

End-of-the-Road Issues in Chapter 13

Christopher W. Jones, Moderator

Acclaim Legal Services, PLLC; Warren, Mich.

Lisa K. Mullen

Office of the Chapter 13 Trustee; Southfield, Mich.

Hon. Daniel S. Opperman

U.S. Bankruptcy Court (E.D. Mich.); Detroit

Kim-Su Morden Rattet

Trott Law, P.C.; Farmington Hills, Mich.



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End-of-the-Road Issues in Chapter 13

Judge Daniel S. Opperman
United States Bankruptcy Court, Eastern District of Michigan
Flint and Bay City, Michigan

Christopher W. Jones
Acclaim Legal Services PLLC
Warren, Michigan

Lisa K. Mullen
Office of the Chapter 13 Trustee David W. Ruskin
Southfield, Michigan

Kim Morden Rattet
Trott Law PC
Farmington Hills, Michigan

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***Harris v. Viegelahn*, 135 S. Ct. 1829 (U.S. 2015)**

The United States Supreme Court issued an opinion on May 18, 2015 in the case of *Harris v. Viegelahn*, 135 S.Ct. 1829 (2015). The opinion addressed the split of decisions in the lower courts regarding the disposition of the funds on hand with the Chapter 13 Trustee at the time of a post confirmation conversion of a Chapter 13 case to one under Chapter 7 of the Bankruptcy Code.

In *Harris*, the debtor converted his Chapter 13 case post confirmation to a Chapter 7 case. At the time of the conversion, the Chapter 13 Trustee (the “Trustee”), had \$5,519.22 on hand. As part of the Trustee’s case closing procedures, the Trustee disbursed funds to debtor’s counsel for an outstanding fee award and also distributed funds to the debtor’s creditors pursuant to the confirmed plan. Post conversion, the debtor took issue with the Trustee’s disbursements arguing that the Trustee lacked authority to disburse his post petition wages after conversion and sought a refund of the disbursed funds from the Trustee. The Bankruptcy court granted the debtor’s motion and the District Court affirmed. The Fifth Circuit, however, reversed finding that the Trustee was required to distribute the debtor’s wages on hand upon conversion to the debtor’s creditors as the creditor’s claims to the undistributed funds were superior to the debtor. *In re Harris*, 757 F. 3d 468, 481 (5th Cir. 2014). The debtor appealed the issue to the Supreme Court. The Supreme Court unanimously held that any post-petition wages not yet distributed by the Chapter 13 Trustee are required to be returned to the debtor (absent a bad faith conversion).

The Court’s decision was premised on Section 348(f)(1)(A) that provides when a case is converted from Chapter 13 to Chapter 7, “property of the estate in the converted case shall consist of property of the estate, as of the filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion.” The Court reasoned that Section

348(f)(1)(A) removed the post petition wages from the Chapter 7 estate and, as a result, the earnings were not part of the “pool of assets that may be liquidated and distributed to creditors.” 135 S.Ct. at 1837. The only exception to this rule was the case where a debtor converts in bad faith. In that instance, Section 348(f)(2) would be triggered and all property, *as of the date of conversion*, would be property of the estate.

In finding that post petition wages are excluded from the Chapter 7 estate and not available to creditors, the Court held that returning the funds to the debtor was consistent with the statutory construction of Section 348 and in harmony with the “fresh start” contemplated by the Bankruptcy Code. 135 S.Ct. at 1838. If Chapter 13 trustees were permitted to disburse the very same earnings that were excluded and to the same creditors, such a finding would be incompatible with the statutory design of Section 348(f)(1)(A). *Id.*

The Court was further persuaded by Section 348(e) of the Bankruptcy Code which terminates the services of the Chapter 13 Trustee upon conversion. The Court found that the Trustee’s duties upon conversion are limited to those specified in Federal Rule of Bankruptcy Procedure 1019(4) and (5) and do not include disbursing funds on hand to attorneys and/or creditors. *Id.* The Court found that “the moment a case is converted from Chapter 13 to Chapter 7, however, the Chapter 13 trustee is stripped of authority to provide that “service.” *Id.* In making this finding, the Court held that the trustee’s duties to disburse under sections 1326(a)(2) and 1327(a) cease to apply upon conversion. *Id.*

The effect of the Court’s decision significantly affects the Trustee’s authority to disburse funds on hand once the case is converted. Upon conversion, all funds on hand at the time of conversion, regardless of the source, are to be sent back to the debtor. This represents a

substantial change in procedure for most, if not all, trustees. Before *Harris*, the common practice by Trustees was to pay any outstanding administrative claims (as provided for in 11 U.S.C. 503(b)), and distribute any remaining funds to creditors pursuant to the confirmed plan. Post *Harris*, the trustees are not permitted to make any disbursement of any funds to any party other than the debtor.

Conclusion:

Post *Harris*, various issues have and will continue to confront the courts, Chapter 13 trustees, and debtors' counsel as the parties consider the effect and application of the ruling, including the following:

1. Does the Supreme Court's rationale and ruling in *Harris* apply to dismissed cases (such that funds on hand with the Chapter 13 trustee can only be returned to the debtor) or does 11 U.S.C. 349 provide distinct authority to disburse fees to debtors' counsel?
2. Are there actions or steps debtors' counsel can take in advance (i.e., at the time of retention) to protect counsel's right to payment (or, more specifically, disbursement from funds on hand with the Chapter 13 Trustee) in the event of conversion?
3. Are there actions or steps debtors' counsel can take when conversion is imminent to protect counsel's right to payment (or, more specifically, disbursement from funds on hand with the Chapter 13 Trustee) in the event of conversion?
4. Should *Harris* be interpreted as an indictment of debtor counsel's right to payment for services rendered on behalf of a debtor when and if a case is converted to Chapter 7 or, alternatively, a finding that the interplay between the provisions of 11 USC 348

and FRBP 1019 create a technical impediment to the Chapter 13 trustee disbursing funds to any party other than the debtor? If interpreted as the former, will courts and Chapter 13 Trustees will be reluctant to cooperate with counsel's efforts to overcome the technical impediment created by *Harris*? If interpreted as the latter, will courts and Chapter 13 trustees work with debtors' counsel in an effort to facilitate compensation to debtors' counsel for services rendered on behalf the debtor?

***In Re: Kathleen Sorter*, No. 08-57829 PJS (Bankr. E.D. Mich., February 11, 2015, Judge Shefferly, bench opinion)**

In *Sorter*, the Trustee filed the Notice of Final Cure at the end of the debtor's five year Plan. Debtor's mortgage company filed a Response Disagreeing with The Notice. The Response filed by the creditor necessitated additional work by debtor's counsel after expiration of the Chapter 13 Plan to ensure completion and discharge. On December 16, 2014, Debtor's counsel appeared at a hearing related to the creditor's response disagreeing with the Trustee's Notice and ultimately Judge Shefferly overruled the creditor's response. Following the hearing, on the same day, the discharge order was entered. On December 28, 2014, debtor's attorney filed an application for fees in the amount of \$1,332.50. More than half of the fees were related to the response disagreeing with the notice of final cure filed by the creditor— important because these were fees that were NOT anticipated by debtor's counsel according to the Court. The Trustee objected to the application on the grounds that the discharge had been entered and any post-filing, pre-discharge fees were included in the discharge pursuant to 11 U.S.C. 1328 and there is no authority to award the fees. Further, the Trustee asserted that "Counsel's Application does not produce any benefit to debtor, creditors, or the estate" because the additional administrative expense would necessitate reopening of the case and potential dismissal based on the unpaid claim. The Trustee also indicated that much of the fees sought in the application was for services rendered prior to the Trustee's Notice of Final Cure (and the creditor's objection thereto) and the request was untimely.

First, although not at issue in the *Sorter* case, Judge Shefferly took the opportunity to make it clear that he disapproved (and indicated his colleagues concurred) and deemed improper a debtor's attorney not filing a fee application and simply sending the debtor a billing invoice

post-discharge. Judge Shefferly made clear that attorneys seeking compensation in relation to services rendered on behalf the debtor during a Chapter 13 must file a fee application and are not to send direct bills to debtors. 11 U.S.C. § 329 imposes disclosure requirements and that sending the debtor a bill at the end impairs the debtor's fresh start and undermine the court's ability to supervise and ascertain the reasonableness of the fees.

Second, Judge Shefferly ruled that entry of the discharge does not, in and of itself, bar the entry of an order awarding fees. The Court found that the analysis of whether the fees are discharged pursuant to 11 U.S.C. 1328 turns on whether the fees were "provided for by the Plan" and inherently related to the timeline of when the services were provided. The Court found a distinction between services rendered prior to the Trustee's Notice of Plan Completion and those rendered after the Notice was filed. The Court found that services rendered prior to the Notice were "anticipated" and thus were "provided for by the plan" and included in the discharge. As to services rendered after the Notice and in conjunction with the creditor's response disagreeing with the Notice, the Court found the fees were unanticipated and could not be "provided for by the plan" and therefore were not discharged pursuant to § 1328.

Judge Shefferly issued practical guidance for the bar going forward. The Judge ruled that if outstanding fees exist for which debtor's counsel seeks compensation, the application must be filed within the 21 day notice period provided for by the Trustee's Notice of Final Cure. If the fees are not sought within this time period, the Court will consider the fees discharged. The Judge sought to adopt a policy that motivates debtors' attorneys to file fee applications timely but to also encourage debtors' attorneys to do the work necessary to get the debtor to discharge.

In conclusion, the Court ruled that in any event, debtor's counsel's seeking compensation must file a fee application (rather than send a billing invoice directly to the debtor post-discharge). Further, time spent and fees incurred prior to the Trustee's Notice of Final Cure must be sought within the 21 day notice period following the filing of such Notice. If the fees are not timely sought, they are considered discharged. However, time spent and fees incurred after the Trustee's Notice of Final Cure could not have been provided for by the plan, such fees are not included in the discharge, such fees are awardable (if otherwise appropriate pursuant to applicable Code provisions) and collectible from the debtors post-discharge.

Applicable Statutory Authority:

11 USC § 1328 - Discharge

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

(1)

provided for under section 1322(b)(5);

(2)

of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3)

for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4)

for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

11 USC § 329 - Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—

(1) the estate, if the property transferred—

(A)

would have been property of the estate; or

(B)

was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2)

the entity that made such payment

***In Re: James and Christine Meade*, No. 09-34865 DOF (Bankr. E.D. Mich., March 16, 2015, Judge Opperman)**

In *Meade*, the debtors' counsel prepared and filed a proposed plan modification approximately 4 months prior to the expiration of the 60 month Chapter 13 Plan. The plan modification faced significant resistance and substantial time was spent pursuing the proposed plan modification. On October 16, 2014, a hearing was held on the matter and the Court sustained a portion of the Trustee's objections. The Court did not excuse all of the missed payments proposed by the plan modification, observed that the Chapter 13 Plan was due to be completed by December 2014, and allowed the Debtors additional time to cure the missed payments (that went unexcused with the proposed plan modification). On December 3, 2014, debtor's counsel filed a fee application for services rendered on behalf of the debtors, both to obtain court permission to incur debt to purchase an automobile and to prepare and prosecute the plan modification. The Trustee and debtors objected.

The Court pointed out the pertinent portions of the trustee's objection as follows: 1.the case is expired and there are insufficient funds on hand to pay the fees; 2. The plan modification filed in advance of the fee application failed to properly account for the fees to be incurred in the prosecution of the plan modification; 3. The statement in the fee application regarding the benefit to the estate is misleading in that the fee request actually impedes discharge; 4. The statement of the impact on creditors is misleading as the fee application indicated disbursements may be delayed when in fact no further distributions would be made if the fees were awarded; 5. Counsel failed to exercise "billing judgment" to determine whether counsel should bill for time allegedly expended in light of factors such as fairness to the debtors and creditors. *See In Re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

A hearing was held on counsel's application for fees and the Court took the matter under advisement. In a written opinion, Judge Opperman, noting that the burden of proving the fees are reasonable under 11 U.S.C. 330 falls on debtor's counsel, denied the vast majority of the fee request and all of the fees sought in relation to the proposed plan modification. The Court evaluated the timeline of activity in the case and determined that debtors' counsel failed to take appropriate action to warrant compensation. Judge Opperman's opinion detailed:

The Debtors' August 13, 2014, proposed modification sought to excuse missed payments. On September 3, 2014 when Trustee filed objections, Debtors' counsel knew the proposed modification would have stiff opposition. By October 16, 2014, The Court made a ruling and did not give Debtors the modification they wanted - it was partially rejected by the Court. Most of the requested fees were already incurred by Debtors' counsel, but not yet billed or requested. As early as November 1, 2014, Debtors' counsel knew the proposed plan modification would not be approved and that significant fees were owed. If an application was filed in November 2014, the Trustee could have held some funds to pay those fees or could have delayed filing the December 12, 2014, motion to release the employer from making further payments. Furthermore, none of the entries in the Application reveal any communication advising the Debtors of the fees that may still be owed and advising to extend the time period to pay the Trustee. By failing to take any of these actions, Debtors' counsel placed their clients in a terrible position of being responsible for significant attorney fees and cutting any access to the Debtors to have those fees paid by the Chapter 13 Trustee either by December 2014, or over a longer period of time. The Debtors did not receive any

value for those services and actually debtors' attorney placed the Debtors in a difficult position by failing to request the fees earlier or have the Trustee reserve the fees. Furthermore, by debtor's attorney requesting the release the Debtors' wage order, they precluded the Debtors from paying these fees through the Chapter 13 Plan. Debtors' attorney did not ensure payment of the fees through the Chapter 13 Plan, but instead placed this burden on the Debtors after plan completion.

Judge Opperman further stated that counsel spent too much time on this case and under 11 U.S.C. § 330 (a)(3)(D) the services were not performed in "a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue, or task addressed."

The Court did approve limited fees associated the filing of a motion to incur because it provided a benefit to the debtors. The balance of the fees requested were denied because the Debtors nor the estate received any value for those services and because Debtors' counsel placed the Debtors in an untenable position by failing to either request those fees earlier, have the Trustee reserve those fees, or request an extension of the Chapter 13 Plan to allow for payment of those fees.

Applicable Statutory Authority:

11 U.S.C. § 330 - Compensation of officers

(a)

(3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A)

the time spent on such services;

(B)

the rates charged for such services;

(C)

whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D)

whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E)

with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F)

whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)

(A) Except as provided in subparagraph (B), the court shall not allow compensation for—

(i)

unnecessary duplication of services; or

(ii) services that were not—

(I)

reasonably likely to benefit the debtor's estate; or

(II)

necessary to the administration of the case.

(B)

In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

End of Case Issues – Chapter 13

Fed. R. Bankr. P. 3002.1 - Notice of Final Cure Payment & E.D. Mich. LR 2015-5**

Trustee's Procedure Upon Chapter 13 Plan Completion

** pending proposed Amendments to the Court's Local Bankruptcy Rules – renumbered as LR 2015-3

1. Applicability

FEDERAL RULE

(a) In General. This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under §1322(b)(5) of the Code in the debtor's plan.

LOCAL RULE

- (a) Procedure Leading to Entry of the Debtor's Discharge. Within 30 days after the completion of plan payments by the debtor to the Trustee, the Trustee must file and serve on the debtor and all holders of allowed claims . . .
- (4) in addition to the requirements for holders of claims governed by F. R. Bankr. P. 3002.1, any party may file with the court an objection . . .

Application:

<u>Federal Rule</u>	<u>Local Rule</u>
Principal Residence	All allowed claims
1322(b)(5) claims or "cure and maintain" under the Plan	Principal residence & 1322(b)(5) claims
	Any party
	Does not apply if there has been an order providing otherwise
	Not applicable where the stay has been terminated <i>See proposed amendment LR 2015-3(e)</i>

- "Maintain" surprising source of confusion: does it refer to the on-going post-petition payments made by a trustee in a conduit-type (trustee pay all) plan OR is it the fact that the plan provides for any payment, regardless of source (i.e., includes "direct pay"), that may be construed as equivalent to maintenance.
- What if the stay lifts? (Before or after confirmation) or if the treatment is lien strip?
- What if there is a loan modification near or after the filing of the notice of final cure
- Voluntary compliance? When is too much information a bad thing?
- What payment does the Debtor begin to make to a Creditor where the payment was previously a Trustee pay?

VARYING CASE LAW:

- *In re Garduno*, 2012 WL 2402789 (Bankr. S.D. Fla. June 26, 2012): Rule 3002.1 did not apply because the mortgage addressed in the notice was not the debtors' principal residence and §1322(b)(5) did not apply where the bank was not receiving payments through the plan.

- *In re Merino*, Case No. 09-22282, 2012 WL 2891112 Bankr. M.D. Fla. July 16, 2012): Because 3002.1 was adopted to aid in the implementation of §1322(b)(5), “[a]n inference may be drawn that Rule 3002.1 does not apply to claims being paid outside the plan.
- *In re Weigel*, Case No. 10-17639, 2012 WL 6061023 (Bankr. E.D. Va. Dec. 6, 2012): §1322(b)(5) did not apply when there was no pre-petition arrearage and the plan provided for direct payments to creditor.
- *In re Cloud*, Case No. 09-60299, 2013 WL 441543 (Bankr. S.D. Ga. Jan 31, 2013): Payments were being made direct. The court held that encompasses all long-term debt, not just debt on which a pre-petition default is cured through the plan ...”; therefore, applies even if no prepetition arrearage exists and the debtor is making post-petition payments directly to the creditor
- *In re Tollios*, 491 B.R. 886, 889 (Bankr. N.D. Ill. May 13, 2013): applies in all Chapter 13 cases in which the plan provides for the maintenance of the debtor's monthly mortgage payments on his or her principal residence, regardless of whether the plan also provides for the cure of any prepetition arrears owed to the creditor
- *In re Roife*, Case No. 10-34070, 2013 WL 6185025 Bankr. S.D. Tex. Nov 26, 2013: Court finding that payments “outside the plan” can nonetheless fall under and be “provided for by the plan” so long as the debtor exercises his or her discretion “to make a provision in a chapter 13 plan for an unmodified secured claim. If the plan does not make a provision for the un-modified secured claim, the plan does not provide for the claim. It follows that if a plan makes a provision for an unmodified secured claim, the plan provides for the claim.”
- *In re O’Brien*, Case No. 14-06554 (Bankr. W.D. Mich. August 20, 2015): 3002.1 does not apply to claims that are secured by a security interest in the debtor’s principal residence but treated as unsecured due to a lien strip

2. Notice Requirements

FEDERAL RULE

3002.1(f) NOTICE OF FINAL CURE PAYMENT. Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and the debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default in the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that the final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

LOCAL RULE

- (a) Procedure Leading to Entry of the Debtor's Discharge. Within 30 days after the completion of plan payments by the debtor to the Trustee, the Trustee must file and serve on the debtor and all holders of allowed claims a notice stating that:
- (1) the debtor's payments to the trustee under the plan have been completed.
 - (2) the order of discharge will include findings that:
 - (A) all allowed claims have been paid in accordance with the plan, and
 - (B) with respect to any secured claim that continues beyond the term of the plan, any prepetition or post-petition defaults have been cured and the claim is in all respects current, with no escrow balance, late charges, costs or attorney fees owing.
 - (3) the order of discharge will direct that:
 - (A) any creditor who held a secured claim that was fully paid must execute and deliver to the debtor a release, termination statement, discharge of mortgage or other appropriate certificate suitable for recording; and
 - (B) any creditor who holds a secured claim that continues beyond the term of the plan must take no action inconsistent with the above findings.

Federal Rule	Local Rule	Proposed Amended Local Rule
Trustee shall file and serve or the Debtor may	Trustee shall file and serve a notice of final cure within 30 days and a final report and account within 120 days	No change
on the holder of the claim, debtor and Debtor's attorney	on debtor and all holders of allowed claims	No change
Notice that: <ul style="list-style-type: none"> the debtor has paid in full the amount required to cure any default in the claim holders obligation to file and serve a response 	Notice that: <ul style="list-style-type: none"> payments to the plan are complete all allowed claims have been paid per the plan secured claims are in all respects current, pre and post 	Notice that: <ul style="list-style-type: none"> payments to the plan are complete all allowed claims have been paid per the plan <i>with respect to any secured claim that continues beyond the term of the plan, an prepetition defaults have been cured</i>

PRACTICE POINTER: Be aware of varying practices by the Trustees of the last payment made to a creditor with a continuing claim at the end of the case in preparation for the notice

3. Responses/Objections

FEDERAL RULE

3002.1(g) RESPONSE TO NOTICE OF FINAL CURE PAYMENT. Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor’s counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder’s proof of claim and is not subject to Rule 3001(f).

LOCAL RULE

(4) in addition to the requirements for holders of claims governed by F.R.Bankr.P. 3002.1, any party may file with the court an objection to the trustee’s notice under subpart (a)(1); to assert that the debtor is not current in the payments that the debtor was authorized to make directly to a creditor; to the proposed findings as stated in subpart (a)(2); or to the proposed terms of the order of discharge as stated in subpart (a)(3).
(5) the deadline to file an objection is 21 days after service of the notice.

<u>Federal Rule</u>	<u>Local Rule</u>
21 days	21 days
If principal residence & “cure & maintain”	Follow Federal Rules for principal residence where there is “cure & maintain”
Shall file a statement - Agree or disagree NOTE: Under the federal rules, requesting a Creditor “withdraw” their notice is not appropriate	Permissive for those parties to assert the Debtor is not current in the payments made directly to a creditor
Supplement to the claim	
Must state whether the Debtor is “otherwise current” on all payments	
If disagreed, must itemize the required cure or postpetition amounts	

- Direct paid claims: be aware of amounts disclosed in the proof of claim or later filed post-petition fee notices. If those amounts were not paid during the life of the case, a disagreed response may be filed.

3. Now what?

FEDERAL RULE

3002.1(h) DETERMINATION OF FINAL CURE AND PAYMENT. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

LOCAL RULE

(5) . . . If no objection is timely filed with the court under this rule, and no statement disagreeing with the notice of final cure payment is timely filed under F.R.Bankr.P. 3002.1(g), the court may enter an order of discharge containing the provisions of subparts (a)(2) and (a)(3) without a hearing. If either a timely objection is filed with the court under this rule, or a timely statement disagreeing with the notice of final cure payment is filed under F.R.Bankr.P. 3002.1(g), the court will delay entry of the order of discharge until it resolves such objection or statement, after a hearing that will be scheduled by the court upon the filing of such objection or statement with notice to the party filing such objection or statement, the debtor and the trustee.

(6) to avoid defaulting on any continuing secured debt obligation, the debtor must immediately begin making the required payments on that obligation.

(7) the chapter 13 discharge does not discharge the debtor from any obligation on any continuing secured debt payments that are due after the trustee's last disbursement to the creditor.

Federal Rule	Local Rule	Proposed Amended Local Rule
On motion of Debtor or Trustee	If disagreed response is filed – automatic hearing; delay of entry of discharge order	No change
After hearing and notice, Court shall determine if the default is cured & all postpetition amounts have been paid	If no timely response filed – discharge order may enter without hearing (deemed an “agreed”)	No change
	Discharge will not apply to an obligation on any continuing secured debt payments that are due after the date of the debtor's last payment under the plan	Discharge will not apply to an obligation on any continuing secured debt payments that are due after the trustee's last disbursement to creditor

PRACTICE POINTER: Know your Trustee / Court. Stipulations resolving disagreeing Notices of Final Cure may require the signature of the Trustee as well.

Consequences:

FEDERAL RULE

3002.1(i) FAILURE TO NOTIFY. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

- (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
- (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

AMERICAN BANKRUPTCY INSTITUTE

YEARLY CASE REVIEW CHECKLIST

1. Has Debtor sent Debtor's **TAX RETURNS** for current tax year and all prior years since confirmation of the Plan to the Chapter 13 Trustee?
 a. If not, please complete the following and send the tax returns to the Trustee:

Yes ☐ No ☐

Tax Year	Date Sent	Refund Amount	Liability Amount

(Note: Joint Debtors filing Tax Returns separately and married Debtors with non-filing spouses are required to provide both Tax Returns to the Trustee)

2. Does Debtor's Plan require Debtor to remit 100% **TAX REFUNDS** (or 100% of any amount that exceeds the prorated amount on Schedule I?)
 a. If yes, please complete the following:

Yes ☐ No ☐

Tax Year	Refund Amount	Remitted To Trustee	Excused	Offset By IRS	If Offset, Proof Provided to Trustee
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

3. Does Debtor's Plan require Debtor to remit 100% profit sharing and/or bonus income?
 a. If yes, please complete the following:

Yes ☐ No ☐

Year	Amount	Remitted To Trustee	Excused	Proof Provided to Trustee
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

4. Has Debtor remitted 100% of Plan payments?

Yes ☐ No ☐

a. If not, amount delinquent: \$ _____

5. All proofs of claim reviewed and compared to Trustee records?

Yes ☐ No ☐

6. Is Debtor's Plan running timely?

Yes ☐ No ☐

a. If not, Plan payment amount needed to run timely: \$ _____

b. If not, Stipulation to Modify Plan needed?

Yes ☐ No ☐

c. If not, Plan Modification needed?

Yes ☐ No ☐

Reviewed by: _____

Date: _____

90 DAY PRE-EXPIRATION CHECKLIST

*(Recommended to be completed **90 days** prior to expiration of the Plan)*

1. Has the Debtor made 100% of Plan payments? Yes ☐ No ☐
 a. If not, amount of delinquency: \$ _____

2. Has the Debtor sent to the Trustee all required **Tax Returns**? Yes ☐ No ☐
 a. If not, obtain from the Debtor the following Tax Returns and send to the Trustee:

Tax Year

Tax Year

3. Does the Debtor's Confirmed Plan require 100% of **Tax Refunds** (or 100% of any amount that exceeds the prorated amount on Schedule I)? Yes ☐ No ☐
 a. If yes, please complete the following:

Tax Year	Refund Amount	Remitted To Trustee	Excused	Offset by IRS	If Offset, Proof Provided to Trustee
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

4. Does the Debtor's Confirmed Plan require 100% of profit sharing and/or bonus income? Yes ☐ No ☐
 a. If yes, please complete the following:

Tax Year	Amount	Remitted To Trustee	Excused	Proof Provided to Trustee
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

5. Has the Debtor remitted a sum sufficient to meet the dividend required? Yes ☐ No ☐
 a. If not, amount needed to be remitted: \$ _____
 b. Will the needed amount be remitted by Plan expiration? Yes ☐ No ☐
 6. All proofs of claim reviewed and compared to Trustee records? Yes ☐ No ☐

Reviewed by: _____ Date: _____

PLAN EXPIRATION CHECKLIST

(Recommended to be completed at expiration of the Plan)

1. Has the Trustee filed the Notice of Final Cure/Notice of Completion form? Yes ☐ No ☐
 - a. If yes, was a Fee Application filed within 21 days of the filing of the Notice?
(See *In re Sorter*, Case No. 08-57829-S and *In re Meade*, Case No. 09-34865-dof) Yes ☐ No ☐
 - b. If Fee Application was filed within 21 days of the filing of the Notice, does the Fee Order provide that fees are to be paid directly by the Debtor? Yes ☐ No ☐
 - c. If the fees are to be paid via the Chapter 13 Trustee, do the fees impede the Debtor's ability to obtain a Discharge? Yes ☐ No ☐
 - d. Have there been any fees/costs incurred on debtor's behalf since the filing of the Notice of Final Cure/Notice of Completion form? Yes ☐ No ☐
 - i. If yes, has an Application for Compensation been filed? Yes ☐ No ☐
 - ii. If an Application has been filed, are the fees to be paid directly by the Debtor? Yes ☐ No ☐
 - iii. If not, is the Debtor entitled to a discharge with the payment of the fees? Yes ☐ No ☐
2. Has the Debtor filed the Certificate Regarding Domestic Support Obligations? Yes ☐ No ☐

(Note: Joint Debtors are both required to file a Certificate. The Certificate can be found at www.mieb.uscourts.gov/forms/localforms or www.det13.com/attorneys/forms)
3. Has Debtor filed the Certificate of Post Petition Instructional Course Concerning Personal Financial Management (Official Form 23)? Yes ☐ No ☐

(Note: The Certificate can be found at www.det13.com/attorneys/forms)

Reviewed by: _____

Date: _____