

## RECENT DEVELOPMENTS

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### I. RECENT CASES

The “Case Law” section of the website contains all the cases known to the Trustee involving Chapter 13 from the Western District Bankruptcy Court, Western District Court, Fourth Circuit, and Supreme Court. They are listed in chronological order, so the most recent cases will be at the end of each Court section.

### II. NEW WESTERN DISTRICT LOCAL RULES

1. **Rule 3015-3 and Form 3015-3A:** Effective 10/05/14, the debtors’ attorney’s certification has been omitted from the pre-confirmation affidavit; the viewing of the Judge Krumm video by the debtors is now suggested but no longer mandatory. (Note: As of 10/08/14, the Form on the website under “Forms” still has the attorney’s certification, but the Form attached to the Local Rules has been amended to delete the certification.)
2. **Rule 4001-2:** Paragraph B, which formerly required the debtors to send out to affected creditors within seven days of the filing of the original plan a Notice of Adequate Protection Payments, has been deleted from the Rule.

### II. NEW WESTERN DISTRICT STANDING ORDERS

Standing Order 15-1, effective August 1, 2015, sets forth new guidelines and procedures for debtor attorney fees in Chapter 13 cases. There is a new “no look” fee of \$4,000, and a menu of additional post-confirmation fees. Please see the Court’s website for the full text of this Order.

### III. CHANGES IN WESTERN DISTRICT COURT POLICIES AND PROCEDURES

11/26/14: The following is a summary of the topics covered by Judge Connelly in her “brown bag lunches” with attorneys in Lynchburg (9/25/14), Harrisonburg (10/1/14), and Charlottesville (10/20/14):

A. CONTINUATION ORDER, DEADLINES FOR FILING A PLAN: Where the parties agree that an amended/modified plan MUST be filed before the continued hearing, the continuation order should set a deadline in paragraph 6 for the filing of the new plan. If the order requests a deadline of longer than 14 days to file a modified plan, the parties must explain why longer than 14 days is necessary or appropriate.

B. IF A MOTION IS NOT ACCOMPANIED by a notice of hearing OR a consent order granting the relief, the Clerk's Office will issue a Deficiency Order for a Notice of Hearing. Failure to comply with a deficiency order may result in dismissal of the Motion.

(1) Waiver: The Court recommends that debtors’ counsel hold the motion to waive notice of a plan until s/he has the agreed order endorsed by the Trustee, and make sure the order waives both the need to notice the plan AND service of the order setting the confirmation hearing on that plan

(2) Extend time to file: A motion to extend the time to file schedules and/or a plan must be resolved by order endorsed by the Trustee or hearing before the initial 341 meeting of creditors; the Judge will use conference calls with all parties for the hearing if no court date is available.

(3) Suspension: The motion must explain why the suspension is needed, what change in circumstances has occurred, and what relief is being sought. The Judge will probably not enter the old form wage order with suspension and promise to file a modified plan within 30 days unless it is accompanied by a motion setting forth sufficient basis for the suspension. She will allow use of the Trustee’s “Order Resolving” to approve suspensions and get payments back on track.

C. MOTIONS TO LIFT STAY:

(1) Continuation: The court will consider entry of a continuance order in advance of the hearing if the order provides the basis for the continuance. At the first hearing if a continuation is requested, the Judge will not require appearance of creditor’s counsel if debtor’s counsel agrees to stand in for both parties and debtor’s counsel provides the court with sufficient information about what has been done, what needs to be done, and why the continuation is needed. Based on the statements at the hearing, the court may require conditions as part of the continuance. At the second hearing the Judge will

expect the matter to be resolved or a scheduling order to be entered setting a trial date or good cause shown why not.

(2) Burden of proof: The Judge reminded the attorneys that the burden of proof is set forth in section 362(g) which states that the party requesting relief has the burden of proof on the issue of the debtor's equity in property and the party opposing relief has the burden on all other issues.

(3) Consent orders: If there is a large post-petition arrearage the Judge is unlikely to enter a consent order that simply puts those arrears into a modified plan and re-starts direct-by-debtor payments. She expects to hear information about what has changed to now make it likely that direct-by-debtor payments will be successful. If the parties seek to put such an arrearage into a direct-by-debtor "stip order," she will want to hear how and why that is feasible and in the debtors' best interests. She said not to recite in an order that a hearing was held and argument was made if counsel is sending over the consent order before the hearing.

D. CERTIFICATION OF DEFAULT ON ORDER RESOLVING: Once the Trustee files a certification for dismissal because of a default on a previous Order Resolving, the Court will dismiss the case on the 22nd day after the Trustee's certification if there has been no response filed by debtors' counsel. If debtor's counsel does not want the case dismissed, s/he must file a response and set it for hearing. The fact that the debtors have sent a payment to the Trustee in the interim will not resolve the matter because neither the Court nor the Trustee will be aware of the payment until it is too late.

E. BRINGING STAFF TO COURT: The Judge encourages all attorneys to bring staff with them to Court if it would be helpful.

F. DOCKET: The Judge expects to move toward a docket generated directly by ECF like that used by the Northern District of Florida (see their website at [FLNB.uscourts.gov](http://FLNB.uscourts.gov)) in the near future.

G. OPINIONS: You can now find all Court opinions for which a Memorandum Opinion has been issued by using the "Opinions" link on the Court's website; it will take you to the General Printing Office website.

H. CONTESTED MATTERS: If counsel notifies the Judge's chambers by 9:00 am on the day before a scheduled Chapter 13-docket day that a matter is contested, the Court will schedule the matter for 2:00 pm so that the parties will not have to wait around all morning to be heard after the agreed matters on the docket.

I. ACCESS TO ECF IN THE COURTROOM: The Judge has set up a computer in the Courtroom in Lynchburg that attorneys can use during Court to check on the status of matters on the

Court's docket that day. The Judge encourages attorneys to make use of this resource, and hopes that it will reduce the number of times attorneys at the podium raise a matter for which an order has already been entered.

J. EXHIBITS IN CONTESTED MATTERS: Exhibits must be filed electronically before the hearing AND must be presented in paper form during the hearing for use by a witness and opposing counsel; the latter requirement can be met by the use of electronic presentation of evidence on the Court's large monitors if counsel knows how to use them.

K. SEATING OF ATTORNEYS IN CHARLOTTEVILLE: When the seating in the courtroom is limited due to a large attendance in the courtroom, Attorneys should fill in the seats in the jury box so non-attorneys can sit in the benches and not have to stand up in the back of the Courtroom.

L. RESPONDING TO MORTGAGEE NOTICES OF DEFAULT: There was a discussion of how to expedite these hearings and prevent additional continuances. One suggestion from creditors' counsel was that debtors' counsel appear at the NOD hearing with proof of certified funds that have been sent to the mortgagee/servicer. Another suggestion was the use of drop dead language (e.g.: "debtors must be current by the hearing date or...") in the continuation order.

M. PAYING CARS DIRECT BY DEBTORS INSTEAD OF THROUGH THE TRUSTEE:  
The Judge said that debtors' attorneys need to be prepared at confirmation hearings to justify why a car is not being paid through the Trustee. One attorney suggestion was to add a short explanation in the plan itself (e.g., paragraph 5.A or 11).

N. MOTIONS TO INCUR STUDENT LOANS or OTHER POST-PETITION INDEBTEDNESS:  
The Judge wants to hear why such a motion is in the best interests of the debtor and in particular how the debtor can realistically repay the loan; she expressed concern that debtors not take on significant additional debt based on unrealistic expectations as to their ability to repay the loan.

#### **IV. CHANGES IN TRUSTEE POLICIES AND PROCEDURES**

(See "Debtor Attorney Information" section of the website.)

#### **V. CHANGES TO THE BANKRUPTCY CODE OR FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Effective December 1, 2017, Chapter 13 cases filed after that date in this District must use the new model form plan promulgated by the national Rules Committee. A copy of the new form will be posted on the Court's website.

In addition, there are several significant changes to the following Federal Rules of Bankruptcy Procedure which will take effect on that date: 2002, 3002, 3007, 3012, 3015, 4003(d), 5009, 7001, and 9009.

Judge Connelly will be conducting a webinar on November 17, 2017 through the Virginia CLE program to review the new plan form and the Rules changes. This webinar is being recorded and will be available for attorneys to purchase through the Virginia CLE program.

## **VI. MISCELLANEOUS**

Nothing to report for now.