

## **Trustee Tips for obtaining and implementing Electronic Transfer of Funds Payment Orders “ACH Transfers”):**

Observations from the Office of David Wm. Ruskin, Chapter 13 Trustee, on issues being commonly encountered in attempting to implement ACH Transfers:

1. As Judge Rhodes explained both at the recent Local Rules Seminar and at the CBA dinner at the Peking House, the Bench does not consider ACH Transfers to be an optional procedure. The Bench much prefers the use of traditional Third Party Payment Orders.

ACH transfers are to be used only when a Third Party Payment Order “cannot be effectuated”. This is specified in Local Rule 1007-1 and is further borne out by Administrative Order 08-10, which requires any party seeking to use ACH Transfers to file with the Court an Affidavit “stating in detail why a Third Party Payment Order cannot be effectuated.” According to Judge Rhodes, this means more than the debtor would “prefer” an ACH transfer.

Accordingly, while the Trustee is more than happy to consider proposed Stipulations to Excuse Entry of Third Party Payment Order and Order to Debtor to Remit Payments to Chapter 13 Trustee by Electronic Transfer of Funds, the debtor must provide some detail why a Third Party Payment Order cannot be effectuated. This must be more than a standard form “boilerplate” Affidavit - “I am worried I will lose my job” or “I receive income that cannot be assigned” - with nothing more. The affidavit should contain specific information to establish a factual predicate to support excusing a Third Party Payment Order. Why does the debtor believe that a Third Party Payment Order” or “a Third Party Payment Order may leave the debtor “subject to punishment or discipline”? Has the debtor seen other employees have Third Party Payment Orders entered who then suffered adverse employment effects? How? When? Has the employer said something about Third Party Payment Orders? What objective evidence does the debtor have? If the debtor believes that the income “cannot be assigned”, explain what sources of income the debtor has and why those sources are not assignable. While the Trustee will not demand proof “beyond a reasonable doubt”, please give the Trustee something on which to base a decision.

2. The Court’s Local Bankruptcy Rules and applicable Federal Banking Regulations prohibit the Trustee from implementing ACH Transfers until:
  - a. The Court has entered an Order authorizing ACH Transfers. The Court’s form “Stipulation Excusing Entry of Third Party Payment Order and Order to Debtor to Remit Payments to Chapter 13 Trustee by Electronic Transfer of Funds” and the Court’s form

"Order Excusing Entry of Third Party Payment Order and Order to Debtor to Remit Payments to Chapter 13 Trustee by Electronic Transfer of Funds" can be found on the Court's website, <http://www.mieb.uscourts.gov/rulesAndForms/localForms.html>; and

- b. We have received an "AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENTS (ACH)" fully completed and signed by all people who are named as "account holders" or "account owners" for the account from which the ACH Transfer is to be made. Our form Authorization can be found on our website, <http://www.det13.com/forms.shtml>.

We have a number of cases where the parties (including the Trustee) have executed stipulations for entry of an Order directing ACH Transfers, but where the Court has not actually entered an Order directing ACH Transfers. It appears in at least some of those cases that the Stipulation has been filed with the Court, but the actual Order has never been submitted to the Judge for entry. We must have the signed Court Order before we can implement ACH Transfers.

3. At present, ACH Transfers from a particular account can occur only once per month. The Court's form Order provides for ACH check transfers "any amount of \$\_\_\_\_\_ per \_\_\_\_\_". Please make sure that the Stipulation and Order reflect the amount of the payment to be made "per month". If the Order references a pay frequency other than "monthly", the Trustee will convert the designated payment amount and frequency into the monthly equivalent and will use that amount to process ACH withdrawals.
4. The Trustee's Authorization Agreement must also specify the payment in a monthly amount. Please make sure that the Authorization Agreement also reflects a monthly payment amount. If the Authorization Agreement references a pay frequency other than "monthly", the Trustee will convert the designated payment amount and frequency into the monthly equivalent and will use that amount to process ACH withdrawals.
5. In the event of a conflict between the Order for ACH Transfers, the amount set forth in the Trustee's Authorization Agreement and/or the terms of the Plan, the Trustee will adjust the amount of the ACH withdrawal to equal the monthly plan payment (or so much of the plan payment as is to be made via ACH).
6. The Trustee's Authorization Agreement includes a page for "Frequently Asked Questions". Please encourage the debtor to read those FAQs, as they may answer some questions or resolve some concerns about the process.

7. The process for setting up an account for ACH Transfers is not as simple or quick as one might imagine. Please do not send us the Order and Authorization agreement a day or two before the selected “draw” date and expect us to implement it in time for that draw to occur. It will start as soon as possible, but it just cannot happen overnight.

The Trustee has posted to his web site a chart showing upcoming dates for ACH Transfers and the deadlines by which events must occur for an ACH Transfer to commence on each of those dates. Counsel may want to review that chart to determine the date on which ACH Transfers will commence, in order to ensure that all plan payments that come due before the implementation of the ACH Transfers are made in a timely manner.

Our goal is to implement this process as smoothly as possible, with the ultimate goal being to assist debtors in completing their plans and obtaining discharges. If you have any constructive suggestions or helpful comments on ways to improve the process, please pass those along.