

**MEMORANDUM RE: CANTON TRANSITION  
PROCEDURES FOR CHAPTER 13 CASES AND RELATED ADVERSARY  
PROCEEDINGS ASSIGNED TO JUDGE JOHN P. GUSTAFSON**

As previously announced, Canton Chapter 13 cases will be handled by Judge John P. Gustafson starting on October 1, 2022, after Judge Kendig's retirement.

**STAFFING**

Anita Pribula will serve as the courtroom deputy for Canton matters assigned to Judge Gustafson. Scheduling and other questions that would generally be directed to the courtroom deputy should continue to be directed to her at (330) 458-2478.

Judge Gustafson's Judicial Assistant is Jean McCoy and his law clerk is Daniel Tavera. They will assist in handling Judge Gustafson's Canton docket. They can be reached in Toledo at (419) 213-5631.

**REINSTITUTING CERTAIN ADMINISTRATIVE ORDERS**

Judge Gustafson will reinstitute the following Administrative Orders: 1) *Order Governing PostPetition Vehicle Financing in Chapter 13 Cases in the Canton and Cleveland Court Locations*, Order No. 21-1; 2) *Order Generally Mandating Wage Orders in Chapter 13 Cases*, Order No. 17-3; 3) *Order Governing Conduit Mortgage Payments in Chapter 13 Cases*, Order No. 17-4. It is anticipated that one or more of these Administrative Orders may be amended. Any such amendments will be noticed through the usual noticing procedures of the bankruptcy clerk's office.

**CHANGES TO THE FORM CHAPTER 13 CONFIRMATION ORDER**

Judge Gustafson will be seeking input on changes to the Form Chapter 13 Order which is submitted by the Chapter 13 Trustee after confirmation of a Chapter 13 case on the record. In the interim, three changes will be made to the Chapter 13 Confirmation Order: 1) the amount of debt a Chapter 13 debtor may incur without court approval is increased from \$500 to \$2,000; and 2) the Confirmation Order will be amended to reflect that debt for a motor vehicle may be incurred in excess of the \$2,000 limit with approval of the Chapter 13 Trustee (which appears to conform with existing Canton practice and *Order Governing PostPetition Vehicle*

*Financing in Chapter 13 Cases in the Canton and Cleveland Court Locations*, Order No. 21-1; 3) the Chapter 13 Form Plan Summary, attached as Exhibit B to the *Chapter 13 Form Plan Administrative Order No. 11-03*, will no longer be required.

### **CONTINUATION OF THE CANTON CHAPTER 13 “FEE SYSTEM”**

Judge Kendig’s memorandum on a presumptive Chapter 13 case fee amount (entered 8/2/22, *Order Governing Procedure for Allowance of Attorney Fees in Chapter 13 Cases Filed on and after August 15, 2022*, Order No. 22-02) has been revoked. However, during the transition, as Judge Gustafson is learning how Chapter 13 procedures operate in Canton, the “fee system” reflected in Order 22-02 will continue for the time being. This includes the Rights & Responsibilities document presently in use in Canton. Where Judge Gustafson has concerns about attorney’s fees, he will set them for hearing and review under 11 U.S.C. § 329.

### **GENERAL SCHEDULING**

In a material departure from existing practice, Judge Gustafson does not permit self-scheduling of matters. Rather the Clerk’s office, courtroom deputy and judge will schedule matters for hearing as necessary, either by notice or order as deemed appropriate. Counsel will not necessarily be contacted in advance about a scheduled hearing date. Any continuance of a scheduled hearing requires a motion indicating whether opposing counsel consents to the requested continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Gustafson holds hearings on Confirmation and Dismissal, even if there is no opposition/response. These hearings may be very short if there is no opposition/response, but they are held. In other respects, Judge Gustafson has virtually identical practices with those outlined by Judge Whipple regarding “notice and a hearing” in Chapter 13 scheduling. So, he will generally not hold a hearing on a properly noticed motion, application, or objection if there is no timely response/objection filed and served. Sometimes, even if there is no timely objection, he will still schedule a hearing on a matter if he has questions or concerns. Even on default, he will evaluate whether a cognizable basis for the relief sought has been stated.

Because Judge Gustafson does not permit self-scheduling, and the Clerk will serve notices of hearing or orders setting hearings as appropriate if a hearing becomes necessary, Judge Gustafson expects compliance with Local Bankruptcy Rule 9013-1 on filings as the means of notifying other parties-in-interest of the response date to the request for relief, whether it is 14 days (usually) or some other period of time as set by Rule. The exception, as set forth in more detail below, is for motions for relief from stay, where Local Bankruptcy Rule 9013-1 language will not be required, because the Clerk will be sending an immediate Official Form B420A notice of motion. The notice will include a response deadline by date and the preliminary hearing date if a response is timely filed. Parties will otherwise no longer be expected to serve motion notices on Official Form B420A on other matters.

**Hearing/Pretrial Conference Times:** Judge Gustafson will retain the practice of scheduling Chapter 13 matters requiring a hearing on designated Wednesdays.

Miscellaneous Chapter 13 matters will continue to be scheduled for hearing at 2:00 p.m. on designated Wednesdays.

Pretrial conferences in Adversary Proceedings related to Chapter 13 matters will be scheduled for designated Wednesdays.

Preliminary hearings on stay relief motions in Chapter 13 cases (with further procedures set forth below) will be initially set for every Wednesday at 11:00 a.m. When there is a response to a motion and a preliminary hearing is necessary, Judge Gustafson may later change the hearing date to avoid other conflicts with his schedule.

Trials or contested matters requiring an evidentiary hearing will be scheduled in consultation with counsel for available days that Judge Gustafson can fit in given his schedule and that do not conflict with Canton scheduling for Judges Whipple and Patton.

### **HEARING PROCEDURES--VIRTUAL VERSUS IN PERSON**

Judge Gustafson initially intends to be present to conduct all Canton Chapter 13 matters in person, at the Regula Courthouse. Parties may appear in person or by telephone. This may evolve into a schedule where a “heavy” hearing Wednesday will be in person, and a “lighter” date will be held remotely from Toledo. At any

time, the court may, for weather, health and/or safety reasons handle a docket by telephone. Call-in information will be as follows: **Parties should call (866) 390-1828 and use Access Code 8812665 followed by the pound sign, which is #.**

Judge Gustafson intends to conduct trials and evidentiary hearings in person in the Canton courtroom. Parties may appear in person, or if the matter is non-evidentiary, by telephone. Call-in information when Judge Gustafson is holding hearings in Canton will be as follows: **Parties should call (866) 390-1828 and use Access Code 8812665 followed by the pound sign, which is #.**

Mask-wearing and other in-court health and safety protocols for in-court proceedings will be addressed in accordance with the then-existing COVID-19 status in Stark County.

Any trial or other contested matter or proceeding at which the court intends to hear witness testimony and take other evidence will be specified as an evidentiary proceeding in a scheduling order. In the absence of a trial or other specification that evidence will be taken, lawyers should assume proceedings will consist of status updates, oral argument and scheduling discussions. Questions about whether a proceeding will be evidentiary should be directed to the courtroom deputy.

Clients are welcome and encouraged to attend pretrial conferences and other court proceedings, virtual and otherwise. But client attendance is not required **by the court** unless the court informs counsel that their client must appear.

### **ADVERSARY PROCEEDINGS**

Judge Gustafson schedules in the summons and conducts an early pretrial conference in every adversary proceeding. Whether virtually or in person, Judge Gustafson will conduct all pretrial conferences on the record, not just those where a party is unrepresented.

Judge Gustafson will not be entering and directing service of Judge Kendig's form "Initial Pretrial and Case Management Order" in connection with service of the summons and complaint. Nor does he use or expect to use a similar order in connection with service of the summons and complaint.

Judge Gustafson does not require formal compliance with Rules 26(f) and 26(a)(1) of the Federal Rules of Civil Procedure before the initial pretrial scheduling conference set in the summons. The matters and actions specified by those rules will be discussed at the pretrial conference. Deadlines set at the initial and other pretrial conferences will become part of the Rule 16 scheduling order issued after the pretrial conference. Although the formal report and discovery plan need not be filed before the pretrial conference occurs, Judge Gustafson generally expects consideration of and discussions about Rule 26 matters with clients and opposing counsel where there is an appearance of record.

The court values transparency of the docket and court record. The court expects that agreements for extensions of time to respond to pleadings or discovery be reflected on the court record. Counsel may either submit an agreed order or stipulation through the e-orders program or file an agreed motion for an enlargement of time. Making such agreements a matter of record reduces miscommunication and keeps the court apprised of case progress.

If a request to extend the response date to the complaint is filed or agreed to, the pretrial conference set in the summons will not automatically be vacated and rescheduled absent a separate motion for cause. Judge Gustafson generally prefers to conduct the pretrial conference even in the absence of a response to the complaint. If there is a reason not to go forward with the initial pretrial conference, then a party needs to file a separate request to continue it. An example of a good reason to continue a pretrial scheduling conference is that the parties are engaged in settlement discussion that present a reasonable probability of success.

Judge Gustafson will follow a different procedure to secure compliance with the consent provisions of Bankruptcy Rule 7008 and 7012(b). Instead of a Clerk's office deficiency notice and follow up to obtain filing of amended pleadings where initial compliance has not occurred, Judge Gustafson will address this subject at the initial pretrial conference. Generally the Rule 16 scheduling order will direct as necessary the filing of a supplemental pleading to address consent, only. Judge Gustafson prefers supplemental pleadings to amended pleadings to address consent issues.

Judge Gustafson's view is that a default judgment cannot be entered against a party without the preliminary step of entry of a Clerk's entry of default under Rule 55(a). The Local Rules do not specify a procedure for Clerk's entries of default. Judge Gustafson does not require (but does not discourage or prohibit) a separate request or application for a Clerk's entry of default to be filed, as the status of an apparent default will be addressed at the pretrial conference. In appropriate cases, the court may grant an oral motion for the entry of the Clerk's entry of default. If service appears proper the court will generally direct entry of the Clerk's entry of default by the Clerk in the Rule 16 scheduling order, while also setting a deadline for filing a motion for default judgment.

If not addressed through an exhibit filed with the complaint, the court expects compliance with the Servicemembers Civil Relief Act in connection with any motion for default judgment filed in an adversary proceeding with an individual defendant, *i.e.*, the filing of a non-military affidavit.

#### **STAY RELIEF MOTIONS IN CHAPTER 13 CASES**

Judge Gustafson will not require Official Form B420A notices or Local Bankruptcy Rule 9013-1 language in connection with motions for relief from stay. Instead, the Clerk will send an immediate notice of motion conforming to Official Form B420A. The notice will include a response deadline by date and the preliminary hearing date if a response is timely filed.

As the Official Form B420A notice will indicate, Judge Gustafson will not hold a preliminary hearing on a motion for relief from stay unless a response is timely filed. Judge Gustafson will not enter stay relief orders on default until on or after the day set for the preliminary hearing even if there is no response to the motion. The reason for holding off on order entry is that debtors sometimes show up for a preliminary hearing even if they are represented.

Continuances of a preliminary hearing at a debtor or trustee's request generally require the consent of movant's counsel, which should be stated in the motion for a continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Gustafson will not sign an order containing waiver of the 14 day stay period of Bankruptcy Rule 4001(a)(3) unless he finds that satisfactory cause for

doing so is set forth in the motion. If he does not find cause, the waiver language will be stricken from the proposed order without further notice or a hearing. Please review the requirements of Local Rule 4001-1(a) regarding the bolding of any deviations from the form relief from stay order (unless movant is alleging good cause to deviate from the form entirely as permitted by the last sentence of 4001-1(a)). The request for “waiver of the stay of the stay” is a non-standard provision that should be bolded, as is the specific reason stating why the waiver is an appropriate part of the relief being requested.

### **ORDER SUBMISSION**

As previously communicated to registered CM/ECF users in this district on September 15, 2022, the transition judges require submission of a proposed form of order through the CM/ECF e-orders program at the time of filing of any request for relief. Unless required by rule, you may (but are not required to) also attach a copy of the proposed order to your filed document as an exhibit. Even if you do so, you must also submit separately a proposed form order through the e-orders program at the time of filing a motion or other request for relief. All orders require a 4-inch margin at the top for electronic processing. The court does not expect a proposed form of judgment to be submitted at the time of the filing of a complaint.

### **MISCELLANEOUS MATTERS**

**Power of Attorney Forms.** If a case record or a filing shows the use of a power of attorney form, Judge Gustafson will expect the form to be separately filed on record. Sometimes he will set a hearing on the power of attorney.

John P. Gustafson  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Northern District of Ohio, Western Division and Canton, Eastern Division

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October 3, 2022