

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION**

In Re:	)	
	)	
Western Division Administrative Order	)	
Regarding (I) Attorney's Fees Under § 4.3 of the	)	Administrative Order No. 17-07
Local Form Plan, (II) the Sequence of Payments	)	(Western Division Only)
Under Part 7 of the Local Form Plan, and (III)	)	
Other Chapter 13 Requirements and Procedures	)	
	)	

**WESTERN DIVISION ADMINISTRATIVE ORDER REGARDING (I) ATTORNEY'S FEES  
UNDER § 4.3 OF THE LOCAL FORM PLAN, (II) THE SEQUENCE OF PAYMENTS  
UNDER PART 7 OF THE LOCAL FORM PLAN, AND (III) OTHER CHAPTER 13  
REQUIREMENTS AND PROCEDURES**

This administrative order (this "Order") applies in all chapter 13 cases filed in the Western Division (the "Western Division") of the United States Bankruptcy Court for the Northern District of Alabama (the "District") on or after December 1, 2017, the effective date of the local form chapter 13 plan adopted by the District in accordance with Rule 3015.1 of the Federal Rules of Bankruptcy Procedure (the "Local Form Plan"). The Order also applies in any Western Division chapter 13 case in which chapter 13 debtor(s) (individually or together, a "Debtor") file a chapter 13 plan in the form of the Local Form Plan (a "Plan"), regardless of when the case was filed. Additionally, effective immediately, part III.E, parts III.H through III.V, and the final sentence of part III.A of the Order apply in all Western Division chapter 13 cases. In the event a case is transferred from the Western Division to another division within the District (or to another district) prior to confirmation of a Plan, the Order shall cease to apply in the case. The provisions of the Order shall not be given preclusive effect in the event a creditor or other party in interest timely objects to confirmation of a Plan or to any proposed modification to a Plan. Subject to the foregoing, and pursuant to § 4.3 and part 7 of the Local Form Plan, Rules 3015, 9006, and 9029 of the Federal Rules of Bankruptcy Procedure (the "Rules"), and Rule 102 of the Federal Rules of Evidence, it is ORDERED as follows:

**I. Payment of Attorney's Fees Under § 4.3 of the Local Form Plan**

**A. The Administrative Order Fee Option.** Part I.A of this Order is deemed incorporated, by reference, in a Plan if the Debtor selects the option, in § 4.3 of the Plan, to pay the balance of the requested Debtor's attorney fee "in accordance with any applicable administrative order regarding fees entered in the division where the case is pending" (the "Administrative Order Fee Option"). (See Local Form Plan § 4.3.) If the Administrative Order Fee Option is selected in the Plan, the fee allowed the Debtor's attorney that is payable from the Debtor's estate (the "Fee"), if any, shall be paid as follows, unless otherwise ordered:

1. Beginning with the first post-confirmation distribution made by the chapter 13 trustee serving in the case (the "Trustee") through and including the *earliest* to occur of the (1) the distribution that pays the Fee in full, (2) the Trustee's distribution for the month preceding the month in which fixed payments are to commence under the terms of the Plan, and (3) the Trustee's distribution for the sixth month after the confirmation hearing (the "Initial Fee Period"),<sup>1</sup> the Trustee shall pay to the Debtor's attorney the balance of the Regular Plan Payments (as said term is hereinafter defined) received by the Trustee that remain after the Trustee disburses the amounts set forth in subparagraphs 1, 2, and 3 of part II.A of this Order (the "Initial Fee Payments").
2. After the Initial Fee Period, if the Fee has not been paid in full, the Trustee shall pay to the Debtor's attorney the balance of the Regular Plan Payments (as said term is hereinafter defined) received by the Trustee that remain after payment of the amounts set forth subparagraphs 1, 2, 3, and 5 of part II.A of this Order (the "Residual Fee Payments"). The Residual Fee Payments shall continue until the Fee is paid in full.

---

<sup>1</sup> If the Administrative Order Fee Option is selected by a Plan, fixed payments to secured creditors, if any, must begin *no later than* the seventh month following confirmation. The month in which fixed payments are to begin under the Plan is referred to herein as the "Fixed Payment Commencement Date."

**B. The Plan Fee Option.** In lieu of selecting the Administrative Order Option, the Debtor, in § 4.3 of the Plan, may provide for payment of all or a portion of the Fee to the Debtor's attorney at confirmation of the Plan (the "Fee at Confirmation") and grant the Debtor's attorney a monthly fixed payment on the unpaid balance of the Fee (the "Fee Balance"). This option is referred to herein as the "Plan Fee Option." Unless otherwise ordered, the Fee at Confirmation and fixed payments to the Debtor's attorney on the Fee Balance shall be paid by the Trustee, post-confirmation, from Regular Plan Payments received by the Trustee in accordance with the sequence of payments set forth in part II.A of this Order; *provided, however*, in the event the Trustee receives insufficient Regular Plan Payments to pay the Fee at Confirmation in full prior to the Fixed Payment Commencement Date, the portion of the Fee at Confirmation that remains unpaid as of the Fixed Payment Commencement Date (the "Fee Deficiency") shall not be paid under subparagraph 4 of part II.A. Instead, the Fee Deficiency shall be paid from the Regular Plan Payments received by the Trustee that remain after payment of the amounts set forth subparagraphs 1, 2, 3, and 5 of part II.A of this Order (the "Fee Deficiency Payments").

## **II. Sequence of Payments Under Part 7 of the Local Form Plan**

**A. Regular Plan Payments.** Unless otherwise ordered, the Trustee shall disburse payments received by the Trustee under §§ 2.1, 2.2, or 2.3 of a Plan (collectively, the "Regular Plan Payments") in the following sequence:

1. The Trustee shall collect the percentage fee currently due from all Regular Plan Payments at the time that funds are disbursed, until the fee then due is collected in full. (*See* Local Form Plan § 4.1.)
2. If the Plan proposes to pay the chapter 13 case filing fee (the "Filing Fee") through the Plan, the Trustee shall then disburse the Filing Fee installment payments currently due to the clerk of court, until the amounts then due are paid in full. (*See* Local Form Plan § 4.2; Local Rule 1006-1.)



3. The Trustee shall then disburse post-petition adequate protection payments to creditors with allowed claims, if any, as provided in the Debtor's most recent Plan, until the amounts then due are paid in full. (*See, e.g.,* Local Form Plan §§ 2.5, 3.2, and 3.3; *see also* Local Form Plan part 9.)
4. The Trustee shall then disburse the Initial Fee Payments payable to the Debtor's attorney under part I.A of this Order, if any, or the Fee at Confirmation payable to the Debtor's attorney under part I.B of this Order, if any. (*See* Local Form Plan § 4.3; *see also supra* parts I.A.1 and I.B.)
5. The Trustee shall then disburse the following amounts proportionately until the amounts that are then currently due are paid in full:
  - a. The current installment payments to be disbursed by the Trustee, if any, including amounts currently due and any unpaid arrearages (*see* Local Form Plan §§ 3.1, 5.4, and 6.1); and
  - b. The monthly fixed payments on allowed secured claims, if any, including any amounts currently due and any unpaid arrearages (*see* Local Form Plan part 3); and
  - c. The monthly fixed payments to the Debtor's attorney for the Fee Balance, if any, including any amounts currently due and any unpaid arrearages (*see* Local Form Plan § 4.3; *see also supra* part I.B); and
  - d. The monthly fixed payments on other priority unsecured claims and § 503(b) administrative expenses, if any, including any amounts currently due and any unpaid arrearages (*see, e.g.,* Local Form Plan §§ 4.4, 4.5).

The monthly fixed payments identified in this subparagraph 5 of part II.A that are due pursuant to the Plan but are unpaid shall accrue proportionately, based upon the amount of each fixed payment awarded, and shall be paid proportionately by the Trustee on a pro rata

basis from available funds on hand.<sup>2</sup>

6. The Trustee shall then disburse the Residual Attorney Fee Payments or Fee Deficiency Payments payable to the Debtor's attorney, if any, until paid in full. (*See* Local Form Plan § 4.3; *see also* supra parts I.A.2 and I.B.)
7. The Trustee shall then disburse the amounts to be paid to holders of nonpriority unsecured claims not separately classified by the Plan, if any, on a pro rata basis until paid in full. (*See* Local Form Plan part 5.)

**B. Claim Proceeds.** Unless otherwise ordered, the Trustee shall disburse proceeds of claim(s), cause(s) of action, lawsuit(s), settlement(s), or judgment award(s) ("Claim Proceeds") received by the Trustee pursuant to § 2.4 of a Plan ("Committed Claim Proceeds") in the sequence specified by the Plan, if any. (*See* Local Form Plan § 2.4, part 9;<sup>3</sup> *see also id.* at § 5.2.<sup>4</sup>) If the Plan does not include a sequence of payment for Committed Claim Proceeds, Committed Claim Proceeds received by the Trustee shall be held pending further

---

<sup>2</sup> For example, if a Plan provides for fixed payments in the amount of \$200.00 to a secured car creditor, \$200.00 to a secured mortgage creditor, and \$100.00 to the Debtor's attorney for the Fee Balance, and, after the Fixed Payment Commencement Date, the Trustee receives a partial Regular Plan Payment in the amount of \$100.00, the Trustee shall disburse, after collecting the Trustee's fee of not more than 10 percent of the disbursements to the creditors (\$9.09), approximately \$36.36 to the secured car creditor, approximately \$36.36 to the secured mortgage creditor, and approximately \$18.18 to the Debtor's attorney. The foregoing scenario assumes the Filing Fee was paid in full prior to the Fixed Payment Commencement Date.

<sup>3</sup> For example, in § 2.4, the Plan may provide: "Non-exempt proceeds of estate causes of action that remain after satisfaction of any and all attorneys' fees and expenses, lien claims, and subrogation claims payable therefrom shall be disbursed in the following sequence: (1) in payment of the percentage fee currently due the Trustee, (2) pro rata to holders of nonpriority unsecured claims not separately classified by the Plan up to 100 percent of the total allowed amount of such claims, (3) in the sequence specified by part II.A of Administrative Order No. 17-07, and (4) the balance, if any, to the Debtor(s)." Or, the Plan may specify a different sequence of payments in § 2.4 (or part 9). The aforementioned sequence is provided for illustrative purposes only and shall not be given preclusive effect in the event a creditor or other party in interest objects to confirmation of a Plan that includes this sequence of payments.

<sup>4</sup> Notably, for "Base" plans, the Local Form Plan provides that Committed Claim Proceeds will be disbursed, like Regular Plan Payments, in accordance with the sequence of payments set forth in part II.A of this Order. (*See* Local Form Plan § 5.2.)

order of the court; provided, however, if all Trustee payments to creditors contemplated by the Plan have been paid in full (referred to herein as "Plan Completion"), the Trustee shall disburse the Committed Claim Proceeds in the following sequence:

1. The Trustee shall collect the percentage fee currently due from Committed Claim Proceeds at the time that such funds are disbursed, until the fee then due is collected in full. (*See* Local Form Plan § 4.1.)
2. The Trustee shall then disburse the amounts necessary to satisfy unpaid compensation awards, subrogation claims, or lien claims payable from the Committed Claim Proceeds, if any.<sup>5</sup>
3. The Trustee shall then disburse, on a pro rata basis, the amounts necessary to pay holders of allowed nonpriority unsecured claims not separately classified by the Plan (the "General Unsecureds"), if any, 100 percent of the total allowed amount of such claims (a "100% General Unsecured Distribution"). (*See* Local Form Plan § 5.3.)
4. Any Committed Claim Proceeds that remain after both Plan Completion and a 100% General Unsecured Distribution occur shall be refunded to the Debtor, and, unless otherwise ordered, the Trustee shall not collect a percentage fee on any such disbursement to the Debtor.

### **III. Other Chapter 13 Requirements and Procedures**

**A. Adequate Protection Payments.** If a Plan provides for adequate protection payments to a creditor, such adequate protection payments shall continue until the Fixed Payment Commencement Date, unless the Plan expressly provides otherwise or otherwise ordered. The Trustee is authorized to make the adequate protection payments proposed to be made to a creditor in a Plan prior to confirmation, so long as

---

<sup>5</sup> Often, such awards and claims are paid directly by special counsel or a settlement administrator, pursuant to an order on a motion to approve compromise. Further, the Debtor, in § 2.4 of the Plan, may exclude from the Committed Claim Proceeds the amounts necessary to satisfy compensation awards or subrogation/lien claims.



the creditor has properly filed a proof of claim.<sup>6</sup>

**B. Fixed Payment Commencement Date.** If a Plan provides for fixed payments to a creditor, the Plan must conspicuously and clearly identify the Fixed Payment Commencement Date. For purposes of this requirement, it shall be sufficient to identify the month following confirmation in which fixed payments are to commence (e.g., "the 7th month after confirmation"). If the Plan states that fixed payments will begin "at confirmation" or "upon confirmation," the Fixed Payment Commencement Date shall be the date of the first, post-confirmation distribution by the Trustee.

**C. Identification and Vesting of Committed Claim Proceeds.** If, in § 2.4 of a Plan, the Debtor checks the box indicating that the Debtor will make additional payment(s) to the Trustee from Claim Proceeds, the Debtor shall include, in the space provided, a description of the Committed Claim Proceeds. For purposes of example only, the Plan may provide that "the Debtor shall pay to the Trustee all non-exempt proceeds of estate causes of action that remain after satisfaction of any and all attorneys' fees and expenses, lien claims, and subrogation claims payable therefrom." Alternatively, the Plan may propose to pay proceeds of "pre-petition" or "scheduled" causes of action. A reference to "estate" causes of action will be deemed to include any and all causes of action comprising property of the estate at the time of the confirmation hearing, as well as any and all post-confirmation causes of action that become property of the estate under 11 U.S.C. § 1306(a). Unless the Plan expressly provides otherwise<sup>7</sup> or otherwise ordered—and notwithstanding the entry of a discharge order in, or the closing of, the Debtor's case—the Committed Claim Proceeds shall not vest in the Debtor at confirmation but shall remain property of the Debtor's estate until each of the following occurs: (1) Plan Completion, and (2) a 100% General Unsecured Distribution; provided, however, if the

---

<sup>6</sup> This Order and the Local Form Plan supersede and replace Western Division Administrative Order No. 09-04.

<sup>7</sup> Checking the box in part 8 of a Plan to provide that "[p]roperty of the estate will vest in Debtor(s)...[u]pon plan confirmation" is not sufficient for purposes of this requirement.

Debtor's case is dismissed or converted prior to the Trustee's receipt or disbursement of all Committed Claim Proceeds, then 11 U.S.C. § 347 or 11 U.S.C. § 349 shall govern whether any Committed Claim Proceeds remain property of the Debtor's estate.

**D. Additional Distributions to General Unsecureds from Committed Claim Proceeds.**

Unless the Plan expressly states otherwise or otherwise ordered, Trustee disbursements of Committed Claim Proceeds to General Unsecureds, if any, shall be in addition to the amount(s) proposed to be paid to General Unsecureds in § 5.2 of the Plan, if any, up to a 100% General Unsecured Distribution (each, an "Additional Unsecured Disbursement"). (See Local Form Plan §§ 2.4 and 5.2 and part 9.) It shall not be necessary to modify the Plan in the event of an Additional Unsecured Disbursement. The Trustee may, instead, (1) file in the Debtor's case, and serve on all creditors, a notice of any higher percentage or increased pot amount that General Unsecureds will be entitled to receive (upon Plan Completion) as result of the Additional Unsecured Disbursement, and (2) update the Trustee's interim statement (and the Trustee's final report if the Additional Unsecured Disbursement is made after the filing of the final report) to reflect the Additional Unsecured Disbursement and any corresponding increase to the pot or percentage.<sup>8</sup> If disbursements of Committed Claim Proceeds to priority unsecured creditors will enable more of the Debtor's disposable income to be paid to General Unsecureds, the Trustee (or an unsecured creditor) typically must move to modify the Plan to increase the amount to be paid to General Unsecureds.<sup>9</sup>

---

<sup>8</sup> This is not necessary for "Base" Plans or "100% Repayment" Plans. (See Local Form Plan § 5.2.)

<sup>9</sup> If the Plan is a "Base" Plan, such a motion is not required. Further, the Debtor may consent to entry of order that increases the pot or percentage to be paid to General Unsecureds, in which case a motion may not be necessary. If a post-confirmation modification to increase the pot or percentage to be paid to General Unsecureds is agreed to by the Debtor and is feasible, it may be approved, without further notice or opportunity to object, pursuant to Rule 3015(g) (without prejudice to the right of the Trustee or any unsecured creditor to move to further increase the pot or percentage).



**E. Limited Notice of Certain Pre-Confirmation Plan Modifications.** At or prior to the hearing to consider confirmation of a Plan or amended Plan (the "Confirmation Hearing"), the Debtor, or the Debtor's attorney, and the Trustee may make the Plan modifications described in this part III.E (each, a "Trustee Report Modification") by notation on the Trustee's confirmation report and recommendation (the "Trustee Report"),<sup>10</sup> so long as (1) the Trustee Report is signed by the Debtor, or the Debtor's attorney, and the Trustee, or the Trustee's attorney, and (2) the signed Trustee Report is filed in the Debtor's case prior to entry of the confirmation order.<sup>11</sup> Each of the following is considered a Trustee Report Modification: (1) an increase to the Debtor's Regular Plan Payments; (2) an increase to a monthly fixed payment provided for by the Plan (other than an increase to a monthly fixed payment on a Fee Balance); (3) a modification to bring forward (but not to delay) the Fixed Payment Commencement Date; (4) an increase to an adequate protection payment provided for by the Plan; (5) a modification to the treatment of a separately classified claim that is consented to by the claimholder (a "Consensual Treatment Modification"); (6) an increase to the percentage or pot amount proposed to be paid to General Unsecureds (but not a change from a percentage to a pot amount or from a pot amount to a percentage); (7) an agreed reduction to a Fee; (8) an agreed reduction to a Fee at Confirmation; (9) an agreed reduction to a monthly fixed payment on a Fee Balance; (10) the Debtor's agreement to pay to the Trustee, under § 2.4, all non-exempt proceeds of *estate* causes of action, *scheduled* causes of action, or *pre-petition* causes of action that remain after satisfaction of any and all attorneys' fees and expenses, lien claims, and subrogation claims payable therefrom (provided all known causes of action are scheduled and no sequence of payments for Committed Claim Proceeds is added); and (11) other Plan modifications that do not adversely or materially affect non-consenting creditors or parties in interest and are

---

<sup>10</sup> The Trustee's Report may be referred to as the Trustee's 341 meeting "bench sheet."

<sup>11</sup> If the signed Trustee Report is not filed prior to the Confirmation Hearing, the court may require that the Trustee, the Trustee's attorney, or the Debtor's attorney announce the modification(s) to the Plan made on the Trustee Report on the record of the Confirmation Hearing.

approved by the court. All Trustee Report Modifications shall be summarized in the proposed, confirmation order submitted by the Trustee's office; provided, however, a Consensual Treatment Modification may be memorialized by a separate consent order approved by the Debtor (or the Debtor's attorney), the Trustee (or the Trustee's attorney), and the affected creditor (a "Consent Order Modification") and need not be memorialized in the confirmation order.<sup>12</sup> Any Trustee Report Modifications not summarized in the confirmation order will not be binding under 11 U.S.C. § 1327 unless separately evidenced by a Consent Order Modification. The Debtor is not required to file an amended Plan (each, an "Amended Plan") for a Trustee Report Modification or Consent Order Modification unless the court orders otherwise at the Confirmation Hearing. Unless otherwise ordered, because no creditors or other parties in interest are adversely or materially affected by Trustee Report Modifications or Consent Order Modifications, and for purposes of the efficiency of the court's consumer bankruptcy dockets, notice of Trustee Report Modifications and Consent Order Modifications is limited as described in this part III.E, and the applicable notices period(s) set forth in Rule 2002 are reduced accordingly, pursuant to Rule 9006(c); provided, however, objections to Trustee Report Modifications and Consent Order Modifications may be made (1) in writing at any time prior to the Confirmation Hearing, (2) orally at the Confirmation Hearing, or (3) within 14 days after the entry of the confirmation order or consent order, as applicable, by filing a motion to alter or amend the confirmation order or consent order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, as made applicable by Rule 9023.

**F. Filing and Service of the Plan.** If the Plan is filed with the Debtor's petition, the clerk's office will serve the Plan with the notice of commencement of the Debtor's case on the Trustee and all creditors and parties in interest identified on the official mailing matrix for the case (collectively, the "Service

---

<sup>12</sup> If the consent order memorializing a Consent Order Modification is not entered on the docket of the case prior to the Confirmation Hearing, the court may require that the attorney for the Debtor or the affected creditor announce the terms of the Consent Order Modification on the record of the Confirmation Hearing.



Parties"). Pursuant to Local Rule 3015-1(b), if the Plan is not filed with the petition, the Debtor, or the Debtor's attorney, must serve the Plan on the Service Parties and attach a certificate of service evidencing the same to the Plan (a "Matrix Certificate of Service"). The Debtor, or the Debtor's attorney, should include all creditors and parties in interest (e.g., codebtors, utilities, etc.) on the official mailing matrix to ensure proper notice of the Plan and the Confirmation Hearing. Regardless of when the Plan is filed, if the Plan includes any of the following provisions (each, a "Rule 7004 Service Provision"), the Debtor must serve the Plan on the affected creditor or party in interest (each, an "Affected Party") in the manner provided for service of a summons and complaint by Rule 7004 and file a separate certificate of service that substantially complies with the certificate of service found at the court's website at [http://www.alnb.uscourts.gov/forms/all-forms/localrules\\_forms](http://www.alnb.uscourts.gov/forms/all-forms/localrules_forms) (a "Supplemental Certificate of Service"): <sup>13</sup> (1) a provision that seeks to limit the amount of a secured claim which may result in partial or no payment at all to the secured creditor, whether set out in § 3.2 or part 9 of the Plan; (2) a request, in § 3.4, to avoid, in whole or in part, a judicial lien or nonpossessory, nonpurchase-money security interest; or (3) a non-standard provision, in part 9, that requires Rule 7004 service of the Plan on the Affected Party (a "7004 Non-Standard Provision"). A request, in part 9, to value surrendered collateral (such as a request to surrender collateral in full satisfaction of the Affected Party's entire claim or to limit the amount of the Affected Party's unsecured deficiency claim to the total claim less the retail value of the surrendered collateral) is considered a 7004 Non-Standard Provision, and service of the Plan on the Affected Party must be made in accordance with Rule 7004 and evidenced by a Supplemental Certificate of Service. A Supplemental Certificate of Service must also be filed (regardless of when the Plan is filed) if the Plan proposes to grant a creditor relief from the codebtor stay of 11 U.S.C. § 1301 (such as in § 3.5) (a "Codebtor Relief Provision") to evidence service of the Plan containing the Codebtor Relief Provision on all affected codebtors. A Supplemental Certificate of Service is not a substitute for a Matrix Certificate of

---

<sup>13</sup> The Supplemental Certificate of Service should be attached to and filed with the Plan.



Service, and if the Debtor, or the Debtor's attorney, fails to file the Plan with the petition, both a Matrix Certificate of Service and a Supplemental Certificate of Service must be filed with the Plan.

**G. Filing and Service of Amended Plans; Deadline for Objecting to Amended Plans.** If the Debtor files an Amended Plan, the Debtor shall serve the Amended Plan on all Service Parties and attach a Matrix Certificate of Service evidencing the same to the Amended Plan. If the Amended Plan includes a Rule 7004 Service Provision or a Codebtor Relief Provision, then service of the Amended Plan must comply with Local Rule 3015-1 and part III.F hereof, and the requisite Supplemental Certificate of Service must be attached to and filed with the Amended Plan. After an Amended Plan is filed, the court typically will enter an order fixing the deadline for filing objections to the Amended Plan, on not less than 21 days' notice to all Service Parties.<sup>14</sup> The court will not confirm an Amended Plan before any court ordered objection deadline expires, nor will the court confirm an Amended Plan before holding a hearing to consider each timely filed objection to the Amended Plan.

**H. Amended Plan Payments.** If the Debtor files an Amended Plan prior to the Confirmation Hearing, the Regular Plan Payments that come due after the date the Amended Plan is filed must be made in the amount stated in the Amended Plan, which may be higher or lower than the amount stated in the original Plan. If successive Amended Plans are filed, any Regular Plan Payment that comes due must be made in the amount stated in the most recently filed Amended Plan.

**I. Requests to Continue the First Setting of a Confirmation Hearing.** Subject to court approval, the first setting of the Confirmation Hearing in a case (the "Original Confirmation Hearing") may be continued before the scheduled date and time thereof, *if, and only if*, the Original Confirmation Hearing can be rescheduled to a date that (1) is not later than 45 days after the date of the 341 meeting of creditors and (2)

---

<sup>14</sup> If a Confirmation Hearing is not scheduled when the Debtor files an Amended Plan, the court will not enter such an order. Instead, the clerk's office will notice a hearing to consider confirmation of the Amended Plan on 28 days' notice to all Service Parties.

is not sooner than 30 days<sup>15</sup> after the date of the order continuing the Original Confirmation Hearing.

**J. Continuances of Confirmation Hearings Generally.** If a request for a continuance of a Confirmation Hearing is made and approved in advance of the scheduled date and time of the Confirmation Hearing, the court will enter an order and notice of rescheduled hearing that provides notice to all Service Parties of the date and time of the rescheduled Confirmation Hearing. So long as the Service Parties received at least 28 days' notice of the Original Confirmation Hearing and the Original Confirmation Hearing was convened, the Confirmation Hearing may be continued on *less than* 28 days' notice to the Service Parties. The Confirmation Hearing also may be convened and rescheduled by announcement on the record of the Confirmation Hearing, without further notice.<sup>16</sup>

**K. Extension of Confirmation Objection Deadline for Objections Based on Unanticipated Claims.** If any of the following types of claims is filed in a Debtor's case on or after expiration of the deadline for filing objections to confirmation (each, an "Unanticipated Claim"), the objection deadline is deemed extended, for cause, to the date and time of the Confirmation Hearing for any objection to confirmation based on an Unanticipated Claim by a party other than the holder, servicer, or filer of the Unanticipated Claim: (1) a secured or priority claim that is not provided for by the Plan (or Amended Plan); (2) with respect to claims that are separately classified by the Plan (or Amended Plan), a claim that exceeds the amount listed by the Plan (or Amended Plan), creating a feasibility issue; or (3) with respect to General Unsecureds, a claim that exceeds the amount listed in the Debtor's schedules, creating a feasibility issue.

---

<sup>15</sup> Rule 2002(b) requires 28 days' notice of the hearing to consider confirmation of a chapter 13 plan. Two days is added to allow for service of the order by the Bankruptcy Noticing Center.

<sup>16</sup> To the extent the Rule 2002(b) notice requirements apply to adjournments of the Confirmation Hearing after the court has convened Original Confirmation Hearing, the requirements are hereby reduced/limited on the terms of paragraph III.J, for cause, to facilitate confirmation within a reasonable period of time. *See* Rule 9006(c).



**L. Confirmation Hearings.** Excepting cases in which the 341 meeting of creditors is conducted in Jasper, Alabama,<sup>17</sup> Confirmation Hearings typically are scheduled for 1:30 p.m. (the "1:30 Docket") and 1:45 p.m. (the "1:45 Docket") on Tuesdays.<sup>18</sup> The 1:30 Docket shall be for Original Confirmation Hearings only. If the Original Confirmation Hearing is continued in accordance with part III.I hereof, it will remain on the 1:30 Docket. All other continued Confirmation Hearings will be set on the 1:45 Docket (or on a different date and time to be heard with other pending matters).

**M. Cases Recommended for Confirmation.** If the Trustee recommends a Plan or Amended Plan for confirmation and, on or before the second business day before the Confirmation Hearing (the "Recommendation Deadline"), the Trustee files a Trustee Report in the case that memorializes any Trustee Report Modifications and states the Trustee's recommendation (a "Trustee Recommendation"),<sup>19</sup> both the Debtor and the Debtor's attorney are excused from appearing for the Confirmation Hearing (so long as there are no pending objections to confirmation or other matters set). If a Trustee Recommendation is not filed on or before the Recommendation Deadline, the Debtor's attorney (or, if the Debtor is not represented by an attorney, the Debtor) is required to appear for the Confirmation Hearing unless (1) the Trustee and any party that has objected to confirmation have agreed that the Trustee may orally request a continuance of the Confirmation Hearing on the record; or (2) there are no pending objections to confirmation, and the Trustee has confirmed that he or she will orally recommend confirmation. The court may collectively call cases recommended for confirmation at the beginning of each confirmation docket in lieu of calling each such case

---

<sup>17</sup> The Trustee conducts 341 meetings in two locations—Tuscaloosa, Alabama and Jasper, Alabama. Confirmation hearings in Jasper cases are typically set for hearing at 1:30 p.m. on the third Thursday of the month.

<sup>18</sup> A Western Division planning calendar (the "Planning Calendar"), which lists upcoming docket dates and times, is available on the court's website ([www.alnb.uscourts.gov](http://www.alnb.uscourts.gov)) on the information page for Judge Jennifer H. Henderson.

<sup>19</sup> If there are no Trustee Report Modifications, the Trustee Report may take the form of a text entry on the docket of the case that notes the Trustee Recommendation, rather than a separate document.



individually. Whether called individually or collectively, the court will convene the Confirmation Hearing in each case, and, if the court does not confirm a case that the Trustee has recommended for confirmation, the court will reschedule the Confirmation Hearing to permit the Debtor or the Debtor's attorney an opportunity to address any impediments to confirmation.

**N. Added Creditors.** If the Debtor's attorney amends any schedule to include an additional creditor, the Debtor's attorney shall promptly serve the Plan or Amended Plan, as well as any order fixing a deadline for objections to such Plan or Amended Plan, on the added creditor and file proof of service evidencing the same. If the added creditor is affected by a Rule 7004 Service Provision, the certificate of service must substantially comply with the Supplemental Certificate of Service. The clerk's office will notify the added creditor of the date and time of the 341 meeting of creditors and the date and time of the Confirmation Hearing. If an added creditor receives less than 28 days' notice of the Confirmation Hearing or less than 21 days' notice of the deadline for filing objections to the operative Plan or Amended Plan, the Debtor's attorney (or, if the Debtor is not represented by an attorney, the Debtor) shall notify the court on the record of the Confirmation Hearing.

**O. Dismissal Prior to Confirmation; Allowance of Administrative Expenses.** If a case is dismissed prior to confirmation, the Trustee shall disburse monies on hand in the following sequence: (1) in payment of any administrative expenses of the Trustee allowed under paragraphs (1)(A), (2), and (6) of 11 U.S.C. § 503(b), (2) pro rata to holders of other allowed administrative expenses under 11 U.S.C. § 503(b), and (3) the balance, if any, to the Debtor.<sup>20</sup> Unless otherwise ordered, and subject to objection, if dismissal of a case occurs prior to confirmation, then (1) if the disclosure of compensation for the Debtor's attorney so provides, the Debtor's attorney is allowed an administrative expense in the amount of \$1,000.00 or in the amount of the Fee, whichever is less, pursuant to 11 U.S.C. § 503(b), and (2) the unpaid balance of the Filing

---

<sup>20</sup> See 11 U.S.C. § 1326(a)(2); 11 U.S.C. § 503(b).

Fee, if any, is allowed as an administrative expense pursuant to 11 U.S.C. § 503(b). The Trustee, the Debtor, and all other parties in interest shall have 14 days from the date of the order dismissing the case to object to any administrative expenses allowed by this subpart. The Debtor's attorney may file a fee application for any fees sought over \$1,000.00, but such fee application must be filed within 14 days of the order of dismissal. The Trustee shall have 14 days from the date of the order dismissing the case to file an application for allowance of any administrative expense(s) of the Trustee. The court retains jurisdiction, pursuant to 11 U.S.C. § 349, to consider any timely objections and applications filed pursuant to this subpart.

**P. Trustee Interim Statements.** In connection with any hearing or determination in a case, and unless a party in interest objects, the court shall deem admitted into evidence the Trustee's interim statement for the case (each, an "Interim Statement") and the facts that can be readily determined from the Interim Statement, without requiring the Trustee to formally offer and authenticate the Interim Statement. It is the practice of the undersigned to print an Interim Statement (in the form used by the Trustee) one to four business days in advance of any hearing in a case (for review prior to and during the hearing). The court also routinely prints and reviews Interim Statements (in the form used by the Trustee) to ascertain whether or not Debtors have complied with orders of the court setting deadlines for payments to the Trustee. Any party in interest that objects to the court reviewing or deeming admitted an Interim Statement may file a written objection in the case or orally object on the record of any hearing, and part III.P of this order shall not be given preclusive effect in the event an interested party timely raises an objection to the court's review or admission (deemed or otherwise) of an Interim Statement.

**Q. Hearing Dockets.** The clerk's office maintains a court calendar at [www.alnb.uscourts.gov/court-calendar](http://www.alnb.uscourts.gov/court-calendar), which displays upcoming hearings (by date, judge, and location). The court's daily hearing docket, listing all matters set for hearing that day (each, a "Hearing Docket"), may be generated and printed by accessing the above-reference link. In advance of a hearing date, the Hearing Docket will be numbered. Ordinarily, for each time slot, matters are grouped and organized (oldest to newest) by



case number. Although cases typically are called (by docket number and Debtor name) in the number order listed on the Hearing Docket, the court may hear matters out of order.

**R. Hearings on Motions to Dismiss; Post-Confirmation Increases to Regular Plan Payments.** Typically, the court sets two hearing times each month for hearings on motions to dismiss chapter 13 cases (each, a "Dismissal Docket").<sup>21</sup> The first Dismissal Docket is for initial hearings on motions to dismiss, and the second Dismissal Docket is for continued hearings on motions to dismiss. The Trustee is authorized to self-calendar and self-notice hearings on Trustee motions to dismiss. With limited exceptions, the Trustee shall notice a pre-confirmation motion to dismiss a chapter 13 case for the date and time of the Confirmation Hearing and a post-confirmation motion to dismiss for the date and time of a Dismissal Docket. A *Consent to Action at Hearing on Trustee's Motion to Dismiss* (a "Consent to Action") for the Western Division is available on the court's website ([www.alnb.uscourts.gov](http://www.alnb.uscourts.gov)). The attorney for a Debtor is expected to appear for the hearing on any motion to dismiss the Debtor's case (or make arrangements for another attorney to appear) unless a duly executed Consent to Action is timely filed in the case. If, in a Consent to Action or orally on the record of a dismissal hearing, the Trustee, the Debtor, or the Debtor's attorney requests that the court increase the amount of the Debtor's Regular Plan Payments so that the Debtor's case remains feasible, the court may order the Regular Plan Payment amount increased, without providing creditors an opportunity to object or request a hearing. In such instances, the applicable notice period(s) are reduced for cause, pursuant to Rules 3015(b) and 9006(c), as no creditors are adversely or materially affected.

**S. Consensual Requests for Continuances,<sup>22</sup> Requests to Vacate Hearings on Settled Matters, and Requests to Grant Motions by Consent.** With the exception of hearings on Trustee motions to dismiss (*see* part III.R hereof), (1) requests to continue hearings by consent, (2) requests to vacate hearings

---

<sup>21</sup> Refer to the Planning Calendar for the dates of the court's dismissal dockets.

<sup>22</sup> Non-consensual requests for continuances must be made by motion and will only be granted for good cause shown.



from Hearing Dockets (i.e., requests to cancel hearings) on the basis of settlement, and (3) requests to grant motions by consent of all interested parties in advance of a scheduled hearing, may be requested by e-mail to the courtroom deputy. A request to continue a hearing will be considered consensual if: (1) in the case of a Confirmation Hearing or a hearing on a motion/application noticed to all creditors (e.g., a motion to modify plan, to approve compromise, etc.), the Debtor, movant (if any), all responding parties, and the Trustee consent, or (2) in the case of a hearing on a motion/objection that seeks relief against a particular party (e.g., an objection to claim, motion to value, motion for relief, etc.), the Debtor, the movant/objector, the party against whom relief is sought, and the Trustee consent. All such e-mails requests should: (1) be sent to [crdeputyjhh@alnb.uscourts.gov](mailto:crdeputyjhh@alnb.uscourts.gov), (2) include in the subject line, or in the body of the e-mail, the name of the Debtor, the case number, the hearing date and time, and, if known, the Hearing Docket number(s), and (3) copy all consenting/settling parties or their counsel. When an e-mail address is not available for a consenting party (or their counsel), the party submitting the e-mail request to the courtroom deputy may mail, fax, or hand deliver a copy of the e-mail request to said party (or counsel), in which case the body of the e-mail should indicate that a copy was transmitted to the party (or counsel) and state the method of transmission (e.g., cc: [PARTY/COUNSEL NAME] via facsimile to [FAX NUMBER]). Although there is no deadline for submitting such consensual requests to the courtroom deputy, if a request is not received in time for the clerk's office/courtroom deputy to enter an order (continuing the hearing or granting the motion by consent) or courtroom deputy note (reflecting that the matter is settled and the hearing cancelled), the hearing will not be vacated from the Hearing Docket, and an attorney for one of the parties must appear for the hearing to report the settlement or request the continuance or consented to relief. Hearing Dockets are typically printed and placed in the courtroom no later than 30 minutes prior to the time of the first hearing for the day. No hearings will be vacated after the Hearing Docket is printed and placed in the courtroom. Attorneys are encouraged to submit all such consensual requests by noon the business day before the hearing, if possible, to allow sufficient time for the clerk's office/courtroom deputy to enter any necessary orders/courtroom

deputy notes.

**T. Settlement of Chapter 13 Motions for Relief from Stay and Codebtor Stay.** If, in an e-mail advising the courtroom deputy that a motion for relief from the stay and the codebtor stay is settled and requesting that the hearing thereon be vacated from the Hearing Docket, the requesting attorney affirmatively represents that the Trustee, the Debtor, and the affected codebtor(s) are in agreement, the courtroom deputy may vacate the hearing from the Hearing Docket and enter a courtroom note that the matter is settled. As set forth above in part III.S, the attorney sending the e-mail should copy counsel for all other parties on the e-mail, as well as any unrepresented parties. If an e-mail address is unavailable for an unrepresented party, the text of the e-mail should indicate that a copy of the e-mail was delivered to the party and state the method of transmission (e.g., cc: [NAME], codebtor, by U.S. mail to [ADDRESS]). If the settling parties are unable to confirm whether or not a codebtor consents to the terms of a settlement agreed to by the Debtor, the hearing on the motion will only be vacated if the parties indicate in the e-mail that the order will unconditionally deny the request for codebtor relief. If the order will include a conditional denial of the request for codebtor relief or a grant of the request for codebtor relief and the parties do not represent that the codebtor consents, the court will hold the hearing to call for the codebtor, and counsel for one of the settling parties will need to appear for the hearing.

**U. Requirements for Proposed Orders.** Each proposed order should identify the person that prepared the order. Additionally, for consent orders, all consenting parties or their attorneys should sign the proposed order (electronic signatures for attorneys are acceptable; handwritten signatures are required for unrepresented parties);<sup>23</sup> provided, however, in lieu of a signature block for an unrepresented party, the proposed order may include the following statement: "[INSERT NAME], attorney for the [INSERT PARTY, e.g., \"debtor\"], represents to the court that [INSERT NAME], the [INSERT PARTY, e.g., \"codebtor\"],

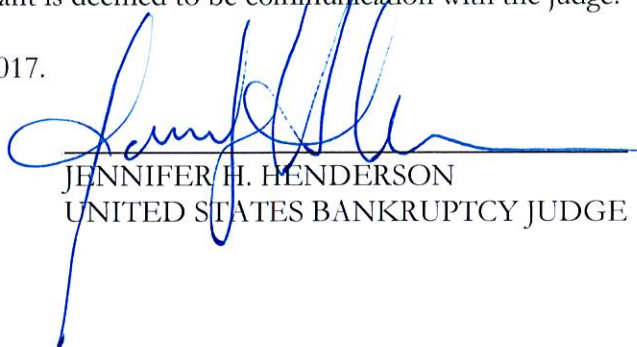
---

<sup>23</sup> If a handwritten signature is required, the signed order should be submitted in .pdf format and an unsigned version submitted in Word or WordPerfect format.

consents to the entry of this agreed order." The order should include the signature of the attorney making the representation. Proposed orders should be submitted in Word or WordPerfect format to [ordersjhh@alnb.uscourts.gov](mailto:ordersjhh@alnb.uscourts.gov), with all consenting parties copied on the submission.

**V. Ex Parte Communications.** All parties should respect the prohibition against ex parte communication (Rule 9003(a)) and avoid communications concerning matters other than procedural or scheduling matters. Emails should not be used to communicate with chambers staff regarding a case. Communication with a law clerk or judicial assistant is deemed to be communication with the judge.

DONE this the 29<sup>th</sup> day of November, 2017.



JENNIFER H. HENDERSON  
UNITED STATES BANKRUPTCY JUDGE