

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

2008 JUN 27 AM 11:17

CLERK U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CASE NO. 08-06

IN RE:	)	ADMINISTRATIVE ORDER
)	
END OF CASE PROCEDURES FOR	)	JUDGE RUSS KENDIG
BAPCPA CHAPTER 13 CASES)	
IN THE CANTON COURT)	

**ORDER GOVERNING END OF CASE PROCEDURES
IN BAPCPA CHAPTER 13 CASES**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") contained new requirements for discharge eligibility. At the present time, no uniform standards have been adopted to address these changes. In the absence of such guidance, the following memorandum sets forth the procedures to be utilized by the Canton division. These requirements are effective immediately in any chapter 13 case governed by BAPCPA (those cases filed on or after October 17, 2005). All events are tied to the filing of the chapter 13 trustee's "Notice of Completion of Plan Payments by Debtor(s)." See Exhibit A. The debtor in an applicable case is under a duty to be aware of the filing of the "Notice of Completion of Plan Payments by Debtor(s)" and to act in the appropriate time frames. The Court will not send deficiency notices to remind debtors of their pre-discharge obligations. If a case is closed without entry of the discharge, a debtor will be required to pay the filing fee imposed for reopening a case.

1. 11 U.S.C. § 1328(f) - Discharge eligibility

All chapter 13 cases filed in the Canton division are reviewed at the time of filing to determine a debtor's eligibility for discharge. If a debtor appears to be ineligible for a discharge, a notation of the disqualifying event is made on the docket and the Court enters an order allowing a debtor to object. See Exhibit B. If no objections are raised, debtor is deemed ineligible for a discharge in the case. If a debtor is not eligible for a discharge, upon the filing of the final report and conclusion of the clerk's duties with regard to the case, the case will be closed without entry of the discharge.

2. 11 U.S.C. § 1328(g)(1) - Financial management course

Under BAPCPA, debtors are required to complete "an instructional course concerning personal financial management." 11 U.S.C. § 1328(g)(1); Fed. R. Bankr. P. 1007(b)(7). Proof of completion is evidenced through the filing of Form 23. Upon the filing of the "Notice of Completion of Plan Payments by Debtor(s)", the docket will be reviewed to determine if Form 23 has been filed. If it has been filed, the case will proceed toward

entry of the discharge order. If it has not been filed, upon completion of the clerk's duties, the case will be closed without discharge. If a case is closed without discharge, reopening the case will require payment of the associated filing fee.

3. 11 U.S.C. § 1328(a) - Domestic support obligations

Debtors who "[are] required by a judicial or administrative order, or by statute, to pay a domestic support obligation" are required to certify that all amounts payable under the order, through the date of the certification, have been paid. 11 U.S.C. § 1328(a). As a result of this requirement, the Court will require **all** debtors to submit a certification related to domestic support obligations. *See* Exhibit C. Joint debtors will each be required to file a certification. The certification must be filed no later than twenty-eight (28) days after the filing of the trustee's "Notice of Completion of Plan Payments by Debtor(s)". In the event the certification has not been timely filed and the case is otherwise ready for discharge, the case will be closed without entry of the discharge. If a debtor was the subject of an order to pay a domestic support obligation during the pendency of the case, or if arrearage amounts related to a prepetition domestic support obligation were paid through the plan, the entity to whom such obligations were owed must be served with the certification.

If a debtor was not subject to an order to pay a domestic support obligation or a debtor who was subject to a domestic support obligation certifies that payments are complete/current, the case will proceed toward discharge. If a debtor subject to a domestic support obligation certifies that payments are not current, the case shall be closed without discharge.

4. 11 U.S.C. § 1328(h) - 522(q)(1) and felony proceeding

Section 1328(h) relates to several other bankruptcy code and bankruptcy rule provisions, including 11 U.S.C. §§ 522(q)(1) and 522(b) and Federal Rules of Bankruptcy Procedure 1007(b)(8), (c), 2002(f)(11) and 4004(c)(3). Implementation of the foregoing will be accomplished in the following manner:

All debtors will be required to file a section 1328(h) certification; a sample of the Court approved form is attached as Exhibit D. Joint debtors must file separate certifications.

The certifications are due no later than twenty-eight days (28) after the filing of the trustee's "Notice of Completion of Plan Payments by Debtor(s)."

Upon entry of a certification where the first box is checked, the Court will enter a "Notice of Intent to Enter Order of Discharge and Opportunity to Object" to be served on all parties. *See* Exhibit E. If no objections are filed, and all other

eligibility requirements have been met, the Court will enter an order of discharge.

In the unlikely event that a debtor files a certification with box two marked, the Court will enter the notice set forth as Exhibit F. If no objections are filed, the Court will thereafter enter an order approving entry of the discharge. *See* Exhibit G. If a debtor files a certification with box three marked, the Court will instruct the clerk to close the case without discharge pursuant to 11 U.S.C. § 1328(h).

The procedures will ensure the uniform implementation of the new requirements for discharges in BAPCPA chapter 13 cases.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Russ Kendig", written over a horizontal line.

Russ Kendig
U.S. Bankruptcy Judge

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

IN RE: : CHAPTER 13 PROCEEDING
: CASE NO. :
: JUDGE RUSS KENDIG
DEBTOR(S) : NOTICE OF COMPLETION OF PLAN
PAYMENTS BY DEBTOR(S) AND
ORDER RELEASING FURTHER PLAN
PAYMENTS

The Standing Chapter 13 Trustee assigned to this case, Toby L. Rosen, hereby provides notice that the debtor(s) in this case have completed payments to the Trustee under the confirmed chapter 13 plan. It is the intent of the Trustee to now prepare and issue her Final Report and Account regarding this case promptly upon the payment of all outstanding disbursement checks issued in relation to this case.

The debtor(s) and counsel are strongly advised to review this Court's Administrative Order No. 08-06 in order to ensure compliance with the discharge eligibility requirements applicable to chapter 13 cases.

The Court on its own motion hereby ORDERS that the debtor is hereby released and that no further payments to the Trustee are required. **(OR)** The Court on its own motion hereby ORDERS that the order previously entered, that required the employer of the debtor(s) to deduct and pay over a portion of the wages or earnings of the debtor(s) to the Trustee, be and it is hereby vacated, and such employer shall no longer be required to make said deductions and is hereby released from further liability with respect thereto.

I hereby certify that this Order complies with Administrative Order No. 03-03. Signed under the pains and penalty of perjury.

/S/ Toby L. Rosen
Toby L. Rosen, Chapter 13 Trustee

Service list

DEBTOR(S):

ATTORNEY FOR DEBTOR(S):

Toby L. Rosen, Chapter 13 Trustee
400 W. Tuscarawas St. #400
Canton, Ohio 44702

EMPLOYER:

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
)	
DEBTOR T. DEBTOR,	)	CASE NO. 08-6----
)	
Debtor.	)	JUDGE RUSS KENDIG
)	
)	
	)	ORDER REGARDING
	)	ELIGIBILITY FOR DISCHARGE
)	

The Court has been informed that Debtor received a discharge in a previous case which may impact the ability to obtain a discharge in the present case. Pursuant to 11 U.S.C. §§ 727(a)(8) and (9) and 11 U.S.C. § 1328(f), a discharge in a prior case can prevent a debtor from obtaining a discharge in a subsequent case depending upon the time between cases and the chapters pursuant to which the cases were filed.

Based upon the facts before the Court at the present time, it appears that Debtor is ineligible for a discharge in this case. Unless Debtor files a request for a hearing, setting forth a cognizable legal defense to the contrary, by April 21, 2008, the Court deems Debtor to be ineligible for a discharge.

It is so ordered.

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

Service List:

Debtor
Debtor's counsel
Chapter 13 trustee
United States Trustee

SAMPLE

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
)	
[NAME/S],	)	CASE NO. 07-6[]
)	
Debtor(s).	)	JUDGE RUSS KENDIG
)	
	)	DEBTOR'S CERTIFICATION
	)	REGARDING DOMESTIC
	)	SUPPORT OBLIGATIONS

I, _____, Debtor in this Chapter 13 case, hereby certify that:

- 1. I am not required by any judicial or administrative order, or by statute, to pay a domestic support obligation [as that term is defined in 11 U.S.C. § 101(14A)].
- 2. I am required by judicial or administrative order, or by statute, to pay a domestic support obligation [as that term is defined in 11 U.S.C. § 101(14A)] and that all amounts payable under such order or such statute that are due on or before the Date of Certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) **have been paid**.
- 3. I am required by a judicial or administrative order, or by statute, to pay a domestic support obligation [as that term is defined in 11 U.S.C. § 101(14A)], and that all amounts payable under such order or such statute that are due on or before the Date of Certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) **have not been paid**.

Date of Certification: _____

Through my signature below, I hereby certify, **under the penalty of perjury**, that the information provided above is true and correct to the best of my knowledge, information and belief.

Date Signed

Signature of Debtor

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

IN RE:	)	CHAPTER 13
)	
[NAME/S],	)	CASE NO. [-]
)	
Debtor(s).	)	JUDGE RUSS KENDIG
)	
	)	1328(H) CERTIFICATION
	)	AND MOTION FOR ENTRY
	)	OF DISCHARGE

I, _____, Debtor in this Chapter case, hereby state:

- 1. **I have not claimed** an exemption under § 522(b)(3)(A) in an amount in excess of the amount set out in § 522(q)(1) in property of the kind described in § 522(p)(1) [generally homestead property].

 There is **no proceeding pending** in which I may be found guilty of a felony as described in § 522(q)(1)(A) or found liable for a debt as described in § 522(q)(1)(B).
- 2. **I have claimed** an exemption under § 522(b)(3)(A) in an amount in excess of the amount set out in § 522(q)(1) in property of the kind described in § 522(p)(1) [generally homestead property].

 There is **no proceeding pending** in which I may be found guilty of a felony as described in § 522(q)(1)(A) or found liable for a debt as described in § 522(q)(1)(B).
- 3. **I have claimed** an exemption under § 522(b)(3)(A) in an amount in excess of the amount set out in § 522(q)(1) in property of the kind described in § 522(p)(1) [generally homestead property].

 There is **a proceeding pending** in which I may be found guilty of a felony as described in § 522(q)(1)(A) or found liable for a debt as described in § 522(q)(1)(B).

Through my signature, I hereby certify, **under the penalty of perjury**, that the information provided above is true and correct to the best of my knowledge, information and belief.

Date Signed

Signature of Debtor

EXHIBIT D

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
)	
[NAME/S],	)	CASE NO. 07-6[]
)	
Debtor(s).	)	JUDGE RUSS KENDIG
)	
	)	NOTICE OF INTENT TO ENTER
	)	ORDER OF DISCHARGE AND
	)	OPPORTUNITY TO OBJECT
)	

Debtor(s) filed a Statement Regarding 1328(h) and Motion for Entry of Discharge. It appears to the court that Debtor has not claimed an exemption in property described in § 522(p)(1) that exceeds the aggregate sum of \$125,000.00 and has not filed a statement under Interim Bankruptcy Rule 1007(b)(8). Consequently, the court finds that there is no reasonable cause to believe that (1) § 522(q)(1) may be applicable to Debtor(s) and (2) a proceeding of the kind specified in 11 U.S.C. § 1328(h)(2) is pending. Thus, the court is prepared to enter an order of discharge in this case.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you oppose the court's findings contained in this notice, then on or before **[date specific, minimum 10 days notice]**, you or your attorney must:

File with the court a written response, explaining your position, at:

Clerk, United States Bankruptcy Court
Frank T. Bow Federal Building
201 Cleveland Ave., S.W.
Canton, OH 44702

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to the Chapter 13 trustee and Debtor's counsel.

If you file a response, the court will set this matter for hearing and your attendance will be required.

If you or your attorney do not take these steps, the court will enter an order of discharge in Debtor's case.

Service List:

All creditors, parties, and persons requesting notice.

EXHIBIT E

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
)	
[NAME/S],	)	CASE NO. 07-6[]
)	
Debtor(s).	)	JUDGE RUSS KENDIG
)	
	)	NOTICE OF DEBTOR'S 1328(H)
	)	STATEMENT AND MOTION FOR
	)	ENTRY OF DISCHARGE

Debtor(s) filed a statement regarding 11 U.S.C. § 1328(h) and a motion for entry of a discharge order.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not agree with the facts contained in the statement, or if you want the court to delay entry of the discharge, then on or before **[date specific, minimum 20 days notice]**, you or your attorney must:

File with the court a written response, explaining your position, at:

Clerk, United States Bankruptcy Court
Frank T. Bow Federal Building
201 Cleveland Ave., S.W.
Canton, OH 44702

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to the Chapter 13 trustee and Debtor's counsel

If you file a response, the court will set this matter for hearing and your attendance will be required.

If you or your attorney do not take these steps, the court will enter an order of discharge in Debtor's case.

EXHIBIT F

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:	)	CHAPTER 13
)	
[NAME/S],	)	CASE NO. 07-6[]
)	
Debtor(s).	)	JUDGE RUSS KENDIG
)	
)	
	)	ORDER PURSUANT TO
	)	§ 1328(H) AND ORDER
	)	GRANTING MOTION FOR
	)	ENTRY OF DISCHARGE

Debtor(s) filed a Statement Pursuant to 1328(h) and Motion for Entry of Discharge. It appears to the court that Debtor has claimed an exemption in property described in § 522(p)(1) that exceeds the aggregate sum of \$125,000.00 and filed a statement as required under Interim Bankruptcy Rule 1007(b)(8). No responses or requests to delay entry of the discharge were filed with the court. Consequently, the court finds that although § 522(q)(1) may be applicable to Debtor(s), no proceeding of the kind specified in 11 U.S.C. § 1328(h)(2) is pending against Debtor(s). Thus, the court is prepared to enter an order of discharge in this case.

Providing that no other eligibility requirements are at issue, the clerk is hereby authorized to enter an order of discharge in this case.

It is so ordered.

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

EXHIBIT G