

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

IN RE:) ADMINISTRATIVE ORDER NO. 09-01
)
END OF CASE PROCEDURES FOR) JUDGE RUSS KENDIG
CANTON BAPCPA CHAPTER 13)
CASES WHEN DEBTOR REQUESTS)
A HARDSHIP DISCHARGE)

**ORDER GOVERNING END OF CASE PROCEDURES
IN BAPCPA CHAPTER 13 CASES WHERE DEBTOR MOVES FOR
A HARDSHIP DISCHARGE UNDER 11 U.S.C. § 1328(B)**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) contained new requirements for discharge. In the Canton division, the procedures for fulfilling the requirements to obtain a discharge under section 1328(a) are set forth in Administrative Order 08-06. This administrative order establishes the procedures to be used when a debtor files a motion for hardship discharge under section 1328(b). These requirements are effective immediately in any chapter 13 case governed by BAPCPA (those cases filed on or after October 17, 2005). The events will be tied to the debtor’s motion for hardship discharge and a debtor will be under a duty to be aware of the procedures 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 A. 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. In accordance with Rule 1007(c), the statement is to be filed no later than the date the motion for hardship discharge is 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

The Court finds that this provision is not applicable when a debtor obtains a discharge under 11 U.S.C. § 1328(b). No action will be required with respect to domestic support obligations. In order to maintain uniformity between this administrative order and the administrative order governing the procedures for all other chapter 13 cases, Exhibit B has been omitted. The remaining exhibits have not been re-labeled in its absence.

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 C. Joint debtors must file separate certifications.

The certifications are due no later than twenty-eight days (28) after the filing of a motion for hardship discharge.

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 D. 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 E. If no objections are filed, the Court will thereafter enter an order approving entry of the discharge. *See* Exhibit F. 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).

IT IS SO ORDERED.

Russ Kendig
U.S. Bankruptcy Judge

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

IN RE:)	CHAPTER 13
)	
DEBTOR T. DEBTOR,)	CASE NO. [-]
)	
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 A

**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).

SAMPLE

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 C

SAMPLE

**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**
)

On _____ (Date), Debtor 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
Ralph Regula Federal Building and United States Courthouse
401 McKinley 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:

Toby L. Rosen
[Address]

Debtor's counsel
[Address]

SAMPLE

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.

It is so ordered.

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

Service List:

All creditors, parties, and persons requesting notice.

SAMPLE
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 DEBTOR'S 1328(H)**
) **STATEMENT AND MOTION FOR**
) **ENTRY OF DISCHARGE**

Debtor 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
Ralph Regula Federal Building and United States Courthouse
401 McKinley 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:

Toby L. Rosen
[Address]

Debtor's counsel
[Address]

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

SAMPLE

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

Date: _____

Signed: _____

EXHIBIT E
SAMPLE

**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**

On _____ (Date), Debtor 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

SAMPLE **EXHIBIT F**