

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF
LOCAL RULES OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 14-01

**TO REVISE LOCAL RULE 4004-2(B) & (C)
AND ADD NEW SUBSECTION (G) TO SET
FORTH THE AVERMENTS REQUIRED IN A
MOTION FOR HARDSHIP DISCHARGE**

It has recently come to this Court's attention that its Local Rules do not specify the averments required in a motion for a hardship discharge in a Chapter 12 or Chapter 13 case. Specifically, there is no local rule stating that in order to obtain a hardship discharge under 11 U.S.C. §§ 1228 and 1328, the movant must set forth factual allegations satisfying the standards of 11 U.S.C. §§ 1228(b) and 1328(b), as well as those set forth in 11 U.S.C. §§ 1228(f) and 1328(h).

Accordingly, IT IS HEREBY ORDERED that Vt. LBR 4004-2 is revised as follows.

First, to clarify that this provision of the rule applies solely to motions for entry of discharge pursuant to 11 U.S.C. § 1228(a), Vt. LBR 4004-2(b) is revised to read:

(b) **Certification of Compliance and Motion for Entry of Discharge Order pursuant to 11 U.S.C. § 1228(a).** In order to obtain a discharge under § 1228(a), a Chapter 12 debtor must file a certification of compliance with 28 U.S.C. § 1746 and a motion requesting the entry of a discharge order.

(1) **Contents of Motion.** In the motion, the debtor must affirm that the debtor has:

Second, to clarify that this part of the rule applies solely to motions for entry of discharge pursuant to 11 U.S.C. § 1328(a), Vt. LBR 4004-2(c) is revised to read:

(c) **Certification of Compliance and Motion for Entry of Discharge Order pursuant to 11 U.S.C. § 1328(a).** In order to obtain a discharge under § 1328(a), a Chapter 13 debtor must file a certification of compliance with 28 U.S.C. § 1746 and a motion requesting the entry of a discharge order.

(1) **Contents of Motion.** In the motion, the debtor must affirm that the debtor has:

Third, to clearly state the requirements for a motion for hardship discharge, a new subsection (g) is included to read:

(g) **Motion for Entry of Hardship Discharge pursuant to 11 U.S.C. §§ 1228(b) or 1328(b).** If a Chapter 12 or Chapter 13 debtor is unable to make all of the payments required by their confirmed plan, and wishes to obtain a discharge, the debtor must file a motion requesting a hardship discharge under either § 1228(b) or § 1328(b), respectively, and may do so using the Court's default procedure. See Vt. LBR 9013-4(b)(12) & (13).

(1) **Contents of Motion.** In the motion, the debtor must:

- (A) describe why the debtor is unable to make the plan payments and explain how the debtor's inability to make payments is properly attributable to circumstances beyond the debtor's control;
- (B) assert that the value of property distributed to general unsecured creditors under the plan is not less than the amount those creditors would have received had the debtor filed a Chapter 7 as of the effective date of the plan;
- (C) explain why modification of the plan is impracticable;
- (D) affirm there is no reasonable cause to believe that § 522(q)(1) may be applicable to the debtor; and
- (E) affirm there is no pending proceeding in which the debtor may be found (i) guilty of a felony of the kind described in § 522(q)(1)(A), or (ii) liable for a debt of a kind described in § 522(q)(1)(B).

(2) **Service of the Debtor's Motion for Hardship Discharge.** The debtor must serve the motion upon the entire creditor matrix.

IT IS FURTHER ORDERED that these amendments shall take effect upon entry of this Standing Order, and that all other provisions of Vt. LBR 4004-2 not specifically changed by this Standing Order shall remain in effect.

SO ORDERED.

May 2, 2014
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge