

13. UPDATE

A Monthly Newsletter

David Wm. Ruskin – Trustee
Cheryl von Drehle – Editor

Office
of the
Chapter 13
Standing
Trustee

E. D. of MI -- Detroit

Volume 1 Issue 10

DECEMBER 1998

DECEMBER CALENDAR:

Closed Dates: The Trustee's office will be closed for winter break on Thursday, December 24 and will reopen Monday, January 4. The Bankruptcy Court will be closed Thursday and Friday, December 24 & 25, and Friday, January 1.

341 Meeting Schedule: Hearings will be held on Mondays, December 7, 14 and 21, with double calls in Rooms A and B at noon and 1:00 PM each day.

Other important dates:

Attorney Forum Meeting: Friday, December 4, at the Trustee's office, 2:00 PM to 4:00 PM.

Document Receipt Deadlines: All documents for court hearings the week of January 4, and completing materials for the January 4th 341 meeting, must be received in our office by Friday, December 18 to guarantee review.

Telephone upgrade: Our phones will be inaccessible on Thursday morning, 12/3, while we undergo conversion to an upgraded system.



INSIDE THIS ISSUE:

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ATTACHMENTS

- Who Does What
- 341 Adjournment Procedure

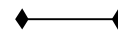
TRAC NEWS:

Training: Both TRAC training sessions for December will be held on Friday, December 11. To sign up, call Cheryl at ext. 627 or e-mail trac@det13.com.

Basic Training, for new users, potential users, or new staff, will be 10:00 AM to 12:00 PM.

Advanced Training, for experienced users wanting to upgrade their skills or their TRAC access, or just need a refresher, will be 2:00 PM to 4:00 PM.

TRAC Tip: Don't overlook the value of the "play" cases on the system: 55-10000, 55-20000 etc. through 55-60000 are shells of cases that are there for you to fill in with whatever information you want. For example, use one of these to calculate a new plan before the case is even filed. Or, if you are making some major modifications on an existing plan, it might be easier to start from scratch, filling in your information in a shell, rather than modifying everything in the actual case.



POLICY UPDATE:

Tax refunds: Debtors are required to offer their "best effort" in funding a Chapter 13 Plan. Therefore the Trustee is now objecting to plans which do not offer 100% future tax refunds, if past refunds have totaled \$1,000.00 or more.

Disbursement is now being processed sometime between the 1st and the 8th of each month, with checks still being mailed on the 10th. This is a change from our previous practice of processing disbursement checks prior to the first of the month.

Any true copies of orders that you want included in disbursement calculations must be in our office by the last business day of the month prior to the month of disbursement. It is the moving party's responsibility to make sure our office gets a copy of any order entered with the Court (see, "Practice Tip," page 2.)

MEET OUR NEW
STAFF ATTORNEY:

Michelle Stephenson recently joined the Trustee's office as our third staff attorney. Many of you already know Michelle as she has been involved in the Chapter 13 bankruptcy community for several years.

See the enclosed "Who Does What" for several additions to our office staff during November.

PRACTICE TIPS:

IF THE JUDGE ORDERS IT, you want us to do it. We can't, unless we have a true copy of the order. So....*Send us a true copy!*

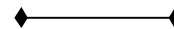
All moving parties are responsible for providing the Trustee's office with a true copy of any order which they have generated (L.B.R. 9013-3). Do not rely on the Bankruptcy Court to automatically provide our office with a copy of your order, even if you supplied the court with additional copies. It is *your* responsibility to make sure we get a true copy of every order you file with the Court.

THE MODEL PLAN HAS CHANGED to reflect the new numbering of the local rules. You probably know this, but you may not have noticed that the designation of the model plan has also changed. If the copy of the model plan you are using is the latest version, it should be designated as **"version 1.55 10/98."** Please make sure you are using the right version of the model plan, and that it is designated properly. If you need a copy of the new version you can get it on disk by calling Karen Wylie of our office at ext. 608.

HOW TO OBTAIN AN ADJOURNMENT OF A 341 MEETING is still causing confusion for some parties. If you are not sure how to do this, please see the attached procedure on the Trustee's 341 adjournment policy.

GUEST COLUMNS

THE FOLLOWING ARTICLE IS A NEW FEATURE OF 13.UPDATE. THIS MONTH'S "CREDITOR CORNER" WILL BE OF EQUAL INTEREST TO DEBTOR PRACTITIONERS. LOOK FOR MORE GUEST FEATURES IN FUTURE ISSUES.



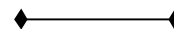
"Creditor Corner" will be providing valuable information to the Creditor Bar in Chapter 13 cases. However, this month's column focuses on a word that can make Chapter 13 practice better for *all practitioners*, Creditor and Debtor alike: **Participation!** We are all familiar with the meaning of this word, but it demands one very important element of our practice--**time.**

Currently the Chapter 13 Trustee is hosting periodic informal meetings to discuss Chapter 13 practices and methods to increase efficiency. The meeting scheduled for December 4, 1998, at 2:00 PM in the Trustee's office is to discuss revisions to the model Plan. This affects all of us. Unfortunately these meetings are too often attended by the same small number of firms. Excuses abound for lack of participation: loss of time at the office; lack of identifiable results; personality conflicts; etc. etc. But it is imperative that we all take part in formulating practice methods, and we all owe a professional duty to participate in improving the Chapter 13 process.

Taking a couple of hours to help restructure the model plan and practice procedures can save several hours of court time in the future. You can also gain some valuable insights by considering other firms' practices, and maybe even pick up some efficiency pointers to reduce court time and allow more time in the office. Remember: while all parties must zealously represent their clients, even to the extent of professional litigation of some issues, vigorous representation and process improvement are not mutually exclusive.

So please accept this invitation to join us on December 4. Come and offer your insights on some of the "issues" created by the current model plan, and help all of us make better use of our most precious commodity: **Time.**

--by Karen L. Rowse-Oberle
Butler & Butler, P.L.L.C.



COMING NEXT MONTH: "DEBTOR VIEWS"

The views expressed in 13.Update columns are not necessarily those of the Chapter 13 Trustee, but are solely the personal views of the authors. Nothing in these columns, or in this newsletter, should be regarded as legal advice.

If you would like to contribute to these new columns, please contact Cheryl, the 13.Update Editor.

The Special Attorney Appearance Requirements of L.B.R. 9010-1(c) and the “Of Counsel” Relationship

L.B.R. 9010-1(c) (E.D.M) requires a Special Appearance Notice and 2016(b) Statement (disclosing compensation) to be filed by attorneys representing debtors in bankruptcy proceedings when that attorney is not an associate, partner, shareholder or of counsel to the attorney and/or law firm of record. These documents must be filed with the Bankruptcy Clerk’s Office prior to the attorney (who is not “of record”) undertaking any representation. It is in the best interests of the attorney making the special appearance to possess, during the course of representation, a time-stamped copy of the Notice and 2016(b) Statement or an Affidavit attesting to the fact these documents were filed. Presumably the rule was drafted to put the special appearance attorney on notice that he/she will be held “accountable for adequately representing the interests of the person or entity on whose behalf the appearance is made.” L.B.R. 9010-1(c) (E.D.M.).

This rule applies to attorneys who are not of record. Whether an attorney is an associate, partner, member or shareholder of a law firm of record is determined by virtue of an employment and/or ownership relationship. An “Of counsel” relationship is not as easily determined. The determination depends on the facts surrounding the relationship between an attorney and an affiliated law firm/attorney. The State Bar of Michigan Informal Ethics Opinion, RI-102, (10/1/91) offers guidance in defining an “of counsel” relationship. Note-- the opinion disavows inconsistent pre-1991 ethics opinions.

Defining an “Of Counsel” Relationship: A lawyer who is “of counsel” to another lawyer or law firm has a close, regular and personal relationship with the affiliated lawyer/firm, RI-102. This requirement is the ‘core’ characteristic of an “of counsel” relationship. *Id.* citing ABA Op 90-357. Frequent and continuing contact does not require, nor mandate contact on a daily basis. *Id.* Michigan recognizes an “of counsel” designation for part-time attorneys, retired partner/ shareholders, and when:

- (a) there is close, regular and personal contact between the “of counsel” attorney and law firm/attorney;
 - (b) the “of counsel” attorney is available for more than just a mere consultation;
 - (c) there is frequent and continuing, but not daily, contact between the affiliated lawyers and/or law firms; and
 - (d) factors (a), (b) and (c) exist and the relationship is consistent with the general principles discussed throughout this opinion.
- RI-102

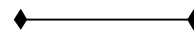
Compensation is not relevant in determining if an affiliation may be designated “of counsel.” *Id.* A lawyer, as well as a law firm, should be able to qualify for the designation. CI-1029 (12/21/84). Michigan practitioners may establish an “of counsel” relationship with an attorney or law firm in a state other than Michigan. Communication to the public about an interstate “of counsel” relationship, between an attorney and a law firm, must state the jurisdictional limitations.

Relationships Outside the Scope of “Of Counsel”: No “of counsel” relationship exists in these circumstances:

- (a) the attorney is currently a partner or associate of a law firm (CI-298 2/9/77);
- (b) the attorney has a mutual referral agreement with another lawyer/law firm (CI-536 - 6/8/81);
- (c) the attorney only occasionally acts as consultant to the other lawyer or firm and
- (d) the attorney shares office space, non-legal staff and expenses with another attorney and/or law firm. (C-230, MRPC 7.5; CI-1039 - 10/10/84).

In conclusion: Michigan Ethics Opinions addressing the “of counsel” designation have evolved over the years. Initially, opinions focused on whether the “of counsel” designation to potential clients, on letterhead or otherwise, was misleading. Recently, opinions appear to focus on the facts of the “of counsel” relationship which give rise to “adequately representing client interests,” to wit: Does a close, regular and personal relationship exist between the affiliated lawyers or firms? It appears L.B.R. 9010-1(c) (E.D.M.) shares the same focus in requiring the attorney of record and the special appearance attorney to take notice that he/she “shall be accountable for adequately representing the interests of the person or entity on whose behalf the appearance is made.”

--by Alaina Zanke-Jodway



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YOUR OPINION IS CRUCIAL!

13.UPDATE NEWSLETTER AND TRAC SURVEY

Please take two minutes to complete this survey. To return it, you don't even need a stamp! You can fax it to our office, or hand it to one of the Trustee's staff members at a court hearing or 341 meeting, or enclose it in *any* mailing to our office. If more than one person reads this copy of the newsletter or uses TRAC, please feel free to make Xerox copies of this survey for each to complete and return.

NEWSLETTER:

1. **How much of the newsletter do you read?**
 all of it most of it some of it
 I skim the headlines and read just those articles that catch my attention
2. **What articles do you find most useful?**
(check all that apply)
 Monthly calendar TRAC information
 Practice Tips Who Does What
 Policies & Procedures Articles Attachments
 Other _____
3. **How helpful is the newsletter to your practice and/or your interaction with the Trustee's Office?**
 Very Somewhat Not at all
3.a. What might make it more useful to you?
4. **Do you save & refer to back issues?**
 Yes No
4a. Would a periodic index of back issues be helpful? Yes No
5. **Who else reads your copy, if anyone?**
 Other staff attorneys office clerical staff
 Other professional or paraprofessional staff
(for additional copies, call Karen Wylie, ext. 608)

Please share any other comments, including suggestions for articles:

TRAC:

If your office is on TRAC:

1. **Who in your office uses TRAC?**
(check all that apply)
 Attorney paralegal clerical staff
 Other _____
2. **How often does someone in your office access TRAC?**
 Daily A few times/week
 A few times/month Once a month or less
3. **What do you use TRAC for?**
 Run plan calcs to prepare for court hearings
 Monitor cases do 24-month case reviews
 calc plans prior to filing with court
 Other _____
4. **Any suggestions to improve TRAC training you received?**

If your office is not on TRAC:

1. **Why not?**
 Don't have the technical equipment needed
 Don't think it would be helpful
 Don't know enough about it, or what equipment is needed
2. **If you would like information about TRAC, call Cheryl at 248-352-7755, ext. 627 or e-mail trac@det13.com**

Website: (www.det13.com)

Have you visited our website? Yes No

.....

Your Position: Attorney Paralegal Clerical Staff Other _____

Type of firm/office: Debtor Creditor Court Trustee Other _____

THE OFFICE OF THE CHAPTER 13 STANDING TRUSTEE-DETROIT

341 ADJOURNMENT PROCEDURE

PRIOR TO THE ORIGINAL 341 HEARING DATE:

- Requests by phone for adjournments will be considered if received by Wednesday before the original hearing date
- See **Who Does What** from the Chapter 13 Trustee's office for the contact person
- The new 341 hearing date given will allow for 20-day notice and 3-day mailing time
- An Adjournment Agreement with a new 341 hearing date will be signed and mailed to debtor attorney
- Debtor attorney is responsible for serving all interested parties with the new date and time

RESCHEDULING WHEN THE DEBTOR FAILS TO APPEAR AT THE ORIGINAL DATE

Considerations:

- 1) An *Order* is required to reschedule a confirmation hearing, but not a 341 hearing
- 2) 20-day notice plus three days mailing time is required for rescheduling a 341 hearing
- 3) The Trustee will provide a new 341 hearing date if:
 - the request is accompanied by supporting documents or an affidavit signed by the debtor detailing the reason for not appearing; and
 - the reason appears plausible and not abusive
- 4) If the Trustee did not agree to reschedule or the debtor attorney did not attempt to obtain prior Trustee agreement the debtor attorney may take whatever action is deemed appropriate to obtain a new date.
- 5) The Trustee's office has two documents available for attorneys' use:
 - Agreement and Notice of Adjourned Section 341 Meeting of Creditors**
 - An *Order* which will reschedule the 341 hearing and adjourn the confirmation hearing

Procedures:

A. When a new confirmation hearing date is NOT required:

- 1) If the Trustee agrees to a new 341 hearing date based on submitted documents or affidavit, an Agreement Form will be prepared and forwarded to debtor attorney;
- 2) If agreement is not sought or not given, and a Motion is submitted pursuant to LBR 2.08, the proposed Order should include language that the court is directing the UST or the Chapter 13 Trustee's office to reset a 341 date; upon receipt of an Order, an Agreement Form with the new 341 hearing date will be prepared and forwarded to debtor attorney along with the approved Order.

B. When a new confirmation hearing date IS required:

- 1) If the Trustee agrees to a new 341 hearing date based on submitted documents or affidavit, an Order rescheduling the 341 hearing and adjourning the confirmation will be prepared and forwarded to debtor attorney;
- 2) If agreement is not sought or not given, and a Motion is filed pursuant to LBR 2.08, the proposed Order adjourning both dates should either be the Trustee's form Order or contain identical information.

WHO DOES WHAT AT THE TRUSTEE'S OFFICE?

**OFFICE OF THE CHAPTER 13 STANDING TRUSTEE
UNITED STATES BANKRUPTCY COURT - EASTERN DISTRICT OF MICHIGAN-DETROIT**

David Wm. Ruskin, Esq., CHAPTER 13 STANDING TRUSTEE
 Tammy L. Terry, Esq., STAFF ATTORNEY
 Krispen S. Carroll, Esq., STAFF ATTORNEY
 Michelle M. Stephenson, Esq., STAFF ATTORNEY
 Drané Beaune, HUMAN RESOURCES MANAGER
 Cheryl von Drehle, EDUCATION & TRAINING MANAGER
 Karen Currie, QUALITY ASSURANCE MANAGER
 Nancy A. Chapman, FINANCE MANAGER
 Rich Collins, INFORMATION SERVICES MANAGER

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 Southfield, Michigan 48076
TELEPHONE: (248) 352-7755
FACSIMILE: (248) 352-2902
WEBSITE: www.det13.com
PAYMENTS: Chapter 13 Trustee
 P.O. Box 5816
 Troy, MI 48007-5816
HOURS: M-F 9:00 A.M. - 5:00 P.M.

Effective November 20, 1998

FOR QUESTIONS ON OR FOR	NAME.EXT	FOR QUESTIONS ON OR FOR	NAME.EXT
Account Info (receipts/disbursements)	Christine Jackson 657	New Attorney Information	Karen Wylie 608
Adequate Protection Orders (questions regarding)	Pat Jackson 641	Newsletter Items	Cheryl von Drehle 627
Address Changes (in writing only)	Pat Jackson 641	Payments from debtors, tracing	Pat Jackson 641
Adversary Proceedings	Krispen Carroll/Tammy Terry 607	Policies & Suggestions	David Ruskin 608
Appeals Cases	Krispen Carroll/Tammy Terry 607	Receipts - From Debtors	Christine Jackson 657
Case Closings and Refunds	Jennifer Sandler-Bowen 638	Secretaries:	
Creditor Meeting Adjournments	Susan Stanley 637	To Mr. Ruskin	Karen Wylie 608
Facilities Matters	Drané Beaune 623	To Staff Attorneys	Nancy Armstrong 607
Final Reports	Jennifer Sandler-Bowen 638	Telephone Inquiries/Case Status	Christine Jackson 657
Financial Matters	Nancy Chapman 630	TRAC: Technical System	Sharon Cobb 656
Human Resources	Drané Beaune 623	TRAC: Training	Rich Collins 605
Inquiries (debtor/creditor)	Christine Jackson 657	Volume Reports	Gloria Ruskin 606
Motions to Dismiss	Sharon Cobb 656		Christine Jackson 657
	Nancy Armstrong 607		

FOR QUESTIONS ON OR FOR	JUDGE SHAPERO TEAM	JUDGE GRAVES TEAM	JUDGE RHODES TEAM
Court Prep, Motion & Order Review			
End digits 00-49	Susan Edwards 613	Liza Koyle 624	Marilee Downs* 633
End digits 50-99	Lois Clark 615	Krystn Hussey 625	Brian Boyd 632
Claims	Tiffany Gaines* 612	(Vacancy)	Susan Stanley 637
Creditors' Meeting Plan Review & Debtor Payment Letters			
End digits 00-24	Hope Smith 619	Hope Smith 619	Hope Smith 619
End digits 25-99	Angela Tyner 618	Nolah Brown 645	Romona Wheeler 635
Discharge of Cases	Ellene Peters 611	Susan Beal 647	Janet Benedetti 636
Wage Deductions:			
Start-up/Changes	Carolyn Dickens 616	(Vacancy)	(Vacancy)
Release	Valerie Willis* 643	Valerie Willis 643	Valerie Willis 643

*Group Leaders

IMPORTANT INFORMATION/DOCUMENT DELIVERY DEADLINES

We will make every effort to review documents for 341 meetings and court hearings if RECEIVED by the following dates:

341 Meetings:

Completing materials on incomplete cases by Wednesday 12:00 noon the week prior to Meeting

Confirmation Hearings:

Amended plans and other documents by Monday 5:00 p.m. the week prior to the hearing

LBR 3015-3(b) Orders Confirming Plan by 2:00 p.m. the day prior to the confirmation hearing