORMATION WITH YOU TO THE HEARING, OR EMAIL IT to Katrina in our office. Her email address is ksergeant@louchapter13.com

The Resulting Order from most Show Cause Hearings is that your client will resume payments immediately, and the Chapter 13 Trustee will issue a wage deduct.

If your client does NOT comply with the Resulting Order within 10 days (i.e. The Trustee does not receive \$\$\$), the Trustee WILL file a Motion to Dismiss (not another Show Cause). Motions to Dismiss are typically granted **the next day**.

If you come to the Show Cause hearing, and you want to modify your client's confirmed plan, the Show Cause hearing will be passed to the next month. If you modify their confirmed plan before the next court date, the show cause motion will then be withdrawn.



IMPORTANT PRACTICE POINTER: Motions to Dismiss filed by the Chapter 13 Trustee after a Show Cause Hearing for failure to resume payments are typically granted **the next day** by the Court.

MOTIONS FOR RELIEF

If a creditor files a Motion for Stay Relief, it is YOUR RESPONSIBILITY to inform your client of the Stay Relief Motion.

Unlike Chapter 7, all Chapter 13 Stay Relief Motions are automatically set for hearing. In Louisville, those hearings typically take place at 11:00 a.m. on the same day as Chapter 13 341 Meetings. In Bowling Green, Owensboro, and Paducah, the Motions for Relief take place as a part of the regularly scheduled monthly Chapter 13 Motion Docket.

Most creditors are open to settling Motions for Relief by an Agreed Order that gives the Debtor a reasonable period of time to make up their payments that they are behind (typically around 6 months). The failure to make the catchup payments or the ongoing payments on time will result in termination of the automatic stay after the creditor files a Certificate of Noncompliance with the Court, and serves it upon the debtor.

PAYMENT SUSPENSIONS

If your client has a legitimate reason for a short payment suspension (hurt at work, temporary job loss, a family member has health issues, major family emergency), you can file a Motion on their behalf to suspend their plan payments. Be sure to put the reason for the payment suspension in your Motion.

Please see Local Form F for an example of a Sample Payment Suspension Motion.

AFTER the Payment suspension is granted, if your client is on a payroll deduct, it is your responsibility to make sure the employer receives and complies with the payment suspension Order. If the employer does not comply with the Suspension Order, the Trustee will not refund money sent to the Trustee by the employer until the payment suspension is over.

PAYMENT DECREASES

If your client's income goes DOWN during the Chapter 13, or if their reasonable and necessary expenses GO UP, you can petition the Court by Motion to decrease their payments. You would do this by filing a Motion to Amend the Order of Confirmation. See 11 USC 1329.

In the text of your Motion, you should state in a brief paragraph the reason(s) that your client needs to decrease their Chapter 13 payment. You would also attach to the Motion an updated Schedule I and J that show their changed income and expenses.



IMPORTANT PRACTICE POINTER:

IF YOU DECREASE OR SUSPEND YOUR CLIENT’S PLAN PAYMENTS, YOU NEED TO MAKE SURE THEIR PLAN STILL “WORKS.” If unsecured creditors will now receive a lower percent, your Motion and Resulting Order MUST also say what the NEW percent will be. (An unsecured creditor might want to object to your Motion).

Also, your client’s plan still must pass the Chapter 7 Liquidation Analysis with the lower plan payments. If it does not, do not file the modification.

PAYMENT INCREASES

After reviewing your client’s tax returns in under 100 percent plans, the Chapter 13 Trustee may file a Motion to Raise your client’s plan payments because their income has gone up “significantly” since Confirmation. See 11 USC 1329.

The Trustee does not raise payments to take away your client’s cost of living raises. That would be unfair and mean-spirited.

In 2017, with approximately 8,000 active Chapter 13’s, the Chapter 13 Trustee filed approximately 25 Motions to raise plan payments because your clients had, in the Chapter 13 Trustee’s opinion, significantly more disposable income than at Confirmation. We don’t have an exact count, but we are confident that there were more than 25 Motions to Suspend Plan Payment and Motions to Reduce Plan Payments filed in the Western District of Kentucky last year.

Just like the Chapter 13 Trustee did not object to most Debtor Motions to Decrease or Suspend Plan Payments, most of the Trustee’s Motions to Increase were not objected to by Debtor’s Counsel. This is a good reflection on both the reasonableness and the high level of practice of the members of the Debtor’s Bar of the Western District of Kentucky.

INHERITANCES, PERSONAL INJURY CASES, LOTTERY WINNINGS AND OTHER POST-FILING OUT OF THE ORDINARY INCOME

Sometimes after filing the case, your client will become entitled to receive other money besides their regular income from their job. For example they may inherit money or real estate or other property. They may have a post-petition personal injury or other tort claim. Sometimes, Chapter 13 debtors win the lottery (it's happened before – if you come visit our office, we can show you a copy of the check the debtors used to pay off their plan early at 100%).

There are 3 steps you should take if this happens:

1. Amend Schedule B to disclose the asset
2. Determine how much of the money your client can spend on reasonable and necessary expenses.
3. File a Motion to Amend the Order of Confirmation to pay that difference between the amount to be received, subtracting reasonable and necessary expenses.

1. DISCLOSE THE ASSET

Any out of the ordinary right to receive money or property after your client files should be disclosed immediately by filing an Amended Schedule B with the Bankruptcy Court.

If you don't think you should amend and disclose a post-petition cause of action, read Kimberlin v. Dollar General Corporation, 6th Circuit Case # 12-3584 (an unpublished case out of the 6th Circuit Court of Appeals). During month 59 of of her 60 month plan, Dollar General terminated Ms. Kimberlin's employment. She made her last 2 plan payments. She did not Amend Schedule B to disclose her potential lawsuit against Dollar General. As a matter of law, the 6th Circuit ruled that her failure to disclose the lawsuit to the Bankruptcy Court judicially estopped her from pursuing her case. Her employment discrimination case was dismissed.

2. HOW MUCH CAN YOUR CLIENT SPEND?

After you disclose the right to receive the money, how much comes into the Chapter 13 Plan? The Chapter 13 Trustee's position is that this money is disposable income that should be paid into the plan. However, disposable income can be reduced if the client is spending that money on necessary expenses. So, medical bills can be paid. A reasonable replacement vehicle could be purchased.

3. FILE A MOTION TO AMEND THE ORDER OF CONFIRMATION

Once you know how much money the client is entitled to receive, you would file a Motion to Amend the Order of Confirmation to pay that net amount into the plan.

MOTION TO USE INSURANCE PROCEEDS

If your client has had a car accident, and if there are insurance proceeds that are to be applied towards the collateral, the insurance company will want a Court Order saying where to send the money.

If the car is being paid direct (outside the plan), the Chapter 13 Trustee will not want the insurance proceeds to flow through our office.

However, if the car is being paid by the Chapter 13 Trustee (inside the plan), then the Chapter 13 Trustee will want that money to come through our office. That will provide an audit trail for the money, and it will also allow your client to comply with their confirmed plan that provided for paying for that car through our office.

MOTIONS TO BORROW MONEY TO PURCHASE A VEHICLE

The typical reason for borrowing money during a Chapter 13 is to purchase a vehicle. Your chances of having the Court approve your Motion to Borrow will be greatly increased if you do the following...

1. The interest rate needs to be less than 17 percent.
2. Your client should be current with their Chapter 13 Payments.
3. The car purchased should be “reasonable” (not a sports car or a luxury car).
4. The monthly payment should be reasonable (less than \$400/month).
5. The length of the loans should be 5 years or less. Stay away from 72 month loans, no matter what the car lot says.

Please see Local BK Form G for a sample Motion to Borrow.

MOTIONS TO PAY OFF PLAN EARLY **36 Months is “Magic”**

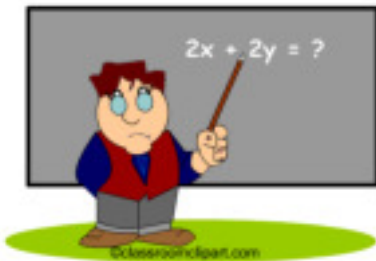
In general, the Trustee will object to any Motion to pay off a plan before 36 months have passed, unless the Motion states that it is a Motion to Pay Off the Plan, in Full, at 100%.

Motions to Pay Off Early filed after Month 36 may or may not be objected to by the Trustee, depending on, but not limited to, the following factors:

1. The “source” of paying of the plan early
2. The percent that unsecureds are receiving in the payoff
3. The size of the past tax refunds in the previous 36 months

If you want to find out if the Chapter 13 Trustee will be objecting to your Motion before you file it, you can email our office at csydenstricker@louchapter13.com to discuss the facts and circumstances.

DEBTOR EDUCATION



Before receiving their discharge, your clients must obtain their “Debtor Education” (i.e. Ticket Out). If you don’t file it with the Court, their case will close **WITHOUT A DISCHARGE**.

If you Move to Reopen the Case to file the Debtor Education Certificate, the Court is going to presume it was **YOUR FAULT** for not filing the Debtor Education form. The Court will require **YOU** (the attorney) to pay the Reopening Fee, unless you can show it was your client’s fault for not doing the Debtor Education

REQUEST FOR DISCHARGE

At the end of the Chapter 13, your clients have to say “Mother May I?” You will need to file an **Affidavit** with the Court telling the Court whether or not your client is entitled, as a matter of law, to a discharge. See Local Form Q.



IMPORTANT PRACTICE POINTER:

A Chapter 13 lasts 3-5 years. Clients move.

Your clients must keep you apprised at all times of their new address and new phone numbers.

Otherwise, you will not be able to help them obtain their discharge that they will have EARNED after completing all of the plan payments.

MOTION FOR HARDSHIP DISCHARGE

The words “hardship discharge”, just like the words “inside the plan” and “outside the plan” are not contained anywhere in the Bankruptcy Code. Anytime you file a Motion in Court, you should cite some law to request what you want. For a “hardship discharge”, the law you cite is 11 USC 1328(b). If you read 11 USC 1328(b), theoretically it seems that you could ask for a hardship discharge the day after the Confirmation Hearing. But, remember that the test for the discharge in 1328(b) has 3 prongs, and you must meet all 3.

1. The failure to complete the payments is beyond the debtor’s control. If your client dies, this fits. If your client suffers extreme medical issues or becomes permanently disabled, this fits. If your client becomes unemployed in month 1 or 2, this does not fit (because your client still has time to find a new job). If your client becomes unemployed in month 54, that may fit.
2. You must pass the Chapter 7 Liquidation Analysis.
3. It must not be practicable to modify the plan. This prong of the test is a sliding scale. The further you are from the last month of the plan, the more practicable it is for you to modify the plan.

For an example of a form to use, please see Local Form R.