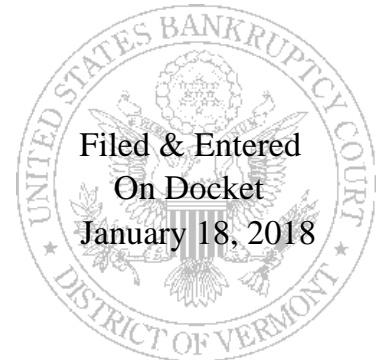


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



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.