

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Rutland
Friday, February 2, 2018 ~ 12:00 - 1:00 PM

Dial-in number: (888) 398-2342. Access code: 846 68 72#

If you dial into the meeting, please use your “mute” function, unless speaking.

AGENDA

1. MORTGAGE MEDIATION STATS ([attached](#)) JUDGE BROWN & JODY KENNEDY
2. AVAILABILITY OF AN INDEX AND/OR PDF BOOKMARKS JUDGE BROWN
 - Update on efforts to create search tools for the bar
3. REVIEW OF NEW CHAPTER 13 CONFIRMATION ORDER ([attached](#)) JAN SENSENICH
4. MISCELLANEOUS ERRATA TO LRS AND UPDATED LOCAL FORMS JUDGE BROWN
 - All Local Forms have been updated to implement new LRs and make format /font /captions consistent); forms available in Word & PDF fillable formats
 - New Standing Orders (2) will address LR inconsistencies re Form 121 and provide further guidance re amended ch 13 plans & timing for CMP pmts ([attached](#))
5. A 5-MINUTE TAX TIP FOR BANKRUPTCY PRACTICE MELISSA RANALDO
 - Treatment of pre-petition tax refunds
 - Need to identify holder & amt of each priority claim on Form 113 (suggesting Part 8)
6. FORM 113: CHALLENGES & CROWD SOURCE TIPS ATTENDEES
 - Open discussion: what’s working? what’s not?
7. PRACTICE POINTER: NOTICE FOR A CH 13 MOTION TO DISMISS JUDGE BROWN
 - Rule 2002(a)(4) is silent re notice for Ch 13 MTDs; Bk Court has discretion
 - VTB has adopted the 2002(a)(4) time period to be consistent with other Chapters
 - See Harrington (ch 13 # 17-10278) Order dated 1/18/18 ([attached](#))
8. CLERK’S OFFICE UPDATES: THERESA DAVIDSON & JODY KENNEDY
 - March 7th Burlington Ch 13 Calendar & 341s – *note change of date!*
 - 341 meetings and court hrs all moved to **Thurs, March 8th**
 - Mailing lists for BB mtg notices and for Clerk’s Office notices updated
 - Notice re New National BK Rules and Forms on website ([attached](#))
 - Availability of electronic case records in old VTB bankruptcy cases
 - this info provided to follow up on Succession Planning discussion at 12/1/17 CLE
 - details set out on document prepared by Michael Dunavin ([attached](#))

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court. They are free and no pre-registration is required.
Have a question about them? Contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov.

Attachments (7): Mediation statistics, new Chapter 13 Confirmation Order, Standing Orders 18-01 & 18-02, copy of Harrington Order, Notice of Amendments to Federal Rules/Forms, Summary of Availability of VTB Electronic Case Records

USBC Mediation Results (From 6/2011 thru 10/2017)	
(by number of cases)	
Motion to Mediate Denied	5
Motion to Mediate Withdrawn	22
Loan Terms Thru Modified Mediation	155
Mediation Resulted in Sale of Property	5
Mediation Resulted in Surrender of Property	11
Mediation Resulted in Forgiveness of Mortgage Debt	2
Parties Agreed on Repayment Plan	1
No Agreement Reached in Mediation	16
Modification Denied Thru Mediation Process	8
Mediation Mooted by Dismissal of Case	29
Mediation Mooted by Relief From Stay	16
Mediation Mooted by Debtor's Relocation	2
Mediation Still Ongoing	20
Status Unknown	6
TOTAL	298

	Mediation Ongoing
	Chapter 7 TFR
	Awaiting Motion to Close

Cases In Which Mediation Was Authorized That Completed USBC Mediation Program	
Number of cases:	192
Percentage of all cases:	64%

Number and Percentage of Completed Cases (192) with Successful Outcomes	
Number of Completed Cases with Successful Outcomes:	174
Percentage of Completed Cases with a Successful Outcome:	91%

Cases by Mediator		
Mediator	Total number of cases	Total percentage of cases
Adams	1	0%
Cooper	19	6%
Edwards	26	9%
Emens-Butler	53	18%
Kelley	1	0%
Lang	6	2%
Mayer	95	32%
Rice	5	2%
Scholes	6	2%
Steckel	1	0%
Valdes	4	1%
Weiner	1	0%
Not yet appointed	4	1%
None	76	26%
Total	298	100%

Total Number of Orders for Mortgage Mediation Filed by Year	
2011	26
2012	68
2013	43
2014	48
2015	45
2016	28
2017	15
No order entered	25
Total	298

Cases by Debtor's Attorney					
Attorney Name		Number of Total Cases		% of Cases out of Total Cases	
R. Rice		137		46%	
T. Taylor		106		36%	
D. Leahy		9		3%	
D. Hayes		8		3%	
K. Walls		9		3%	
A. Klingler		7		2%	
D. Lynch		5		2%	
N. Geise		4		1%	
M. Weiner		4		1%	
H. Cooper		2		1%	
J. Gravel		1		0%	
T. Hawkins		2		1%	
P. Kulig		1		0%	
G. Pazdan		1		0%	
R. Obuchowski		1		0%	
J. McFaul		1		0%	
Total Cases		298			

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

1.25.18 version
with edits to be made by 2.8.18
(doc will also be reformatted to
leave add'l space on top of each
page for CM/ECF stamp)

In re: COLLEEN COHAN

Chapter 13
Case No. 17-10432

SAMPLE

Debtor.

Appearances:

The attorney for the debtor,
The Chapter 13 Trustee,
Other appearances:

Rebecca A. Rice, Esq.
Jan M. Sensenich
Stephen Colbert

FINDINGS AND ORDER CONFIRMING CHAPTER 13 PLAN

A hearing on confirmation of the debtor's¹ Chapter 13 Plan dated October 17, 2017, was held on September 13, 2017.

Based upon the record in this case and the evidence presented at the hearing, and after due consideration of the chapter 13 Plan, the chapter 13 trustee's preliminary report, any objections to the Plan, and the arguments presented at the confirmation hearing both in support of and opposition to the Plan,

THE COURT MAKES THE FOLLOWING FINDINGS:

- i. The Plan complies with the provisions of chapter 13, and all other applicable provisions of the Bankruptcy Code, as well as this Court's local rules, and judicial rulings.
- ii. All fees, charges, or amounts required to be paid before confirmation of the Plan or by the provisions of Title 28, United States Code, have been paid.
- iii. The Plan has been proposed in good faith and not by any means forbidden by law.
- iv. As of the effective date of the Plan, the value of property to be distributed under the Plan for each allowed unsecured claim is not less than the amount that would be paid on such claim on this date if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code **on such date.**
- v. With respect to each allowed secured claim provided for in the Plan, the treatment complies with 11 U.S.C. §1325(a)(5).
- vi. The debtor will be able to make all Plan payments and to comply with the Plan.
- vii. The debtor filed this case in good faith.
- viii. The debtor is current on all domestic support obligations.
- ix. The debtor has filed all required tax returns.
- x. The Plan has been transmitted to all parties in interest and the notice of the confirmation hearing required by Federal Rules of Bankruptcy 2002 and 3015(d) has been given.
- xi. The debtor has appeared at all required meetings and hearings and is in compliance with all court orders issued in this case.
- xii. Any filed objections to the Plan not specifically addressed herein are hereby overruled **insufficient to warrant denial of confirmation.**
- xiii. Debtor's attorney's fees proposed in the Plan and set forth below are reasonable.
- xiv. The debtor is in full compliance with 11 U.S.C. § 521.

¹ In a joint case, the term "debtor" shall refer to both debtors.

I. DESCRIPTION OF THE PLAN AS CONFIRMED

PART 1: ADDITIONAL RELIEF SOUGHT AND AUTHORIZED BY THE PLAN

Reclassification or reduction in the amount a secured claim, a change in the interest rate to be paid on an allowed secured claim, or other modification of the repayment terms of a secured claim, see Part 3.2 of the Plan, results in the following treatment of these secured claims:

- ☐ Avoidance of the following judicial liens or nonpossessory, nonpurchase-money security interests, see Part 3.4 of the Plan: n/a.

PART 2A: PLAN PAYMENTS AND LENGTH OF THE PLAN

- 2.1 Debtor will make regular payments to the trustee as follows:
\$700.00 monthly for 11 months and then \$120,700.00 one time payment and then \$700.00 monthly for 24 months, see Part 2.4 of the Plan.

- 2.2 Debtor will make payments in the following manner:

- ☐ pursuant to a payroll deduction order, the debtor's employer, Phillips shall withhold funds from each of the debtor's paychecks and send the funds, with the debtor's name and case no. (17-10432), addressed to:

**Jan M. Sensenich, chapter 13 trustee
P.O. Box 39, Memphis, TN 38101-0039**

- ☒ pursuant to an order authorizing an automatic bank account debit.

- ☐ other (specify): _____.

If the debtor is making Plan payments through automatic deductions from a bank account, and the debtor fails to remain current on Plan payments, the chapter 13 trustee may file a proposed payroll deduction order on notice to the debtor and the debtor's attorney, and if the debtor fails to object to the order within ten (10) days of service of the proposed order, the Court may enter that order without a hearing.

- 2.3 Income Tax Refunds:

- ☐ Debtor will retain any income tax refunds during the Plan term;
☒ Debtor will supply the trustee with a copy of each income tax return filed during the Plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the Plan term; or
☐ Debtor will treat income tax refunds as follows: _____.

- 2.4 Additional payments: None.

- 2.5 The total amount of payments the debtor will make under the Plan: \$145,200.00.

PART 2B: AMOUNT OF ESTIMATED TRUSTEE DISBURSEMENTS UNDER THE PLAN

The trustee shall disburse funds paid under the Plan as follows:²

a.	Maintenance and cure of payments on secured claims (Part 3, § 3.1 total)		
	i. Pre-petition mortgage arrearage	\$	111,974.00
	ii. Estimated total of monthly post-petition mortgage payments	\$	6,915.30
b.	Modified undersecured claims (Part 3, § 3.2 total)	\$	7,345.06
c.	Secured claims excluded from 11 U.S.C. § 506 (Part 3, § 3.3 total)	\$	0.00
d.	Judicial liens or security interests partially avoided (Part 3, § 3.4 total)	\$	0.00
e.	Fees and priority unsecured claims (Part 4 total)	\$	17,795.01
f.	Nonpriority unsecured claims (Part 5, § 5.1, highest stated amount)	\$	1,170.63
g.	Maintenance and cure payments on nonpriority unsecured claims (Part 5, § 5.2 total)	\$	0.00
h.	Separately classified nonpriority unsecured claims (Part 5, § 5.3 total)	\$	0.00
i.	Trustee payments on executory contracts and unexpired leases (Part 6, § 6.1 total)	\$	0.00
j.	Nonstandard Plan payments (Part 8, total)	\$	0.00

The total amount the trustee shall disburse under the Plan: \$ 145,200.00

² If there is any difference between the amounts set out in this Order and the terms of the Plan, the terms of this Order control. The total amounts listed in this section, 2B, do not include any direct payments made by the debtor, which are included in Part 6 of the Plan.

PART 3: TREATMENT OF SECURED CLAIMS

3.1 Maintenance of payments and cure of defaults, if any:

Name of creditor	Collateral	Current installment pmt (inc. escrow)	Amt of pre-petition arrearage (if any)	Int rate on arrearage (if any)	Average monthly Plan pmt on arrears See Item No. 9 in Part III, below)	Total of post-petition mtge pmts by trustee up to (amt of install pmt) x (mos in Plan + 2)]
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FLAVIO RIZZO and VERUSHKA CANTELL		\$ 493.95	\$ 111,974.00	0.00%	\$ 3,110.39	\$ 6,915.30
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Disbursed by:

☒ Trustee

☐ Debtor

3.2 Valuation of security, payment of fully secured claims, modification of undersecured claims.

Name of creditor	Estimated amt of creditor's claim	Collateral	Value of collateral	Amt of claims senior to C's claim	Amt of secured claim	Interest Rate	Monthly pmt to creditor	Est. total of mthly pmts
CREDIT ACCEPTANCE CORP.	\$ 0.00	7024 (05 Honda Pilot)	\$5,607.00	\$ 0.00	\$ 5,607.00	4.75%	\$ 167.42	\$ 6,027.05
TOWN OF ROCHESTER	\$ 0.00		\$1,221.56	\$ 0.00	\$ 1,221.56	5.00%	\$ 36.61	\$ 1,318.01

3.3 Secured claims excluded from 11 U.S.C. § 506.

None

3.4 Lien avoidance pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy 4003(d).

None

3.5 Surrender of collateral:

None

PART 4: TREATMENT OF FEES AND PRIORITY UNSECURED CLAIMS

4.1 General: The trustee's fees and all allowed priority claims, including domestic support obligations, other than those treated in Part 4.5 in the Plan, will be paid in full without post-petition interest.

4.2 Trustee's Fees: The trustee's fees are governed by statute and may change during the course of the case but are estimated to be 10.00% of Plan payments. During the term of the Plan, it is estimated they will total \$14,520.00.

4.3 Attorney's Fees: The balance of the fees owed to the attorney for the debtor, in the amount of \$3,000.00, shall be paid through the Plan.

4.4 Priority claims other than attorney's fees shall be paid as follows:

Creditor Name	Amount to be paid
UNITED STATES TREASURY	\$ 275.01

4.5 Domestic support obligations that have been assigned to or are owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4).

None

PART 5: TREATMENT OF NONPRIORITY (GENERAL) UNSECURED CLAIMS

5.1 Allowed nonpriority unsecured claims (not separately classified) will be paid as follows:

9.74% of the total allowed amount of these claims, an estimated payment of \$1,170.63

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims with a final payment due after the final Plan payment, pursuant to 11 U.S.C. § 1322(b)(5):

None

5.3 Separately classified nonpriority (general) unsecured claims:

None

PART 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected.

None

PART 7: VESTING OF PROPERTY OF THE ESTATE

7.1 Property of the estate will vest in the debtor upon:

☐ Plan confirmation ☐ entry of discharge ☒ other (specify: 90% completion of plan payments)

PART 8: NONSTANDARD PLAN PROVISIONS

8.1 Nonstandard provisions in the Plan: None

8.2 Other requirements applicable to implementation of this Plan: Pay additional funds to prior attorney

II. RELIEF UNDER EMBEDDED MOTIONS

1. If relief has been sought under Part 3 of the Plan, then, pursuant to Vt. LBR 3015-1(b)(A-D), the debtor has either obtained or been denied a separate Order pertaining to that relief as follows:

None

ORDER

III. DUTIES OF THE DEBTOR AND TRUSTEE DURING THE PLAN TERM

IT IS HEREBY ORDERED:

1. The chapter 13 trustee is authorized to, and shall, commence disbursements immediately, in accordance with the Plan, except that the trustee shall not begin disbursing mortgage payments until the mortgage creditor files a proof of claim or the Court orders otherwise.
2. (a) The chapter 13 trustee shall not perform the duties specified in 11 U.S.C. § 1302(c) unless this Court orders him to do so.

(b) If the debtor is operating a business, as defined in 11 U.S.C. § 1304(a), the debtor shall perform the duties as specified in 11 U.S.C. § 704(a)(8) and file periodic reports of the debtor's operations ("Operating Reports") in the form and frequency as the Court directs, pursuant to 11 U.S.C. § 1304 (c).

(c) The debtor shall timely file all required federal and state tax returns, pay all taxes when due, and

☐ the debtor shall provide copies of all tax returns (including any requests for an extension or filing deadlines) to the chapter 13 trustee within 14 days of filing them with the taxing authorities, or

☒ upon request of the chapter 13 trustee, at any time while the case is pending, the debtor shall provide copies of all requested tax returns (including requests for an extension of filing) to the trustee within ten (10) days of the chapter 13 trustee's request.

3. The debtor shall remain current on all post-petition domestic support obligations and the debtor's failure to pay post-petition domestic support obligations may constitute cause for conversion to chapter 7, or dismissal of the case under 11 U.S.C. § 1307(c).
4. Nothing in the Plan or in this Order shall be construed to limit the chapter 13 trustee's rights in any adversary proceeding filed under 11 U.S.C. §§ 544, 545, 547, 548 or 549.
5. If the debtor is operating a business without a tax account, the debtor shall open a separate bank account and promptly deposit into it all sums withheld from employees' wages and all employer payroll taxes, and shall make no disbursements from such account except to pay tax liabilities arising from payment of wages.
6. In the event this case is converted to chapter 7, and the chapter 13 trustee possesses funds aggregating more than \$2,500 at the time of conversion, the chapter 13 trustee shall forward all such funds to the debtor, in care of the debtor's attorney, if any, after ten (10) days from the first scheduled § 341(a) meeting in the chapter 7 case, unless, prior to that date, the chapter 7 trustee files and serves a written objection pursuant to 11 U.S.C. § 348(f)(2). In the event the funds in the chapter 13 trustee's possession at such time aggregate \$2,500 or less, or in the event this case is dismissed, the chapter 13 trustee shall forward all funds in the chapter 13 trustee's possession to the debtor in care of the debtor's attorney, if any. Nothing in this paragraph constitutes a determination of the rights of any particular party in such funds.
7. In the event a proof of claim for a priority claim or secured claim to be paid in the Plan is filed in an amount greater than that provided for under the Plan and, after notice of the filed claims, the debtor neither objects to the claim nor modifies the Plan to pay it in full, the term of the Plan, to the extent it is less than 60 months, shall be extended up to 60 months as necessary to pay that claim in full.
8. In the event a proof of claim for a priority claim or secured claim to be paid in the Plan is filed in an amount less than that provided for under the Plan, the difference between the amount provided for the claim in the Plan and the proof of claim shall be added to the dividend to be paid to unsecured creditors.
9. In the event the Plan calls for the curing of a mortgage arrearage, the trustee will commence disbursements for the mortgage arrearage claim as soon as the trustee has brought current the regular mortgage payments and paid all attorney's fees due under the Plan. The amount of each disbursement on the mortgage arrearage claim will vary depending on the amount of funds the trustee has on hand in the case and the number and amount of fixed monthly payments the trustee is obligated to make under the Plan.
10. If the amount actually due a secured or administrative creditor over the term of the Plan is less than the amount allocated to that administrative expense or secured claim in the Plan then, upon a stipulation of the debtor and chapter 13 trustee, the debtor may be authorized to use the funds available from this reduced amount due to cure a Plan payment arrears which arose during the last year of the Plan term.
11. The debtor is enjoined from incurring any debt in excess of \$1,000, other than for a medical emergency and enjoined from selling any asset having a value of greater than \$1,000, without the prior written and filed consent of the chapter 13 trustee or an order of this Court.

12. (a) Unless waived by the chapter 13 trustee in writing, the debtor shall immediately report to the chapter 13 trustee any actual or projected increase in gross annual income of 10% or more above the gross income stated by the debtor in the most recently filed Schedule I.
- (b) Except for those amounts listed in the schedules, the debtor shall report immediately to the chapter 13 trustee any right of the debtor or co-debtor to a distribution of funds (other than regular monthly income) or of property which exceeds a value of \$2,500. This includes the right to disbursement from any source, including but not limited to bonuses and inheritances. Any such funds to which the debtor or co-debtor become entitled shall be held by the debtor and not used without the trustee's consent or order of this Court.
- (c) The debtor shall not encumber or otherwise dispose of any interest in
- (i) real property, or
 - (ii) personal property with a value exceeding \$10,000, outside the ordinary course of business, without notice to all creditors and the chapter 13 trustee, with an opportunity for hearing (unless such property is acquired through the use of credit and the chapter 13 trustee's consent or an order of this Court is obtained pursuant to this Order and the Court's Local Rules).
13. (a) If the debtor has recently filed a tax return for a pre-petition tax period (with a federal taxing authority including but not limited to the Internal Revenue Service or any state taxing authority),
- (i) the taxing authority which received that return may amend its claims after confirmation, and
 - (ii) the amount of any amended claim shall control the amounts to be paid, notwithstanding the amounts reflected in the Plan or this Order, unless the trustee or debtor files an objection to that amended proof of claim within 60 days of the filing date of the post-confirmation proof of claim and that objection is sustained.
- (b) To the extent the allowed claim of the taxing authority is higher than the amount of the claim in this Order, the debtor shall move to modify the Plan, within 60 days from the date of the filing of the proof of claim, or after a ruling on any objection to the amended proof of claim, whichever is later, to pay that tax claim in full.

IT IS FURTHER ORDERED that notwithstanding any provision in the Plan to the contrary, the entry of this Order grants no relief that is only available through an adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7001(6), including but not limited to an exception from discharge for a student loan debt under 11 U.S.C. § 523(a)(8).

IT IS FURTHER ORDERED that:

1. The debtor shall timely pay the trustee, and the trustee shall timely disburse all payments, required by the Plan and described above.
2. The Plan dated October 17, 2017, and as described above, is CONFIRMED.
3. All attorney's fees the debtor seeks to pay through the Plan are APPROVED.

4. The following objections to confirmation are OVERRULED: ____.
[This par. to be inserted at option of T - only when objs are filed.]

_____, 2018
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

**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 # 18-01

**TO RELIEVE CHAPTER 13 TRUSTEE OF DUTY TO
DISBURSE MORTGAGE PAYMENTS PRIOR TO DATE
MORTGAGE CREDITOR FILES A PROOF OF CLAIM,
REVISING LOCAL BANKRUPTCY RULE 3015-6(d); AND
TO RELIEVE DEBTOR'S ATTORNEYS OF DUTY TO FILE
REDLINED VERSION OF CHAPTER 13 MODIFIED
PLANS, REVISING LOCAL BANKRUPTCY RULE 3015-8(c).**

On December 1, 2017, certain amendments to both the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms took effect. This Court's revised Local Rules also took effect on that date, to implement the changes made to the Federal Bankruptcy Rules and Official Bankruptcy Forms, particularly with regard to chapter 13 practice. Now that the Court, the chapter 13 trustee, and the Vermont bankruptcy bar have had some experience with the impact of the amended Bankruptcy Rules and amended Official Forms, especially the new form for chapter 13 plans (Official Form 113), and after considering input from those practitioners, THE COURT FINDS cause to amend its Local Rules to simplify and streamline local chapter 13 practice.

Therefore, IT IS HEREBY ORDERED that Vermont Local Bankruptcy Rules 3015-6 and 3015-8 are revised as follows:

3015-6. CONDUIT MORTGAGE PAYMENT PLANS IN CHAPTER 13.

...

(d) Duties of the Trustee.

In Conduit Mortgage Payment cases, the trustee must

- (1) disburse payments to the Mortgage Creditor ~~by the earlier of~~ within 30 days of the date the Mortgage Creditor files a proof of claim ~~or 30 days after confirmation of the plan,~~ unless the Court orders otherwise.

3015-8. MOTIONS TO MODIFY CONFIRMED CHAPTER 12 AND 13 PLANS.

...

(c) Additional Filing Requirements for a Motion to Modify Plan.

- (1) A party who files a motion to modify a chapter 13 plan must ~~also and simultaneously file clean and redlined copies of the proposed modified plan, along with a proposed order using Vt. LB Form F. If the movant seeks to modify a chapter 13 plan, file~~ the proposed modified plan ~~must be filed~~ on Official Form 113 and must, on the top of that form (next to the box checked to identify it as an amended plan), specify the part of the plan being modified, the name of each creditor whose claim is affected, and the nature and extent of the proposed changes to the affected claim (i.e., what each such creditor's treatment was under the original plan and what it is under the modified plan), and must also file a proposed order using Vt. LB Form F-13.
- (2) A party who files a motion to modify a chapter 12 plan must also and simultaneously file clean and redlined copies of the proposed modified plan, along with a proposed order using Vt. LB Form F-12.

IT IS FURTHER ORDERED that these revisions are effective immediately.

SO ORDERED.

February __, 2018
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

**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 # 18-02

**TO CLARIFY WHEN THE CLERK OF THE COURT
SHALL RETAIN OFFICIAL FORM 121,
REVISING VERMONT LOCAL BANKRUPTCY RULES
1007-1, 5003-1, AND 9011-2.**

Since implementation, certain Vermont Local Bankruptcy Rules have been found to be inconsistent with respect to the retention of Official Form 121. In particular, the following Local Bankruptcy Rules command differing treatment of the “Statement About Your Social Security Numbers:” Local Bankruptcy Rules 1007-1(f)(4) and 9011-2(b) both impose upon *pro se* debtors the duty to retain their completed and signed Official Forms 121 for at least 5 years:

**Vt. LBR 1007-1. LISTS, SCHEDULES, STATEMENTS, AND OTHER REQUIRED DOCUMENTS;
TIME LIMITS.**

...

(f) Official Form 121, Statement About Your Social Security Numbers.

...

(4) If the debtor is *pro se*, in addition to complying with the other requirements of this Rule, the debtor must retain the completed and signed Official Form 121 for at least 5 years in accordance with Vt. LBR 9011-2(b).

**VT. LBR 9011-2. PRO SE PARTIES – REQUIREMENTS, RETENTION OF DOCUMENTS,
USE OF CM/ECF.**

...

(b) Pro Se Party’s Duty to Retain Originals of Documents Submitted by E-Mail for Filing.

The *pro se* party must retain for 5 years the originals of any documents they submit, by email, to the Clerk, for filing. On request or order of this Court or any other court, the *pro se* filer must provide original, signed documents for review.

However, Local Bankruptcy Rule 5003-1 requires the Clerk of Court to retain, for a minimum of 5 years, every Official Form 121 that is submitted in this District.

Vt. LBR 5003-1. Clerk – Duty to Maintain Records.

...

(b) Official Form 121, Statement About Your Social Security Numbers.

The Clerk retains every Official Form 121 that parties submit for a minimum of 5 years.

The Official Form 121 is not to be filed, and therefore will not become part of, any bankruptcy case record.

THE COURT FINDS the Clerk of the Court is in a better position than *pro se* parties to retain and maintain documents related to bankruptcy cases and therefore modifies the Local Rules to clarify that it is the Clerk who shall be required to retain, for at least 5 years, every Official Form 121 that is submitted in this District – whether by a *pro se* or represented party. See also Vt. LBR 1007-1(f)(2) and 1009-1(e)(1)(A).

Therefore, IT IS HEREBY ORDERED that (i) Vermont Local Bankruptcy Rule 1007-1(f)(4) is stricken, and (ii) an exception is inserted into Vermont Local Bankruptcy Rule 9011-2(b) to relieve *pro se* parties of the duty to retain Official Bankruptcy Form 121. The latter Local Bankruptcy Rule will henceforth read:

VT. LBR 9011-2. PRO SE PARTIES – REQUIREMENTS, RETENTION OF DOCUMENTS, USE OF CM/ECF.

...

(b) Pro Se Party's Duty to Retain Originals of Documents Submitted by E-Mail for Filing.

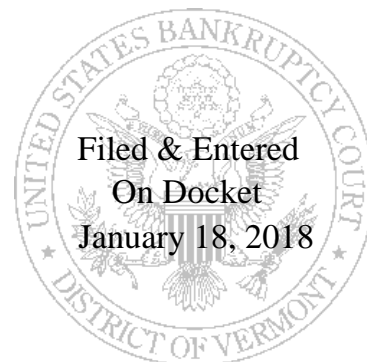
The *pro se* party must retain for 5 years the originals of any documents they submit by email, to the Clerk, for filing. On request or order of this Court or any other court, the *pro se* filer must provide original, signed documents for review. However, the *pro se* parties need not retain any Official Form 121 they submit.

SO ORDERED.

February __, 2018
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Joshua J. Harrington and
Emily L. Harrington,
Debtors.**

**Chapter 13 Case
17-10278**

ORDER
REGARDING NOTICE REQUIRED FOR CREDITOR'S MOTION TO DISMISS

On July 6, 2017, the Debtors filed a petition for relief under chapter 13 (doc. # 1). The Debtors filed a chapter 13 plan on August 7, 2017 (doc. # 15), to which the Internal Revenue Service (the "IRS") and secured creditor Patricia Wetteman (the "Creditor") objected (doc. ## 23, 24). After multiple motions to continue the confirmation hearing and, citing concerns over the Debtors' failure to make plan payments, file tax returns, pay local property taxes, and file a motion for mortgage mediation, Ms. Wetteman filed a motion to dismiss the case on January 12, 2018 (doc. # 33)(the "Motion").

The Creditor filed the Motion using this Court's default procedure, which is permitted under Vt. LBR 9013-4(b)(14). However, Ms. Wetteman provided only 14 days' notice between the filing of the Motion and the end of the objection period, instead of the 21 days required by Local Rule, as stated in this Court's "Reference Guide for Noticing," see Vt. LBR Appendices II and VIII. The amount of notice required for this type of motion is not as obvious as one might expect. Federal Bankruptcy Rule 2002(a)(4) requires parties to give 21 days' notice for motions to convert or dismiss in chapter 7, 11 and 12 cases, but is silent as to notice required for such motions in a chapter 13 case. The rules leave it to the courts to determine the amount of notice required for these motions. As the leading bankruptcy treatise observes, "when notice and hearing are required on motions to convert or dismiss under chapter 13, the court has discretion to establish an appropriate period under Rule 2002(f)," see COLLIER ON BANKRUPTCY ¶ 2002.02(6)(d) (16th ed. 2017).


Federal Bankruptcy Rule 1017(a), which governs dismissals for cause, also states that “a case shall not be dismissed . . . for want of prosecution or other cause . . . before a hearing on notice as provided in Rule 2002.” As noted by COLLIER, “[p]resumably, under Rule 1017(a), 21 days’ notice similar to that under Rule 2002 of such a dismissal request would be required . . . [and], [a]lthough Rule 2002 only requires 21 days’ notice when a chapter 7, chapter 11 or chapter 12 case is dismissed or converted, Rule 1017(a) seems to envision that notice under Rule 2002 will be given in all dismissal matters other than those under sections 707(b), 1208(b), and 1307(b).” COLLIER ON BANKRUPTCY ¶ 1017.02(2)(16th ed. 2017). Several bankruptcy courts have interpreted the Federal Bankruptcy Rules to require 21 days’ notice when filing a motion to dismiss or convert under § 1307(c)-(e), see, e.g., In re Anderson, 70 B.R. 883, 888 (Bankr. D. Utah 1987); In re Whitmore, 225 B.R. 199, 201 n. 9 (Bankr. D. Idaho 1998)(noting that “unlike the debtor’s motion for voluntary dismissal, the creditor’s or trustee’s § 1307(c) motion must be heard on 20 [would now be 21] days’ notice”).

In recognition of the serious ramifications of any order to dismiss, and in the interest of preserving consistency with regard to the notice period required for motions to dismiss or convert under all chapters of the Bankruptcy Code, THE COURT FINDS that, absent extraordinary circumstances, motions to dismiss in chapter 13 cases should be served on 21 days’ notice, and therefore, the Creditor failed to give sufficient notice of her motion to dismiss (doc. # 33).*

Accordingly, IT IS HEREBY ORDERED that the February 2, 2018 hearing set on the Motion will proceed, regardless of whether an objection is filed, as if the motion were filed under the conventional procedures, to allow all parties 21 days’ notice, see Vt. LBR 9013-2.

SO ORDERED.

January 18, 2018
Burlington, Vermont


Colleen A. Brown
United States Bankruptcy Judge

* This order is entered to reiterate the notice requirement for this type of motion, as reflected in Vt. LBR Appendix II and Appendix VIII.



**NOTICE OF AMENDMENTS TO
THE FEDERAL BANKRUPTCY RULES AND OFFICIAL FORMS,
THE FEDERAL RULES OF EVIDENCE,
THE FEDERAL RULES OF CIVIL PROCEDURE, AND
THE FEDERAL RULES OF APPELLATE PROCEDURE**

Please be advised that under the Rules Enabling Act, 28 U.S.C. §§ 2071-75, amendments to the following rules became effective December 1, 2017:

Federal Rules of Appellate Procedure

Rule 4 Appeal as of Right—When Taken

Federal Rules of Bankruptcy Procedure

Rule 1001	Scope of Rules and Forms; Short Title
Rule 1006	Filing Fee
Rule 1015	Consolidation or Joint Administration of Cases Pending in Same Court
Rule 2002	Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
Rule 3002	Filing Proof of Claim or Interest
Rule 3007	Objections to Claims
Rule 3012	Determining the Amount of Secured and Priority Claims
Rule 3015	Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case
Rule 3015.1	(new) Requirements for a Local Form for Plans Filed in a Chapter 13 case
Rule 4003	Exemptions
Rule 5009	Closing Chapter 7, Chapter 12, Chapter 13, and Chapter 15 Cases; Order Declaring Lien Satisfied
Rule 7001	Scope of Rules of Part VII
Rule 9009	Forms

Federal Rules of Civil Procedure

Rule 4 Summons

Federal Rules of Evidence

Rule 803	Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness
Rule 902	Evidence That Is Self-Authenticating

Under 28 U.S.C. § 2074(a) and the Supreme Court orders dated April 27, 2017, the amendments will govern all proceedings commenced on or after December 1, 2017, and all proceedings then pending “insofar as just and practicable.”

The text of the new and amended rules and accompanying committee notes—along with extensive supporting documentation related to their adoption—are posted on the “Current Rules” page of the Judiciary’s website at:

<http://www.uscourts.gov/rules-policies/current-rules-practice-procedure>

In addition, the following new and amended official bankruptcy forms are effective on December 1, 2017. As approved by the Judicial Conference, the forms govern all proceedings in bankruptcy cases thereafter commenced and, insofar as just and practicable, all proceedings then pending. The amended forms are posted on the website at:

<http://www.uscourts.gov/forms/bankruptcy-forms>

Official Bankruptcy Forms

Official Form 101	Voluntary Petition for Individuals Filing for Bankruptcy
Official Form 113	Chapter 13 Plan
Official Form 309F	For Corporations or Partnerships; Notice of Chapter 11 Bankruptcy Case
Official Form 309G	For Individuals or Joint Debtors; Notice of Chapter 12 Bankruptcy Case
Official Form 309H	For Corporations or Partnerships; Notice of Chapter 12 Bankruptcy Case
Official Form 309I	Notice of Chapter 13 Bankruptcy Case
Official Form 425A	Plan of Reorganization for Small Business Under Chapter 11
Official Form 425B	Disclosure Statement for Small Business Under Chapter 11
Official Form 425C	Monthly Operating Report for Small Business Under Chapter 11
Official Form 426	Periodic Report Regarding Value, Operations, and Profitability of Entities in Which the Debtor’s Estate Holds a Substantial or Controlling Interest

**JEFFREY S. EATON
CLERK OF COURT**

ELECTRONIC AVAILABILITY OF CASE DOCUMENTS AND DOCKETS IN BANKRUPTCY CASES

Prepared January 2018 ~ Michael Dunavin, Chief Deputy Clerk

IS ALL BANKRUPTCY CASE INFORMATION AVAILABLE TO THE PUBLIC? No, not quite all...

- Some case information is protected:
 - certain personal identifiers are removed or redacted before the record becomes public, including Social Security numbers, financial account numbers, the name of a minor, and date of birth; and
 - documents which are under seal are not available to the general public.
- For bankruptcy cases filed from 1979 through 1998, only the docket sheets are available (*no documents*).*
- Pre-1979 bankruptcy case neither docket sheets nor documents are available (*unless designated an “important” case*).*

	Docket Sheet & Case Info Available (i.e., to Everyone)	Docs (Images) Available via CM (Internal Staff)	Docs (Images) Available via Public Terminal	Docs (Images) Available via PACER
Cases filed prior to 1979	no	no	no	no
Cases filed 1/1/1979 - 12/31/1998	yes	no	no	no
Cases filed 1/1/1999 - 12/31/2003	yes	yes	yes	no
Cases filed 1/1/2004 - Present	yes	yes	yes	yes

IS ALL BANKRUPTCY CASE INFORMATION THAT IS AVAILABLE, FREE? No:

- PACER fees apply to information downloaded from the PACER system; [see PACER fee schedule](#).
- Miscellaneous Bankruptcy Fee Schedule fees apply to documents obtained from the Clerk’s Office.

* However, some of these records may be obtained, on paper, through the Bankruptcy Court’s Clerk’s Office and Federal Records Center; fees may apply.