

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

FILED
2016 FEB 12 P 1:42

In re:

U.S. BANKRUPTCY COURT
E.D. MICHIGAN-DETROIT

The Administration of the
United States Bankruptcy Court
for the Eastern District of Michigan

Administrative Order
No. 16-04

**ADMINISTRATIVE ORDER REGARDING THE
BANKRUPTCY COURT'S PUBLISHED GUIDELINES**

From time to time the Bankruptcy Court for the Eastern District of Michigan has adopted Guidelines and published them on the Court's website. On January 5, 2016, the Court approved revised Local Bankruptcy Rules and ECF Administrative Procedures effective February 1, 2016. Since then, the Court conducted a review of its Guidelines to determine whether it should also revise them based on the new Local Bankruptcy Rules and ECF Administrative Procedures. Some of the Guidelines are now obsolete, others require changes, but some should remain as written. The Court enters this order to conform its Guidelines to the revised Local Bankruptcy Rules and ECF Administrative Procedures. Accordingly,

IT IS HEREBY ORDERED that Guidelines 1, 2, 4, 11 and 12 remain in full force and effect as they are currently written.

IT IS FURTHER ORDERED that Guidelines 3, 5, 6, 13 and 14 remain in effect, but are revised in the manner reflected in the redlined version attached to this order.

IT IS FURTHER ORDERED that Guidelines 7, 8, 9 and 10 are abrogated and are of no further force or effect.

IT IS FURTHER ORDERED that Guidelines 1 through 6 and 11 through 14, as revised by this order, are now renumbered Guidelines 1 through 10.

IT IS FURTHER ORDERED that the Clerk of the Court shall post this order on the Court's website with a link to the revised Guidelines that contains both a clean copy of the revised Guidelines and a redlined version to reflect the changes from the Guidelines previously in effect.



Phillip J. Shefferly, Chief Judge
United States Bankruptcy Court

Dated: February 12, 2016

Guidelines

Guideline 1 Notifying the United States Trustee and the Clerk of First Day Motions

Before filing a chapter 11 case that is accompanied by First Day Motions, counsel for the debtor is encouraged to communicate with the United States trustee's office and the clerk's office. With respect to contact with the clerk's office, counsel should contact the clerk of the court. If the clerk is not available, contact may be made with the chief deputy clerk or the operations manager of the clerk's office. Counsel for the debtor may discuss any relevant issues in the case with the United States trustee and the clerk of the court.

The court strongly encourages the parties to discuss the following with the United States trustee's office:

- (1) The nature of the first day relief to be requested.
- (2) The debt structure of the business, including the public and trade debt.
- (3) Description of the debtor's cash management system and issues under § 345.
- (4) Issues that may be resolved by consent (*e.g.*, extensions of time to file schedules, adequate assurances of utility payments, wage and benefit payments up to statutory limitation(s), joint administration, necessity doctrine payments, professional employment issues, including conflicts and indemnification requests).
- (5) Corporate governance issues.
- (6) Collateral issues including Federal Trade Commission issues, taxing authority issues, Security and Exchange Commission issues, pension and other Department of Labor issues, Environmental Protection Agency and Michigan Department of Environmental Quality issues and insurance issues.
- (7) The status of any attempted out-of-court workout, including perceived impediments to a successful reorganization and whether there was an unofficial prepetition committee.
- (8) The number of creditors and any special needs due to the size of the case.
- (9) The need for a noticing vendor for the notice of the meeting of creditors and any other notice requirement.

The court strongly encourages the parties to discuss the following with the clerk:

- (1) The number of creditors and any special needs due to the size of the case.

(2) The need for a noticing vendor for the notice of the meeting of creditors and any other notice requirement.

(3) The need for the availability of the clerk or staff outside of ordinary business hours.

Guideline 2 Expedited Formation of Committee in a Large Bankruptcy Case

In Large Bankruptcy Cases, the United States trustee's office is encouraged to appoint a committee of creditors within 3 Business Days after receiving the information from the debtor required by Local Rule 2003-3, provided that creditors are willing to serve in accordance with § 1102.

Guideline 3 Missing Papers

The clerk will not issue a discharge in a chapter 13 case if the debtor has not filed a Debtor's Certification Regarding Domestic Support Obligations, as required by Local Rule 4004-1.

Guideline 4 Waiver of Filing Fee

An application to waive the filing fee must be filed on the official form. The court will review all such applications in chambers. The court may deny an application without a hearing. If the court schedules a hearing, the court will give notice to the debtor and the trustee.

Guideline 5 Tax Return Compliance

A motion under §§ 521(j), 1307(e) or 1308 must be filed under Local Rule 9014-1.

Guideline 6 Chapter 13 Post-Confirmation Motions to Excuse Plan Payments or Tax Refunds in Chapter 13 Cases and Plan Modifications

Because post-confirmation motions to excuse plan payments or tax refunds in chapter 13 cases are actually plan modifications, for which the national and local rules establish a

procedure, the Court will no longer consider such motions. Upon the filing of such a post-confirmation motion, the Court will enter an order denying it without prejudice to the debtor's right to file a proposed plan modification.

Any such proposed plan modification must comply with LBR 3015-2(b); and be filed in ECF using the event, "Chapter 13 Post-Confirmation Plan Modification."

Guideline 7 Entry of a Discharge in an Individual Chapter 11 Case

11 U.S.C. § 1141(d)(5) provides that in an individual chapter 11 case, a discharge is entered after the completion of all payments under the confirmed plan and after the court makes the findings required by § 1141(d)(5)(C). Rather than await those events to close the case, which may take several years, the Court will close such a case upon plan confirmation and resolution of all post-confirmation litigation. To request the entry of a discharge upon the completion of plan payments, the debtor must file a motion to reopen for that purpose. The Court will waive any applicable reopening fee for such a motion. The motion should request the findings required by § 1141(d)(5)(C) and should be filed under LBR 9014-1 with notice to all parties in interest.

Guideline 8 Procedure for Lien Strip of a Junior Mortgage in Chapter 13

This guideline applies to any Chapter 13 case in which a debtor proposes to strip a junior lien on real property under §§ 1322(b)(2) and 506(a) of the Bankruptcy Code. If the lien strip is agreed upon by the debtor and the lien holder, the debtor and the lien holder may file a stipulation in the bankruptcy case and submit a proposed order accomplishing the lien strip. If the debtor does not have the agreement of the lien holder to the lien strip, the debtor must file an adversary proceeding contemporaneous with the debtor's Chapter 13 plan. In such case, the plan must contain a provision informing the lien holder that an adversary proceeding to strip the lien has been filed under §§ 1322(b)(2) and 506(a) of the Bankruptcy Code. A Chapter 13 debtor filing such adversary proceeding is exempt from payment of the adversary proceeding filing fee. Any lien strip default judgment entered in such adversary proceeding must include the following language:

IT IS ORDERED that upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge order in bankruptcy case number _____, the mortgage ("Mortgage") dated _____, covering the following described property ("Property") situated in the City of _____, County of _____, State of _____, and further described as follows:

[legal description]

recorded in the _____ County Register of Deeds on _____, Liber _____, Page _____, will be stripped from the Property and discharged.

IT IS FURTHER ORDERED that upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge order in bankruptcy case number _____, the debtor may record a certified copy of this order, with a copy of the debtor's Chapter 13 discharge order attached, with the _____ County Register of Deeds, which will constitute and effectuate the discharge of the Mortgage.

IT IS FURTHER ORDERED that if the debtor fails to complete the debtor's Chapter 13 plan and obtain a Chapter 13 discharge order in bankruptcy case number _____, this order does not affect the validity or enforceability of the Mortgage and may not be used in any subsequent bankruptcy case of the debtor either to compel the holder of the Mortgage to execute a discharge of the Mortgage, or to otherwise act as a discharge of the Mortgage.

Guideline 9 Responsibilities of Debtor's Counsel Relating to a Reaffirmation Agreement

As a matter of fulfilling the obligations of counsel for a debtor in a Chapter 7 case, counsel may not exclude from representation services relating to a reaffirmation agreement.

Guideline 10 New Chapter 13 Model Plan

All Chapter 13 plans filed in the Eastern District of Michigan must be in the form and contain the content of the model plan that is available on the Court's website, www.mieb.uscourts.gov, and on www.13edm.com.

Guidelines

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The court strongly encourages the parties to discuss the following with the United States trustee's office:

- (1) The nature of the first day relief to be requested.
- (2) The debt structure of the business, including the public and trade debt.
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- (4) Issues that may be resolved by consent (*e.g.*, extensions of time to file schedules, adequate assurances of utility payments, wage and benefit payments up to statutory limitation(s), joint administration, necessity doctrine payments, professional employment issues, including conflicts and indemnification requests).
- (5) Corporate governance issues.
- (6) Collateral issues including Federal Trade Commission issues, taxing authority issues, Security and Exchange Commission issues, pension and other Department of Labor issues, Environmental Protection Agency and Michigan Department of Environmental Quality issues and insurance issues.
- (7) The status of any attempted out-of-court workout, including perceived impediments to a successful reorganization and whether there was an unofficial prepetition committee.
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The court strongly encourages the parties to discuss the following with the clerk:

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Guideline 2 Expedited Formation of Committee in a Large Bankruptcy Case

In Large Bankruptcy Cases, the United States trustee's office is encouraged to appoint a committee of creditors within 3 Business Days after receiving the information from the debtor required by Local Rule 2003-3, provided that creditors are willing to serve in accordance with § 1102.

Guideline 3 Missing Papers

The clerk will not issue a discharge **in a chapter 13 case** if the debtor has not filed:

~~(a) Official Form 23 – Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management, as required by F.R.Bankr.P. 1007(b)(7) and (e);~~
~~and~~

~~(b) In a Chapter 13 case, a Debtor's Certification Regarding Domestic Support Obligations, as required by Local Rule 4004-1.~~

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Guideline 4 Waiver of Filing Fee

An application to waive the filing fee must be filed on the official form. The court will review all such applications in chambers. The court may deny an application without a hearing. If the court schedules a hearing, the court will give notice to the debtor and the trustee.

Guideline 5 Tax Return Compliance

A motion under §§ 521(j), 1307(e) or 1308 ~~shall~~ **must** be filed under Local Rule 9014-1.

Guideline 6 Chapter 13 Post-Confirmation Motions to Excuse Plan Payments or Tax Refunds in Chapter 13 Cases and Plan Modifications

Because post-confirmation motions to excuse plan payments or tax refunds in chapter 13 cases are actually plan modifications, for which the national and local rules establish a procedure, the Court will no longer consider such motions. Upon the filing of such a post-confirmation motion, the Court will enter an order denying it without prejudice to the debtor's right to file a proposed plan modification.

Any such proposed plan modification ~~shall~~ must :

~~(1) Be served as required by F.R.Bankr.P. 3015(g);~~

~~(2) C~~omply with LBR 3015-2(b); and

~~(3) State with specificity the impact of the proposed plan modification on each class of creditors;~~

~~(4) Be accompanied by a form "Notice of Deadline to Object to Chapter 13 Plan Modification," available on the Court's website; and~~

~~(5) B~~e filed in ECF using the event, "Chapter 13 Post-Confirmation Plan Modification."

~~If a timely objection is filed, the Court will set the matter for hearing and give notice of the hearing to the debtor, the proponent of the plan modification, the trustee and any objecting parties.~~

~~(Effective May 1, 2008)~~

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Guideline 7 ~~LBR 1009-1 Compliance~~

~~In regard to filing an amended petition, schedule, statement of financial affairs, E.D. Mich. LBR 1009-1(a) states, "The amended paper shall completely disclose all information required by the form. A 'supplemental' paper that merely provides additional information shall not be filed." If a "supplemental" paper is filed, it may be stricken without a hearing and without prejudice to the right to file an amended paper that complies with the local rule.~~

~~(Effective May 5, 2008)~~

~~Guideline 8—LBR 9013-5 Compliance~~

~~E.D. Mich LBR 9013-5 requires a corporate ownership statement when filing certain papers relating to contested matters. When required, that statement should be filed as part of the paper and should be separately bookmarked in the filed PDF file. If a statement of corporate ownership statement was previously filed and is therefore not required, a statement to that effect should be filed with the currently filed paper, separately bookmarked. If the required statement is not included in the paper, and the Court cannot readily determine that a statement was previously filed as required, the Court will send a notice stating that the deficiency must be corrected within seven days or the paper will be stricken.~~

~~(Effective May 5, 2008)~~

~~Guideline 9—Motion Cover Sheet Compliance~~

~~Several local rules require the filing of a cover sheet with certain motions. When a cover sheet is not filed as required, the Court may enter an order striking or denying the motion without prejudice to the movant's right to file the motion in compliance with the applicable local rule.~~

~~(Effective May 5, 2008)~~

~~Guideline 10—Schedule C in a Joint Case~~

~~LBR 1007-1(g) states, "Each debtor in a joint case shall file a separate schedule C." Any filing that clearly identifies separate claims of exemption for the husband and wife will be accepted under this local rule. However any schedule C that does not comply with this rule will be ordered stricken.~~

~~(Effective July 15, 2008)~~

Guideline 11.7 Entry of a Discharge in an Individual Chapter 11 Case

11 U.S.C. § 1141(d)(5) provides that in an individual chapter 11 case, a discharge is entered after the completion of all payments under the confirmed plan and after the court makes the findings required by § 1141(d)(5)(C). Rather than await those events to close the case, which

may take several years, the Court will close such a case upon plan confirmation and resolution of all post-confirmation litigation. To request the entry of a discharge upon the completion of plan payments, the debtor must file a motion to reopen for that purpose. The Court will waive any applicable reopening fee for such a motion. The motion should request the findings required by § 1141(d)(5)(C) and should be filed under LBR 9014-1 with notice to all parties in interest.

~~(Effective September 10, 2008)~~

Guideline ~~12~~8 Procedure for Lien Strip of a Junior Mortgage in Chapter 13

This guideline applies to any Chapter 13 case in which a debtor proposes to strip a junior lien on real property under §§ 1322(b)(2) and 506(a) of the Bankruptcy Code. If the lien strip is agreed upon by the debtor and the lien holder, the debtor and the lien holder may file a stipulation in the bankruptcy case and submit a proposed order accomplishing the lien strip. If the debtor does not have the agreement of the lien holder to the lien strip, the debtor must file an adversary proceeding contemporaneous with the debtor's Chapter 13 plan. In such case, the plan must contain a provision informing the lien holder that an adversary proceeding to strip the lien has been filed under §§ 1322(b)(2) and 506(a) of the Bankruptcy Code. A Chapter 13 debtor filing such adversary proceeding is exempt from payment of the adversary proceeding filing fee. Any lien strip default judgment entered in such adversary proceeding must include the following language:

IT IS ORDERED that upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge order in bankruptcy case number _____, the mortgage ("Mortgage") dated _____, covering the following described property ("Property") situated in the City of _____, County of _____, State of _____, and further described as follows:

[legal description]

recorded in the _____ County Register of Deeds on _____, Liber _____, Page _____, will be stripped from the Property and discharged.

IT IS FURTHER ORDERED that upon completion of the debtor's Chapter 13 plan and the entry of a Chapter 13 discharge order in bankruptcy case number _____, the debtor may record a certified copy of this order, with a copy

of the debtor's Chapter 13 discharge order attached, with the _____ County Register of Deeds, which will constitute and effectuate the discharge of the Mortgage.

IT IS FURTHER ORDERED that if the debtor fails to complete the debtor's Chapter 13 plan and obtain a Chapter 13 discharge order in bankruptcy case number _____, this order does not affect the validity or enforceability of the Mortgage and may not be used in any subsequent bankruptcy case of the debtor either to compel the holder of the Mortgage to execute a discharge of the Mortgage, or to otherwise act as a discharge of the Mortgage.

~~(Effective June 4, 2009)~~

Guideline ~~13~~⁹ Responsibilities of Debtor's Counsel Relating to a Reaffirmation Agreement

As a matter of fulfilling the obligations of counsel for a debtor in a Chapter 7 case:

~~(1) Counsel may not exclude from representation services relating to a reaffirmation agreement; and~~

~~(2) Counsel shall appear and represent the debtor at any hearing on any reaffirmation agreement.~~

~~(Effective December 16, 2009)~~

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Guideline ~~14~~¹⁰ New Chapter 13 Model Plan

All Chapter 13 plans filed in the Eastern District of Michigan must be in the form and contain the content of the ~~new~~ model plan that is available on the Court's website, www.mieb.uscourts.gov, and on www.13edm.com. ~~This Guideline applies only to Chapter 13 cases filed on or after January 1, 2013, and not to Chapter 13 cases filed before such date.~~