

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In Re: Bankruptcy Abuse Prevention) Implementation Order
and Consumer Protection Act of 2005) Amended December 21, 2006
) Effective January 1, 2007

**¹Amended Order Implementing Interim Procedures Under the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005 and Adopting Interim Bankruptcy
Rules & Official Forms**

Whereas, on April 20, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) was enacted into law; and

Whereas, most provisions are effective on October 17, 2005; and

Whereas, the general effective date of the Act has not provided sufficient time for the promulgation and adoption of revised Federal Rules of Bankruptcy Procedure; and

Whereas, the Advisory Committee on Bankruptcy Rules for the United States Judicial Conference has prepared Interim Rules and Official Forms designed to implement the substantive and procedural changes mandated by the Act; and

Whereas, the Committee on Rules of Practice and Procedures of the United States Judicial Conference has approved and recommends for adoption the Interim Rules (“Interim Rules”); and

Whereas, the Executive Committee of the Judicial Conference has approved the revised Official Forms designed to implement the substantive and procedural changes mandated by the Act and (“the Official Forms”); and

Whereas, the Local Rules Advisory Committee serving the United States Bankruptcy Court for the Eastern District of Missouri has prepared interim procedures for consideration and adoption as an Implementation Order by this Court; and

Whereas, the Board of Judges for the United States Bankruptcy Court for the Eastern District of Missouri has considered those interim procedures and has made its own determination of interim procedures and practices under the Act;

Accordingly,

IT IS HEREBY ORDERED, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure and Rules 9019 and 9009 of the Federal Rules of Bankruptcy Procedure, the

¹ This Order amends the Court’s previous Amended Implementation Order dated October 6, 2006. This Order corrects a paragraph reference in **paragraph 10**; clarifies that the Court may assess costs on reinstatement following dismissal for failure to provide payment advice or tax documents in **paragraph 16**; restructures **paragraph 24** by inserting new paragraph 24(b) regarding objections to discharge in Chapter 13 cases; amends **paragraph 26** to give the debtor additional time to file the certification of DSO at conclusion of a Chapter 13 case; amends **paragraph 31** and **adds new paragraph 32** to provide faster payment of attorney fees in Chapter 13 cases; amends **paragraph 45** to make the Consent Order and Stipulation form referenced in Appendix B. mandatory in Chapter 13 cases; and amends **paragraph 49** to remove the Adversary Coversheet as an Appendix because the form is now available on-line with other Official Forms.

following procedures are adopted and shall govern proceedings and cases in this United States Bankruptcy Court for the Eastern District of Missouri filed on or after October 17, 2005 until further order of this Court. This order may be amended from time to time at the discretion of the Court.

Interim National Rules & Forms

1.(a) **Adoption of 2005 Interim Rules & Forms.** The Interim Rules and Official Forms approved and recommended by the Committee on Rules of Practice and Procedures of the United States Judicial Conference and the Executive Committee, which are available at <http://www.uscourts.gov/rules/interim.html> are hereby adopted in their entirety. For cases and proceedings not governed by the Act, the Federal Rules of Bankruptcy Procedure, other than the Interim Rules, and this Court's Local Rules of Bankruptcy Procedure will continue to apply. In all cases and proceedings governed by the Act, the Federal Rules of Bankruptcy Procedure and this Court's Local Rules of Bankruptcy Procedure, as may be modified by the Interim Rules and Official Forms and by this Implementation Order, will apply. In all cases and proceedings, the Official Forms shall be observed and used with alterations as may be necessary, but all forms used must be in substantial conformity with the Official Forms.

(b) **Adoption of 2006 Amended Interim Rule 1007 & Forms.** The statistic and audit requirements of the Bankruptcy Abuse and Consumer Protection Act of 2005 (BAPCPA) take effect on October 17, 2006. To collect the statistics required by the BAPCPA and by other statistical reporting requirements, the Judicial Conference of the United States Courts has approved revised Official Forms 1, 5, and 6. Additionally, to provide clarification of other processes imposed by the BAPCPA, the Judicial Conference has adopted revised Official Forms 1 (new Exhibit D), 9, 22A, 22C, and 23 and has adopted an amendment to Interim Bankruptcy Rule 1007 with a recommendation that courts adopt the revised Interim Rule by local order. Amended Interim Rule 1007, and the revised Official Forms are hereby adopted and will be implemented in this U.S. Bankruptcy Court for the Eastern District of Missouri as outlined in this Order.

Means Testing/Current Income Calculations (paragraphs 2-5)

2. **Median Family Income.** In determining median family income for purposes of 11 U.S.C. § 707(b)(7) and item 14 on Form B22A in Chapter 7 cases, and item 16 on Form B22C in Chapter 13 cases, absent evidence to the contrary, the median family income shall be those amounts established by the United States Bureau of the Census and made available on the Bankruptcy Court's website as provided by the Office of the United States Trustee.

3. **Monthly Expenses.** Absent evidence to the contrary, the monthly expenses for use in determining the means test under 11 U.S.C. § 707(b)(2)(A) and on Forms B22A in Chapter 7 cases, and for determining disposable income on Form B22C in Chapter 13 cases, shall be those expenses established by the Internal Revenue Service and made available through a link on the Bankruptcy Court's website to this information as provided by the Office of the United States Trustee. The multiplier for calculating the Chapter 13 administrative expense for item 45b on

Form B22A, and item 50b on Form B22C, shall be the percentage on the date the case is filed and made available through a link on the Bankruptcy Court's website to this information as provided by the Office of the United States Trustee.

4. **Documentation Supporting Means Test.** The debtor shall bring to the § 341 meeting of creditors documentation supporting expenses claimed on the Means Test and Disposable Income forms in Chapter 7 and 13 cases (Part V of the Means Test Form B22A in Chapter 7 cases, and Part IV of the Disposable Income Calculation Form B22C in Chapter 13 cases). On request of the U.S. Trustee or the trustee, the debtor shall timely provide to the requesting party the documentation supporting such expenses. Such documentation shall not be filed with the Court unless filing is necessary to comply with existing rules and procedures.

5. **Deadline to File Means Test/Statement of Current Monthly Income Forms.**

(a) **Case Commencement.** The Statement of Current Monthly Income referred to in Rule 1007(b)(4), (5), and (6) (the Means Test/Disposable Income Forms, Forms B22A, B & C) shall be filed with the petition and if not with the petition, within 15 days thereafter, using the appropriate Means Test or Statement of Current Monthly Income event. The Court will issue a 15-day deficiency notice and order if such statement is not filed with the petition. Failure to file these documents within 15 days of the filing of the petition shall lead to dismissal.

(b) **Conversion.** When an individual debtor seeks to convert a case filed on or after October 17, 2005 to a case under Chapter 7, 11 or 13, the debtor must attach the appropriate B22A, B, or C Form for the converted case to the debtor's motion or notice to convert. If not attached to the motion or notice, the appropriate B22 Form must be filed simultaneously with the motion or notice to convert using the appropriate "Means Test or Statement of Current Monthly Income" event. Failure to promptly file the B22 Form for the converted case may result in denial of the motion to convert, or dismissal or reconversion of the case. The information provided on the B22 Form filed for the converted case shall reflect average monthly income for the six calendar months prior to the filing the original bankruptcy petition.

Debtor's Duties and New Filing and Document Requirements under 11 U.S.C. § 521 (paragraphs 6-9)

6. **Section 521(a)(1) Filing Requirements.** The Act imposes various new filing requirements on debtors. The debtor shall not be required to file the documents specified in 11 U.S.C. § 521(a)(1)(B)(iv), (v), and (vi) and shall be deemed to have satisfied these § 521(a) filing requirements in the following manner:

(a) The requirement of 11 U.S.C. § 521(a)(1)(B)(iv) (copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition by the debtor from any employer of the debtor) is satisfied by providing to the trustee at least 14 calendar days before the first setting of the § 341 meeting (1) payment advice(s) or other evidence of payment, or (2) a verified statement that the debtor did not receive payments to which § 521(a)(1)(B)(iv) applies. Such requirement may be satisfied by providing less than "all payment advices or other evidence of payment received within 60 days before the date of the filing of the

petition . . . ” (e.g. by providing a year-to-date statement that includes payments received within 60 days of the petition). Failure to timely provide this documentation may result in dismissal of the case.

(b) The requirement of 11 U.S.C. § 521(a)(1)(B)(v) (statement of the amount of monthly net income, itemized to show how the amount is calculated) is satisfied by including such information in Schedule I (Rev. 10/05).

(c) The requirement of 11 U.S.C. § 521(a)(1)(B)(vi) (a statement disclosing any reasonably anticipated increase in income or expenditures over the next 12-month period following the date of the filing of the petition) is satisfied by including such information in item 17 of Schedule I (Rev. 10/05) and item 19 of Schedule J (Rev. 10/05).

(d) Because 11 U.S.C. § 521(i)(1) requires dismissal on the 46th day after the filing of a petition if the debtor fails to file all of the information required under § 521(a)(1), the trustee must, within 45 days of the date of the petition, either:

- (1) file a statement indicating the debtor has complied with the requirements of 11 U.S.C. § 521(a)(1)(B)(iv) by providing the trustee the required payment advices or other document; or
- (2) file a motion to extend time for the debtor to comply in accordance with 11 U.S.C. § 521(i)(4) on the grounds that the debtor acted in good faith and the interests of creditors would be served by administration of the case, unless the debtor has already requested such an extension; or
- (3) file a motion to dismiss if the debtor has failed to provide the information required in 11 U.S.C. § 521(a)(1)(B)(iv) and the time to provide the documentation has not been extended.

If the § 341 meeting is not set within 45 days of the filing of the petition, the 45 day deadline for dismissal in 11 U.S.C. § 521(i) is deemed extended for this purpose. If the trustee continues the § 341 meeting to receive these documents, such continuance shall be deemed a request to extend the deadline of § 521(i). Failure to provide the documents at or before the continued meeting shall be grounds for the trustee to request dismissal without further notice or hearing. (See paragraph 16). The debtor should provide the required documents to the trustee seven (7) calendar days before the continued meeting.

7. **Statistical Summary Form (Official Form 6, page 2).** Revised Official Form 6 includes a second page titled “Statistical Summary of Certain Liabilities and Related Data 28 U.S.C. § 159).” Individual debtors whose debts are primarily consumer debts filing a case under chapters 7, 11 or 13 must complete and file the Statistical Summary Form. If not filed with the petition, the Court will issue its 15-Day Order and Notice of Missing Documents. Thereafter, if the form remains unfiled, the Court will issue a notice to the debtor advising that the case may be closed without entry of a discharge. If filed after the voluntary petition, the form must be filed using the Miscellaneous Event: “Statistical Summary of Certain Liabilities.”

8. **Section 521(c) Education Accounts.** The debtor shall file with the petition, and if not with the petition, within 15 days thereafter, records of any interest under 11 U.S.C. § 521(c) (record of any interest that a debtor has in an education [sic] individual retirement account or under a qualified State tuition program) by including such information on item 11 of Schedule B (Rev. 10/05) and by attaching an Exhibit Summary to the Schedules or by filing the Exhibit Summary separately using the “Debtor Interest in Education Account” event.

9. **Section 521(e)(2) Pre-Petition Tax Returns.** Unless otherwise requested by the United States Trustee or the trustee, the debtor shall be deemed to have met the requirement of 11 U.S.C. § 521(e)(2)(A)(i) by providing to the trustee, no later than seven (7) calendar days prior to the § 341 meeting of creditors, a copy of the debtor’s most recently filed federal and state tax returns. On the request of a creditor under 11 U.S.C. § 521(e)(2)(A)(ii) and Interim Rule 4002(b)(4), the debtor shall provide copies of such tax returns to the creditor but shall not file the returns or an Exhibit Summary thereof with the Court. Failure to provide the trustee with the required tax returns will result in a Trustee’s request for dismissal of the case following the continued meeting of creditors as further specified in paragraph 16.

Tax Returns / Transcripts (paragraphs 10-15)

10. **Section 521(e) Tax Requests.** Unless otherwise requested by the United States Trustee or the trustee, the debtor shall be deemed to have met the requirement of 11 U.S.C. § 521(e)(2)(A)(i) by providing to the trustee, no later than seven (7) calendar days prior to the § 341 meeting of creditors, a copy of the debtor’s most recently filed federal and state tax returns. On the request of a creditor under 11 U.S.C. § 521(e)(2)(A)(ii) and Interim Rule 4002(b)(4), the debtor shall provide copies of such tax returns to the creditor but shall not file the returns or an Exhibit Summary thereof with the Court. Failure to provide the trustee with the required tax returns will result in a Trustee’s request for dismissal of the case following the continued meeting of creditors as further specified in paragraph 16. This paragraph is identical to paragraph 9 and is intentionally repeated here.

11. **Section 521(f) Tax Requests.** A written request pursuant to 11 U.S.C. § 521(f) (requesting post-petition tax returns) shall be filed with the Court using the “Request for Copy of Debtor’s Tax Information” event and shall be served on the debtor and debtor’s counsel, if any. -

12. **Filing Returns with the Court.** To file tax returns or transcripts under 11 U.S.C. § 521(f) in the Court’s CM/ECF system, the debtor must use the “Tax Documents” event. This event limits access to the filed tax information.

13. **Access to Filed Tax Documents.** For the United States Trustee, the trustee, or a party in interest to gain access to tax returns or transcripts filed with the Court, such party must file a motion with the Court, using the “Motion for Access to Tax Information” event and must serve the motion upon the debtor and debtor’s counsel, if any. The motion must include:

- 1) a description of the movant's status in the case;
- 2) a description of the specific tax information sought;
- 3) a statement indicating the information cannot be obtained by the movant from any other source; and
- 4) a statement showing a demonstrated need for the tax information.

If the Court grants access to the tax returns or transcripts filed with the Court, the movant must keep the tax returns and transcripts confidential and is prohibited from unauthorized dissemination of those documents or information.

14. **Redaction of Certain Tax Documents.** The debtor should take the following steps to redact personal identifiers in any tax returns or transcripts filed with the Court or provided to creditors, or parties in interest under 11 U.S.C. § 521:

- 1) Social Security numbers. If an individual's social security number is included, only the last four digits should appear;
- 2) Names of minor children. If a minor child(ren) is/are identified by name, only the child(ren)'s initials should appear;
- 3) Dates of birth. If an individual's date of birth is included, only the year should appear; and
- 4) Financial account numbers. If financial account numbers are provided, only the last four digits of these numbers should appear.

Court employees are not responsible for redacting any information. All redaction responsibilities rest solely with the filer.

15. **Disposition of Tax Documents.** On conclusion of review of any tax returns or transcripts by the United States Trustee, the trustee, any creditor, or party in interest, such party is authorized to return the tax returns or transcripts to the debtor or dispose of such returns.

Other Duties & Procedures (paragraphs 16-24)

16. **Dismissal for Failure to Provide Tax or Payment Advice Documents to Trustee.** Pursuant to paragraph 6 and paragraphs 9 and 10, the debtor must provide the trustee with payment advices and certain tax records at or before the § 341 meeting. If not provided, or if inadequate information is provided, the trustee will continue the first setting of the § 341 meeting. The court will send written notice to the debtor of the continued § 341 meeting date and will advise debtor that failure to provide the trustee with the required documents may result in dismissal of the case without further notice or hearing. The debtor should provide the required documents to the trustee not less than seven (7) days before the continued meeting. If the debtor fails to provide the documents, the trustee may docket a request for dismissal and the court will immediately dismiss the case. If the debtor believes the case was dismissed in error, the debtor may file a motion to reinstate the case within ten (10) days of entry of the dismissal order. The Court may award costs against the debtor as a condition of reinstatement.

17. **Credit Counseling.** Pursuant to 109(h), Interim Rule 1007(b)(3), Exhibit D to the Voluntary Petition (Official Form 1), and as required by § 521(b) and determined by this Court, each individual debtor in a voluntary chapter 7, 11, 12 or 13 case must file one of four documents at commencement of the case: (1) a certificate of credit counseling; (2) Exhibit D signed by the debtor stating the debtor received a credit counseling briefing but the certificate is not available; (3) a motion for exigent circumstances; or (4) a motion for exemption from credit counseling. If Exhibit D is filed indicating counseling was obtained but the certificate is not available, the Court will issue a 15-day Order and Notice of Missing Documents and will dismiss the case on the 16th day if the certificate of credit counseling is not timely filed. Failure to file one of the four documents identified above with the voluntary petition will result in prompt dismissal of the case. A separate certificate of credit counseling or Exhibit D should be filed with the petition for each debtor unless a motion for exemption or exigent circumstances is filed. If a single Exhibit D is filed for both debtors in a joint case, the Form must include the names and signatures of both debtors. The certificate of credit counseling or Exhibit D shall be appended to the voluntary petition or may be filed separately using the appropriate event: “Certificate of Credit Counseling” or “Support/Supplement.” The certification of exigent circumstances under § 109(h)(3)(A) shall be filed using the Miscellaneous event “Exigent Circumstances re: Credit Counseling.” A motion for exemption under § 109(h)(4) shall be filed using the “Motion for Exemption from Credit Counseling” event. The Court will look to the United States Trustee, or to the case or Chapter 13 Trustee, as applicable, to review the credit counseling certificate and to file a motion if the debtor has not met the requirements of § 109(h) to be eligible for bankruptcy relief.

18. **Post-Petition Personal Financial Management.** Pursuant to 11 U.S.C. § 727(a)(11) and § 1328(g), the Court will not grant a discharge but will close a case without discharge in Chapter 7 and Chapter 13 cases if the debtor fails to file a certificate of completing the financial management course required by 11 U.S.C. § 111. Pursuant to Interim Rule 1007(c), in a Chapter 7 case, the certificate of completion of a financial management course shall be filed within 45 days after the first date set for the meeting of creditors. In a Chapter 13 case, the certificate of completion shall be filed no later than the last payment made by the debtor under the plan or the filing of a motion for hardship discharge. The Court will send a notice to the debtor in advance of the filing deadline advising the debtor that the case may be closed without discharge if the certificate of completion of a financial management course is not filed. Completion of a financial management course must be shown by each debtor, either by filing Official Form 23 (Debtor’s Certification of Completion of Instructional Course Concerning Financial Management) or by filing one or more certificates. If a single Form 23 is filed for both debtors in a joint case, the Form must include the names and signatures of both debtors. Exemption from this requirement may also be shown by checking the appropriate box and filing Official Form 23. A separate motion is not necessary when exemption is sought using the Official Form. Debtor’s certification of completion of financial management course or debtor’s exemption shall be filed using the “Financial Management Course” event. The Court will look to the United States Trustee or to the case or Chapter 13 Trustee, as applicable, to review the case and file a motion if the debtor has not met the requirements of § 727(a)(11) or § 1328(g) to be eligible for a discharge.

19. **Closing of Case without Discharge.** If a case is closed without discharge, the Court will give notice of such closing to all creditors and parties in interest as required by Interim Rule 4006. A debtor may move to reopen a case closed without issuance of the discharge in order to file a required document. A reopening fee must be paid to reopen the case to obtain discharge.

20. **Request for Documents.** Unless otherwise stated (such as for taxes in paragraph 10 above or requests made under formal discovery procedures), when any party may request a document from another party, the initial request shall be a writing, made either by letter or e-mail and shall not be filed with the Court. Failure to comply with the request, and in no event, later than 15 days after the request, shall be grounds for the requesting party to file a motion to compel documents or seek other remedy from the Court, including dismissal. To comply with the request, the party must provide the documents to the requesting party but shall not file the documents or an Exhibit Summary concerning the documents with the Court. Nothing precludes use of current Motion to Compel practices as otherwise authorized and permitted.

21. **Privacy and Redaction of Documents.** Under the privacy policy of the Judicial Conference of the U.S. Courts, the party filing a document is responsible for redacting any personal information of a confidential nature from any document filed. The Court and Clerk of Court will not redact documents and are under no obligation to maintain the privacy of any information filed with the Court. Existing procedures for filing documents under seal and the right of parties to file redacted documents are the appropriate methods for ensuring personal, confidential information is not disclosed through the Court's system.

22. **Reaffirmation Agreements.** The Court will set a hearing to consider approval of those reaffirmation agreements that do not include the signature of the debtor's attorney when Court action on the reaffirmation agreement is required. (11 U.S.C. § 524(d) and § 524(k)(3)(J)(i)(7)). A request to approve other agreements (whether signed by counsel or not), shall be presented by motion. A motion seeking approval shall be filed with the reaffirmation agreement using the "Reaffirmation Agreement and Motion to Approve" event. The Court will set a hearing on such reaffirmation agreements.

23. **In Forma Pauperis.** Pursuant to 28 U.S.C. § 1930(f), the Court will promptly deny any application for In Forma Pauperis in which the debtor's income exceeds 150 percent of the income official poverty line applicable to a family of the size involved. The Court will post on the Court's website the applicable official poverty lines to be used in this analysis. If an application for In Forma Pauperis is granted, unless otherwise stated, the order granting the application will waive all filing fees in the case. The order granting In Forma Pauperis status may be vacated if developments in the case demonstrate waiver of fees was unwarranted. If an application for In Forma Pauperis is denied, the debtor will ordinarily be ordered to pay the filing fee in installments pursuant to a payment schedule set out in the Court's order. If the debtor is not eligible to pay fees in installments because outstanding fees remain owing to the Court in a prior case, the debtor will be ordered to pay the full filing fee within 5 business days of the order denying the In Forma

Pauperis application or the case will be dismissed.

24. Prior Discharge and Delay of Discharge.

(a) **In Chapter 7 Cases.** It is the responsibility of the United States Trustee to object to discharge if the debtor obtained a discharge in a prior case within the time periods that prohibit the Court from granting a discharge under 11 U.S.C. § 727(a)(8) or (9). An adversary proceeding objecting to discharge is necessary. Nothing precludes a party in interest from filing such an adversary proceeding.

(b) **In Chapter 13 Cases.** In Chapter 13 cases, the Chapter 13 Trustee shall object to confirmation if the debtor appears to have obtained a discharge in a prior case within the time periods that prohibit the Court from granting a discharge under 11 U.S.C. §§ 1328(f)(1) or (2). Nothing precludes a party in interest from filing such an objection to confirmation.

(c) **Delay of Discharge in all Cases.** Any request to delay discharge under 11 U.S.C. § 727(a)(12), § 1228(f); § 1328(h) or § 1141(d)(5)(C), shall be filed by motion, using the “Motion to Delay Discharge” event.

Domestic Support Obligations (“DSO”) (paragraphs 25-30)

25. Child Support Claimants. The Chapter 7, 12 or 13 Trustee is not obligated to send notice under 11 U.S.C. § 704(c)(1)(A)(B) and (C), § 1202(b)(6) and § 1302(b)(6) unless a creditor holding a claim for unpaid pre-petition child support contacts the Trustee to request such notice. The duties of the Trustees under these sections shall be met if the Trustee provides the notice specified in those sections upon request. The Notice and Order of Commencement and the Discharge Order shall contain the following language to give notice to such pre-petition child support creditors.

The holder of any claim for unpaid pre-petition child support is entitled to have the Trustee provide such creditor with notice of the creditor’s right to use the services of the state child support enforcement agency and supply such creditor with the address and telephone number of the state child support enforcement agency and an explanation of the creditor’s rights to payment in the bankruptcy case. Any creditor may request such notice and information by writing the Trustee. Such creditor is further entitled to have the Trustee provide the creditor with (i) notice of the granting of the discharge, (ii) any last known address of the debtor; (iii) debtor’s most recent employer, and (iv) information concerning other claims on which the debtor may be liable following the discharge. Failure to request such information from the Trustee shall be a waiver of the right to receive such notice from the Trustee.

26. Certification of Payment of DSOs as a Condition for Discharge -- Chapter 13 Cases.

To implement 11 U.S.C. § 1328(a), as a prerequisite for the Court to issue the discharge in a Chapter 13 case, the debtor must certify either (1) that all amounts payable under a domestic support obligation order have been paid through the date of completion of all Chapter 13 plan payments or (2) that the debtor does not owe any domestic support obligations. On receipt of the Trustee’s Motion to Stop Wage Withholding and Return Excess Funds, the Court will issue a

notice to the debtor, advising that the certification required by 11 U.S.C. § 1328(a) must be filed within 20 calendar days of the date of the Court's notice. If the certification is not timely filed, the Court may close the case without entering a discharge. To thereafter receive a discharge, the debtor must file a motion to reopen the case and pay the required filing fee.

27. Certification of Payment of DSOs as a Condition for Discharge -- Chapter 12 Cases.

To implement 11 U.S.C. § 1228(a), as a prerequisite for the Court to issue the discharge in a Chapter 12 case, the debtor must certify that all amounts payable under a domestic support obligation order have been paid through the date of the debtor's certification. The debtor shall file this certification prior to or as part of debtor's motion for discharge under Local Bankruptcy Rule 4004-1. If the certification has not been filed as part of or prior to the motion for discharge, on receipt of the motion, the Court will issue a notice to the debtor, advising the certification required by 11 U.S.C. § 1228(a) must be filed within 10 calendar days of the notice or the Court may close the case without entry of a discharge. To thereafter receive a discharge, the debtor must file a motion to reopen the case and pay the required filing fee.

28. Certification of Payment of DSOs and Taxes as a Condition for Confirmation – Chapter 13 Cases.

Under 11 U.S.C. § 1325(a)(8) and (9), the Court shall not confirm a Chapter 13 plan unless the debtor has certified that all domestic support obligations as specified in § 1325(a)(8) have been paid and that the debtor has filed all tax returns specified in § 1325(a)(9). These requirements for confirmation shall be established by the debtor completing and signing the Debtor's Statement Under Penalty of Perjury at the § 341 Meeting. The Chapter 13 Trustee shall report to the Court whether debtor has completed these requirements.

29. Certification of Payment of DSOs as a Condition for Confirmation – Chapter 12 Cases.

Under 11 U.S.C. § 1225(a)(7), the Court shall not confirm a Chapter 12 plan unless the debtor has certified that all domestic support obligations as specified in § 1225(a)(7) have been paid. This requirement for confirmation shall be established by the debtor providing information concerning these matters under oath at the § 341 Meeting. The Chapter 12 Trustee shall report to the Court whether debtor has paid all necessary domestic support obligations.

30. Matrix to Include State Child Support Enforcement Agency. Any debtor who is subject to a child support claim of a domestic support obligation shall include the address for the appropriate state child support enforcement agency in the debtor's matrix. Such addresses are available through the website of the Office of the United States Trustee at: <http://www.usdoj.gov/ust/bapcpa/ds/index.htm>

Chapter 13 Plan Provisions, Conversion & Claims (paragraphs 31-39)

31. Mandatory Model Plan. Effective with cases filed on and after March 1, 2006, the Court will require use of a form Chapter 13 plan and will not require a plan summary. The form plan is posted on the Court's website and adopted as (Local Form 13). The form plan is incorporated

into this Implementation Order as **Appendix A**. Effective October 16, 2006, the first paragraph of the form plan is amended to require the debtor to pay to the Chapter 13 Trustee 50% of any distribution paid or payable to the debtor from the debtor's pension plan or as an employee bonus. Effective January 1, 2007, the form plan is amended to allow disbursements for attorney fees to begin earlier in the Chapter 13 case. Several paragraphs in the form plan have been modified for this purpose.

32. **Payment of Chapter 13 Attorney's Fees – Revisions to Procedures Manual.** Paragraph 5 of the Chapter 13 Attorney Fee Guideline in the Court's Procedures Manual is amended to include the following language to allow earlier disbursement of a portion of attorney fees in cases filed on or after October 17, 2005.

Payment of Chapter 13 Attorney's Fees through Plan.

a. **In cases filed prior to October 17, 2005:** When paid through the plan, unless otherwise specified, the Chapter 13 trustee shall pay debtor's attorney's fees at the rate of 35% of funds available for distribution at the disbursement level for secured creditors.

b. **In cases filed on or after October 17, 2005:** Debtor's attorney's fees shall be paid by the Trustee after monthly payments to secured creditors. However, a maximum of \$2,000 in attorney fees, minus any attorney fees paid directly by the Debtor, may be paid in equal monthly payments over twelve or more months. Said monthly payments shall be paid after monthly payments for post-petition real estate contract payments, post-petition executory contract payments, and unassigned domestic support obligation payments. Any attorney fees owed and not paid or payable in equal monthly payments as stated above shall be paid as a lump sum at a disbursement level after all secured claims. If an attorney chooses to amend a confirmed plan to add a provision for payment of some fees in equal monthly payments, the Trustee shall establish the monthly payment by dividing the fees remaining to be paid under the paragraph by the remainder of the repayment period in the paragraph.

33. **Adequate Protection in Chapter 13 Cases.** All payments required by 11 U.S.C. § 1326(a)(1) shall be made to the Chapter 13 Trustee in the amount of the monthly payment provided for in the debtor's plan or scheduled in a lease of personal property. Such payments shall be paid in the ordinary course of the Trustee's business to the secured creditor. The Trustee shall make such payments from funds not designated by the plan for payment to other creditors. Creditors may file objections to the amount of such payments. Pending a hearing and contrary ruling, the Trustee shall pay out such sums to the creditor or lessor as provided in this paragraph. In determining the monthly payment amount, the Court presumes depreciation and valuation as specified in paragraph 32 below.

34. **Treatment and Vehicle Valuation in Chapter 13 Cases.** Absent evidence to the contrary, the Court presumes automobiles will depreciate at a rate of 1.5% of the vehicle's value

per month. The plan must compensate secured creditors for this rate of depreciation. Absent evidence to the contrary, the value of vehicles for this purpose shall be determined using the Court's Vehicle Valuation Policy. Absent evidence to the contrary, for purposes of 11 U.S.C. § 506, the Court's Vehicle Valuation Policy referred to in L.B.R. 3015-3 J. shall be 97% of the National Automobile Dealers Association (NADA) (Central Edition) retail value at the time of filing the petition.

35. **Distribution on Secured Claims in Chapter 13 Cases.** The plan shall provide for payment of secured claims by the Trustee in equal monthly installments beginning with the first distribution made by the Trustee. The plan must provide for allowed secured claims to be paid in equal monthly installments over the plan term, or as specified in the plan, with interest as calculated under L.B.R. 3015-3 E.

36. **Conversion of Chapter 13 Cases.** When an individual debtor seeks to convert a Chapter 13 case filed on or after October 17, 2005 to a case under Chapter 7 or 11, the debtor must attach the appropriate B22A or B Form for the converted case to the debtor's motion or notice to convert. If not attached to the notice, the appropriate B22 Form must be filed simultaneously with the motion or notice to convert using the motion or appropriate "Means Test or Statement of Current Monthly Income" event. Failure to promptly file the B22 Form for the converted case may result in denial of the motion to convert, or dismissal or reconversion of the case. The information provided on the B22 Form filed for the converted case shall reflect average monthly income for the six calendar months prior to the filing of the original bankruptcy petition.

37. **Disclosure of Real Estate Mortgage Payment Obligations.** The holders of claims secured by real estate shall provide accurate billing and account information directly to the debtor(s) regarding any post-petition obligation to be paid directly by the debtor(s) pursuant to the confirmed Chapter 13 Plan, or to both the debtor(s) and the Chapter 13 Trustee when the post-petition obligation is paid by the Chapter 13 Trustee pursuant to the confirmed Chapter 13 Plan. Such direct contact by mail from such claim holders for purposes of providing this information shall not be considered a violation of the automatic stay. It is the intent of this rule to advise debtor(s) of their monthly mortgage obligation and to provide debtor(s) with information regarding any adjustments made to the mortgage obligation pursuant to applicable non-bankruptcy law which may arise during the pendency of their Chapter 13 case. Upon request by debtor and made at or near completion of the Chapter 13 case, mortgagee shall provide full payoff statement to debtor. Any dispute regarding payoff may be addressed by a motion prior to closing the case.

38. **Application of Payments Secured by Real Estate.** Holders of claims secured by real estate shall apply payments for mortgage payments accruing **post-petition**, whether made by the Chapter 13 Trustee or by the debtor(s) to post-petition monthly contractual mortgage obligations, including principal interest, interest, escrow obligations and other adjustments made to the mortgage obligation pursuant to non-bankruptcy law, if not otherwise noted on the payment.

Holders of claims secured by real estate shall apply payments made by the Chapter 13 Trustee for **pre-petition** arrearage claims to the balance of unpaid monthly contractual mortgage obligations which accrued prior to the petition date, if not otherwise noted on the payment.

39. **Adjustment of Mortgage Payment.** Upon notice from the debtor or a holder of a claim secured by real estate of a change in the amount of a post-petition monthly payment obligation which the Trustee is paying under a plan, the Trustee shall adjust the monthly distribution on such claim in accordance with such notice. (NOTE: This Rule supplements 3015-3 A. by allowing the holder of the claim to send notice to the trustee).

Automatic Stay (paragraphs 40-45)

40. **Requests for Continuation of Stay.** In cases where the automatic stay is limited to 30 days from the date of filing of the petition, or expires at some other date, (11 U.S.C. § 362(c)(3), § 362(h), or § 521(a)(2) or (6)), the debtor, trustee, or any party in interest may file a motion for continuation of the stay. When the stay terminates 30 days after the date of the petition, such motion by a debtor shall be filed within ten (10) days of the filing of the voluntary petition. When such motion is filed by the trustee, it shall be filed within twenty (20) days of the filing of the voluntary petition. Such motions will be set for hearing between 20 and 30-days after the date of the petition. Responses may be filed until the time of hearing. A motion for continuation of the stay shall be filed using the “Motion to Extend Automatic Stay” event.

41. **Verified Motion for Imposition of Stay.** In cases where no automatic stay exists upon filing of the petition under 11 U.S.C. § 362(b)(20), § 362(b)(21), § 362(c)(4), or § 362(n), the debtor, trustee, or any party in interest may file a **verified motion** for emergency imposition of the stay under § 362 as to any creditor(s). Such motion shall be filed using the “Motion to Impose Automatic Stay” event. Movant shall set such motion for hearing and shall serve the motion upon all affected parties, upon the Trustee or Successor Trustee of any pending foreclosure proceeding and upon any party in possession of debtor’s repossessed collateral. The motion for imposition of an emergency stay may be considered by the Court without hearing and, if granted, such stay will continue for a period not to exceed seven days or until conclusion of the final hearing on imposition of the stay whichever is less. The motion must: (i) identify the circumstances justifying imposition of a stay; and (ii) indicate whether movant consents to the continued processing of the creditor’s action, including statutory notices and publication or continued possession of collateral pending final hearing.

42. **Motion for Order Confirming the Stay is Inapplicable under § 362(j) (“Comfort Order”).** The Court shall consider without hearing all motions under 11 U.S.C. § 362(j) for orders confirming the stay has been terminated. The motion and proposed order shall both provide with specificity the basis of movant’s belief that the stay has terminated or is inapplicable including, e.g. previous case numbers and dates. The motion shall be filed using the

“Termination or Absence of Stay” event. No filing fees are required to be collected for such motions.

43. **Automatic Stay with Respect to Lessors of Real Property – Proceedings under 11 U.S.C. § 362(l).** The following procedures will apply to proceedings to reimpose the automatic stay following a residential eviction against the debtor under 11 U.S.C. § 362(l):

- a. The debtor must file the certification required by 11 U.S.C. § 362(l)(1) by completing the information requested on page two of the voluntary petition.
- b. The debtor must deposit with the Court rent payments that will come due within the 30-day period after the filing of the bankruptcy petition. Debtor shall submit such rent payments by tendering to the Court a cashier’s or certified check, or money order payable to the lessor. The debtor shall also provide the Court with a copy of the pre-petition judgment for possession at the time of submitting the rent payment with the Court.
- c. The Court will send notice to the designated lessor advising that the lessor may:
 - (1) consent to receive the rent payment (and shall give payment instructions, e.g. address for Court to mail check, etc.); or
 - (2) object to receiving the rent payment.
- d. The lessor shall have 10 days from the date of the Court’s notice to file any objection under 11 U.S.C. § 362(l)(3)(A). Failure to file a timely objection shall be lessor’s consent to receive debtor’s rent payment, and the Court will transmit debtor’s rent payment to the lessor. If the lessor files an objection, the Court will set such objection for hearing.
- e. Within 30 days of the filing of the petition, the debtor must file the certification required by 11 U.S.C. § 362(l)(2), advising that the debtor has cured the pre-petition default and must serve that certification on the lessor.
- f. If the lessor objects to the certification under 11 U.S.C. § 362(l)(2), lessor must file an objection within 10 days of receipt of the certification and serve the objection on the debtor and debtor’s counsel, if any. The Court will set a hearing as required under 11 U.S.C. § 362(l)(3).
- g. If debtor fails to file the necessary certification(s) under 11 U.S.C. § 362(l)(1) or (2), the Court will provide the lessor and debtor with a certified copy of the docket sheet and notice as required in 11 U.S.C. § 362(l)(4)(B).

44. **Local Rule 4001-1 Relief From the Automatic Stay.** L.B.R. 4001-1 is amended as follows:

L.B.R. 4001-1 Relief from the Automatic Stay.

- A. Service of Motions for Relief from the Automatic Stay.** The movant shall serve any motion for relief from the automatic stay and notice of hearing upon: the debtor, debtor’s attorney, and the trustee, ~~and any entity actually known by movant to have a mortgage on or consensual interest in the collateral.~~ In Chapter 11 cases, unless otherwise ordered, the movant shall also serve the motion and notice upon the Master Service List (L.B.R. 9013-3 C.) or if no such list exists,

upon those who would be on such list, and on any entity who may be affected by the motion.

B. Hearings on Motions for Relief from the Automatic Stay. Motions for relief from the automatic stay shall ordinarily be set giving a minimum of twenty (20) days notice. If Movant consents to having the motion set on a calendar date that is greater than thirty (30) days after the filing of the motion, the caption of the motion must state: "MOVANT WAIVES 30 DAY HEARING."

C. Content of Motion for Relief from the Automatic Stay.

1. **Motion for Relief from the Automatic Stay to Foreclose on Collateral.**

a. **General Provisions.** In a case filed under any chapter in which movant is seeking to foreclose on collateral, the motion shall ~~list all entities actually known by movant to have an interest in the collateral and shall~~ recite the legal and factual basis on which relief is sought including:

- i. the basis for the debt;
- ii. the balance of the indebtedness on the petition date or otherwise;
- iii. and
- iv. the date and manner of perfection, including book and page number, certificate of title, or UCC-1 recording.

Documentation in support of a motion for relief shall be summarized using an Exhibit summary following the procedures under L.B.R.9040-1 A. unless otherwise permitted in this Rule. On request, movant shall provide copies of all exhibits in their entirety as set forth in L.B.R. 9040-1 C.

b. **Chapter 13 Cases.** In a Chapter 13 case in which movant is seeking to foreclose on collateral, the following procedures apply:

i. **Balance due.** The motion must include a statement of the amount due including a breakdown of the following categories:

- (1) unpaid principal;
- (2) accrued interest from a specific date to a specific date;
- (3) late charges from a specific date to a specific date;
- (4) attorney's fees;
- (5) advances for taxes, insurance and the like; and
- (6) any other charges.

ii. **Post-Petition Payments.** In Chapter 13 cases, where the movant is seeking relief from the stay for failure to make post-petition payments on a claim secured by real property that is the Debtor's principal residence or is treated by the Debtor's Chapter 13 Plan pursuant to § 1322(b)(5), the motion or attachments thereto, shall contain a legible post-petition payment history. The payment history shall set forth:

- (1) the date each post-petition payment was received,
- (2) the amount of each post-petition payment received, and
- (3) how each post-petition payment was applied by movant.

Pursuant to § 362(g)(2), the Debtor has the burden to prove any post-petition payment(s) alleged to have been made but not set forth in the motion, or attachments thereto.

iii. **Exhibits.** ~~An Exhibit Summary prescribed by L.B.R. 9040-1 A. shall not be used with respect to motions for relief from the automatic stay to foreclose on collateral in Chapter 13 cases. Instead, Sselect~~ exhibits or page(s) may be attached to the motion provided the exhibit page(s) contain evidence of perfection. It is sufficient for movant to attach only the first page of a deed of trust, certificate of title, or UCC-1 form showing the recorder's stamp and verifying lien perfection. On request, movant shall provide copies of all exhibits in their entirety as set forth in L.B.R. 9040-1 C.

iv. **Order Granting Relief from Automatic Stay - Effect on Secured Claims.** All orders granting relief from the automatic stay in a Chapter 13 case shall contain the following language:

The Chapter 13 Trustee is directed to discontinue payment on all claims secured by the property against which relief from the automatic stay is granted in this Order. The Trustee is directed to resume payment on such claims on notification pursuant to L.B.R. 3021-1 A.

- D. Responses to Motions for Relief from the Automatic Stay.** Any response to a motion for relief from the automatic stay must be filed no later than five (5) **business** days before the hearing date set for the motion for relief. The response should specifically admit or deny the allegations in each paragraph. ~~A general denial or similar response is insufficient.~~ When a response asserts adequate protection, the response must state how movant will be adequately protected if the automatic stay remains in effect. The parties shall exchange and file exhibits following the procedures in L.B.R. 9040-1 C.
- E. Duty to Confer.** As required by L.B.R. 2093-1 B., in advance of hearing, attorneys for the parties involved in a motion for relief shall confer with respect to the issues raised by the motion to determine whether a consensual order may be entered or whether a stipulation may be reached concerning relevant facts.
- F. Consent Motions for Relief from the Automatic Stay.** ~~A consent motion for relief from the automatic stay must be styled as a "consent motion."~~ Pursuant to

L.B.R. 9013-1 E., a consent motion for relief from the automatic stay need not be set for hearing and may be ruled upon without hearing. The Clerk of Court is authorized to waive the filing fee for a motion for relief from the automatic stay **when ~~if~~ the motion is filed with the written consent and signature of the trustee and all respondents. Consent may be shown by separate certificate of consent or certificate of no opposition signed by the responding party but such consent or no opposition must be ~~and~~ filed as part of the consent motion. All consent motions for relief from stay must be filed using the proper non-fee consent motion event in ECF to avoid automatic assessment of the filing fee. Consent Motions for relief to proceed with a domestic action do not require signature of the non-debtor spouse.**

G. Orders on Motions for Relief from the Automatic Stay. Proposed Orders on any motion for relief from the automatic stay must follow the format in L.B.R. 9050-1 and must specifically describe the property (collateral) that is the subject of relief. “So Ordered” provisions in L.B.R. 9050-1 E. may not be used with motions for relief from the automatic stay. In Chapter 13 cases, the order must include the language set forth in L.B.R. 4001-1 C. iii. above.

H. Emergency and Ex Parte Relief from the Automatic Stay. Procedures for emergency and ex parte relief from the automatic shall be as stated in L.B.R. 9013-2 C. and D., respectively.

I. Continuances. If the court does not render a final decision on a motion for relief from stay during the 60-day period referenced in 11 U.S.C. § 362(e)(2), any party wishing to have the automatic stay extended until a continued hearing date shall submit a proposed order continuing the hearing and ordering that the stay be extended until such hearing.

45. **Mandatory Form Consent Order & Stipulation re: Relief from Stay.** The Bankruptcy Court adopts as a Local Form “Consent Order and Stipulation in Settlement of Motion for Relief” referenced in **Appendix B**. Absent good cause, use of this form is mandatory in Chapter 13 cases.

Miscellaneous Matters (paragraphs 46-51)

46. **Electronic Issuance of Summonses.** In accordance with Fed. R. Bankr. P. 7004(a)(2) as amended December 1, 2005, the United States Bankruptcy Court for the Eastern District of Missouri will electronically sign, seal, and issue summonses. Plaintiffs no longer need to submit a proposed summons when filing an adversary complaint. The Court will complete the summons, endorse it with the /s/ signature of the deputy clerk, affix an electronic seal, and issue the summons through CM/ECF. Attorneys will receive the summons by e-mail through CM/ECF. The Court will mail the summons to any pro se plaintiff. The plaintiff or plaintiff’s attorney must serve the

summons on each defendant as required in Fed. R. Bankr. P. 7004(a) –(h). This procedure supersedes and replaces any contrary procedural instruction in the Court’s Local Rules (specifically L.B.R. 7004-1 A.), its Procedures Manual, and its ECF training materials.

47. **Chapter 11 First Day Motions.** To properly gather statistical information concerning Chapter 11 first day motions, first day motions must be filed using designated Motion/Application events within the CM/ECF system. Three specific first day motions have descriptively titled events and should be filed using those events: (1) “Applications to Employ,” (2) “Motion to Use Cash Collateral,” and (3) “Motion for Continuance of Utility Service.” Other first day motions should be filed using a new “Chapter 11 First Day Motion” event. A description of the motions should be typed into the available text box.

48. **Proposed Orders re: Valuation of Property.** To properly gather statistical information required concerning valuation of property as compared to the value of a claim, any proposed order submitted concerning (1) a “Trustee’s Motion to Determine Value of Property,” or (2) a “Motion Setting Property Value,” must include a statement whether the property valuation is below the value of the claim. This statement should be added as the last paragraph of the proposed order.

49. **Adversary Cover Sheet.** A current Adversary Cover Sheet (with a revised date of 10/06) must be filed when commencing an adversary proceeding. The new cover sheet form is now available as Form B104 under Official Forms on the Court’s website.

50. **Local Rule 3001-1 B. Service of Proof of Claim in Chapter 7, 13 and 12 Cases.** L.B.R. 3001-1 B. is amended as follows:

L.B.R. 3001-1 B. Service of Proof of Claim in Chapter 7, 13 and 12 Cases. Immediately upon filing a proof of claim or interest, the claimant shall ~~provide a copy of~~ serve the proof of claim and its Exhibit Summary on ~~to~~ the debtor, debtor’s attorney, and ~~to~~ the trustee, if any. The claimant ~~must shall also simultaneously serve provide a copy of the proof of claim and~~ a complete copy of all ~~supporting~~ exhibits ~~supporting~~ referenced in the Exhibit Summary, or relevant portions thereof ~~not merely the exhibit summary~~, on the trustee in chapter 7 cases, and on the debtor’s attorney and the trustee in Chapter 12 and 13 cases. ~~On request of any entity, c~~Claimant ~~must~~ shall provide such copies no later than seven (7) days after the request and at no charge to the requesting entity. Failure to promptly provide the exhibits ~~when requested~~ may be cause for disallowance of the claim. ~~The filing of a proof of claim electronically is the filer’s representation that the filer has served a hard copy of all supporting documents referenced in the Exhibit Summary as required by this rule. No certificate of service is required for service of supporting documents.~~

51. **Amendments.** This order may be amended from time to time at the discretion of the Court.

SO ORDERED:



Chief Judge Barry S. Schermer



Judge Kathy A. Surratt-States



Judge Charles E. Rendlen, III



Judge David P. McDonald

Dated: December 21, 2006

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Mandatory Form Chapter 13 Plan

(required in all Chapter 13 cases filed on or after March 1, 2006)

This form is available in PDF by [clicking here](#).

It is also on the Court's Website in Word and WordPerfect under Local Forms at:
http://www.moeb.uscourts.gov/ch13_forms.htm

**Mandatory Consent Order & Stipulation in Settlement of
Motion for Relief from Stay**

(for use in Chapter 13 cases)

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