

❖ MEMORANDUM ❖

Chambers of The Honorable Marilyn Shea-Stonum
United States Bankruptcy Court
Northern District of Ohio, Eastern Division
John F. Seiberling Federal Building & U.S. Courthouse, Room 240
2 South Main Street
Akron, OH 44308
330/252-6130 (phone)

To: Akron Practitioners

Fr: Judge Marilyn Shea-Stonum

Date: August 26, 2011

Re: Notification of Chapter 13 Trustee's Ability to Seek Case Dismissal and Revocation of Debtor's Counsel "No Look Fee" Under Certain Circumstances

Under Administrative Order 08-4, debtor's counsel may charge an initial total fee of up to \$3,000 to be paid during the administration of a chapter 13 case without the necessity of filing a separate fee application. Counsel are authorized to receive 25% of the total fee prior to the filing of the case **provided that the filing of the petition is accompanied by all of the required schedules and disclosure information.** In addition to the amounts received prior to the petition date, counsel can receive as an administrative claim 25% of the outstanding total fee paid if the case is converted or dismissed before confirmation of a chapter 13 plan. The chapter 13 trustee has expressed concern over the ability of certain counsel to receive such a large percentage of the total fee for a case in which a plan never reaches confirmation. He has proposed a supplement to Administrative Order 08-4 which is focused on those counsel who appear to be making little, if any, effort to have a plan qualify for confirmation. The chapter 13 trustee's proposal was circulated to Akron practitioners for consideration and comment in May, 2011. This matter was also addressed at a Town Hall Meeting held on June 23, 2011.

In response to the chapter 13 trustee's concerns, his proposed supplement and the comments from Akron practitioners at the Town Hall Meeting, the Court will adopt the following procedure in applying Administrative Order 08-4.

The "30 Day Warning that Case will be Dismissed" (the "30 Day Warning") is to be used only in those cases where debtor's counsel has failed to attempt to resolve pending issues. The chapter 13 trustee is not required to file the 30 Day Warning and is encouraged to file

this pleading only in those cases where debtor's counsel truly appears to be making no effort to move a case forward towards confirmation of a chapter 13 plan. Prior to filing the 30 Day Warning, the Court expects that the chapter 13 trustee will have filed with the Court and served on debtor's counsel a "First Meeting of Creditors Status Sheet," a "Notice that 341 Meeting of Creditors Cannot be Concluded" and a "Notice the Chapter 13 Plan Cannot be Confirmed," as has been his practice for the past few years.

In cases where practitioners have been unresponsive to the efforts of the chapter 13 trustee to assist them in timely resolving issues and getting chapter 13 plans confirmed, the chapter 13 trustee may file with the Court the 30 Day Warning.

The 30 Day Warning shall provide notice to debtor and debtor's counsel that failure to respond may result in the dismissal of the debtor's chapter 13 case. In addition, upon the filing of the 30 Day Warning, regardless of whether a chapter 13 plan is eventually confirmed in that case, debtor's counsel will be deemed to have lost, in that case, his/her privilege to receive the "no-look fee" provided for in Administrative Order 08-4. In order to receive fees in that case, counsel must file a fee application by not later than 30 days following the filing of the 30 Day Warning. The fee application must include an itemization of time spent by counsel to date and a memorandum in support that sets forth in detail why counsel should be entitled to fees. The fee application will be set for hearing by the Court. Repeated behavior of this sort in several cases may serve as a basis for the Court to determine that a particular counsel may no longer avail himself or herself of the no-look fee arrangement.

The chapter 13 trustee also requested authority to escrow counsel's fees in cases where it appears to him that debtor's counsel has not timely submitted an appropriate proposed order to the Court in resolution of motions pending on the Court's docket. At this time, the Court is not willing to provide for this relief without notice to debtor's counsel in a specific case. If the chapter 13 trustee wishes to pursue this type of relief, he must file with the Court a motion seeking that relief and the Court will consider said request on a case by case basis. Again repeated behavior of this sort may result in the Court excluding such counsel from the benefit of the no-look fee arrangement.

