

Filed  
U. S. Bankruptcy Court  
District of Colorado  
November 10, 2004

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF INTERIM  
AMENDMENT TO THE LOCAL  
BANKRUPTCY RULES AND FORMS  
WITH RESPECT TO CHAPTER 13  
REQUIREMENTS AND PROCEDURES

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GENERAL PROCEDURE ORDER NUMBER 2004-3

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The Court having assembled an advisory group of attorneys who specialize in the practice of chapter 13, said advisory group having met regularly over the past twelve months to discuss and develop comments and recommended changes to the chapter 13 practice and procedure, and the Court having considered those recommendations, does now determine that certain proposed changes submitted by said attorney advisory group have merit and should be referred to the Court's Local Bankruptcy Rules and Forms Advisory Committee (Advisory Committee) for consideration and subsequent release for public notice and an opportunity to comment pursuant to Rule 83, Federal Rules of Civil Procedure. The Court further determines that until such time as proposed revisions to all other sections of the Local Bankruptcy Rules and Forms are ready to be released for public notice by the Advisory Committee, the chapter 13 practice could benefit substantially from the implementation of the recommendations of the chapter 13 advisory group on an interim basis, pending final approval of comprehensive revisions to the Local Bankruptcy Rules and Forms.

Accordingly, pursuant to the authority established in Rule 9029, Federal Rules of Bankruptcy Procedure, it is

ORDERED that effective February 1, 2005, the Local Bankruptcy Rules and Forms are revised as follows:

Rule 117: Rule 117 is new and establishes requirements for the filing and service of certain tax returns on the chapter 13 trustee by the debtor prior to the meeting of creditors (see Exhibit A);

Rule 202: Rule 202 is amended to add a new paragraph (b)(3)(C) to establish a reduced deadline for objecting to a motion to dismiss pursuant to new Rule 117(b) and reads as follows:

(b)(3)(C) Any motion to dismiss filed pursuant to L.B.R. 117(b) shall be filed with accompanying notice providing the debtor seven days in which to respond to the motion. Objections or responses to a motion filed pursuant to L.B.R. 117(b) shall be served on the Movant and Movant's counsel. If service is effected by mail, three days shall be added to the prescribed period.

Rule 315: Rule 315 is amended to delete the requirement to serve a notice with the plan, strike subparagraph (b) requiring the filing of motions to avoid liens at the time of filing of the chapter 13 plan, and to rearrange the remaining paragraphs to more consistently align with the caption of the Rule (see Exhibit B);

Rule 320: Rule 320 is amended to add a title and second sentence to subparagraph (c)(4) to clarify the status of previously filed objections when the plan is thereafter amended as follows:

(c)(4) **Effect of Amendment:** If the plan is amended after the filing and service of a motion to confirm, a new motion to confirm, verified by the debtor and conforming to the amended plan, shall be filed and served by the debtor together with a copy of the amended plan and the notice required by L.B.R. 202. Upon the filing of an Amended Plan, Motion to Confirm the Amended Plan and L.B.R. 202 Notice, previously filed objections to confirmation are deemed withdrawn and new objections must be timely filed addressing the current plan and Motion.

Form 202.5, 13 Order: The form of order granting the motion to confirm and confirming the plan is amended to simplify preparation of the order by deleting the requirement to fill in blank lines for dollar amounts, dates, and payment intervals and inserting in lieu thereof reference to the terms of the plan (see Exhibit C);

Form 315.1, 13 Plan: The form of chapter 13 plan is amended substantially to reorganize or clarify existing information, improve format and layout, eliminate obsolete sections, and require additional information in several areas to better document compliance with the statutes, improve disclosure of information to creditors and the Court, and to guide counsel through preparation of the plan so as to facilitate the process, eliminate deficiencies, and generally shorten the time required to reach confirmation (see Exhibit D).

Form 315.2, Notice: As provided in the amendment to Rule 320(c)(4), this notice is deleted due to obsolescence;

Form 320.4, Motion: The form of motion to confirm chapter 13 plan is amended to enumerate the paragraph between subparagraphs (7)B and (7)C, to renumber the remaining subparagraphs, and to add a new subparagraph (7)F requiring the debtors to show the Court that they have complied with the new provisions of Rule 117 with respect to the filing of tax returns and service thereof upon the chapter 13 trustee (see Exhibit E).

Dated: November 10, 2004

BY THE COURT:

Sidney B. Brooks, Chief Bankruptcy Judge  
A. Bruce Campbell, Bankruptcy Judge  
Elizabeth E. Brown, Bankruptcy Judge  
Howard R. Tallman, Bankruptcy Judge  
Michael E. Romero, Bankruptcy Judge

**LOCAL BANKRUPTCY RULE 117**

**(a) Filing of Tax Returns Required.**

In Chapter 13 cases, the debtor shall (1) file with the appropriate taxing entities all tax returns due for the three years immediately preceding the date of the order of relief and as necessary for the administration of the case; and (2) provide copies of the tax returns, for the three years immediately preceding the date of the order for relief, to the Standing Chapter 13 Trustee along with evidence of current regular income, no later than seven days prior to the first scheduled meeting of creditors provided for by 11 U.S.C. § 341(a). If a tax return is not due as of the date of the order for relief, but becomes due prior to confirmation, the debtor shall provide a copy of that tax return to the Standing Chapter 13 Trustee within fifteen (15) days from the date it is due.

**(b) Failure to Comply.**

A debtor's failure to comply with L.B.R. 117(a)(1) or (a)(2) above may constitute grounds for dismissal of the Chapter 13 case pursuant to 11 U.S.C. § 1307(c)(1).

**(c) Notice of Motion Under L.B.R. 117(b).**

Notice of any motion to dismiss under L.B.R. 117(b) for failure to comply with L.B.R. 117(a)(1) or (a)(2) shall be given in accordance with L.B.R. 202 and in the time frame specifically established in L.B.R. 202(b)(3)(C).

**(d) Request for Extension.**

Any request to extend the deadline for compliance with L.B.R. 117(a) shall be made by motion filed before the expiration of the deadline for compliance and must state good cause for the requested extension.

**Local Bankruptcy Rule 315**  
**Filing of Chapter 12 and Chapter 13 Plans**

(a) **Filing of Chapter 12 Plan:** The debtor may file a Chapter 12 Plan with the petition. If a plan is not filed with the petition, it shall be filed within ninety (90) days thereafter unless the court, pursuant to 11 U.S.C. § 1221, extends the time for filing of the plan.

(b) **Filing and Service of Original Chapter 13 Plan:** The debtor in Chapter 13 shall file an original plan in substantial conformity with L.B.F. 315.1, 13 Plan, within the time limits specified in Fed.R.B.P. 3015(b). Debtor shall serve that plan with a motion to confirm as set forth in L.B.R. 320(c)(2)..

**Local Bankruptcy Form 202.5, 13 Order**

[Caption as in Bankruptcy Official Form No. 16B]

**Order Granting Motion to Confirm and Confirming Plan**

IT HAVING BEEN DETERMINED AFTER NOTICE AND A HEARING:

That the Plan complies with Chapter 13 and all other applicable provisions of Title 11, United States Code;

That any fee, charge, or amount required under Chapter 123 of Title 28, United States Code, or by the Plan, to be paid before confirmation, has been paid;

That the Plan has been proposed in good faith and not by any means forbidden by law;

That the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor(s) were liquidated under Chapter 7 of Title 11, United States Code on such date;

That the Plan provides that the holders of secured claims who have not accepted the Plan shall retain their liens, and the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each secured claim whose holder has not accepted the Plan is not less than the allowed amount of each of those claims, or that the property securing any such claim shall be surrendered.

**IT IS ORDERED:**

The Motion to Confirm is granted;

The debtor's(') Plan is confirmed;

The debtor(s) shall make payments in accordance with the terms of the Plan.

Creditors holding liens on property which the Plan specifies is to be surrendered by the debtor(s) are hereby granted relief from the stay imposed by 11 U.S.C. § 362 and may enforce their rights in and to said property.

The assumption of executory contracts on the terms stated in the Plan is approved. If the plan provides for the rejection of an executory contract or unexpired lease, the party to the rejected executory contract or lease shall file a proof of claim within 30 days of the date of the entry of this Order, failing which the claim may be barred.

BY THE COURT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

**Exhibit D**

### Chapter 13 Plan

\_\_\_\_\_  
(Date of Plan)

**I. PLAN ANALYSIS**

**A. TOTAL DEBT PROVIDED FOR UNDER THE PLAN AND ADMINISTRATIVE EXPENSES**

1. Total Priority Claims (Class One)
  - a. Unpaid attorney's fees ..... \$ \_\_\_\_\_  
Total attorney's fees are estimated to be \$ \_\_\_\_\_ of which \$ \_\_\_\_\_ has been prepaid.
  - b. Unpaid attorney's costs (estimated) ..... \$ \_\_\_\_\_
  - c. Total Taxes ..... \$ \_\_\_\_\_  
Federal: \_\_\_\_\_ ; State: \_\_\_\_\_
  - d. Other ..... \$ \_\_\_\_\_
2. Total of payments to cure defaults (Class Two) ..... \$ \_\_\_\_\_
3. Total payment on secured claims (Class Three) ..... \$ \_\_\_\_\_
4. Total of payments on unsecured claims (Class Four) ..... \$ \_\_\_\_\_
5. Sub-total ..... \$ \_\_\_\_\_
6. Total trustee's compensation (10% of debtor's payments) ..... \$ \_\_\_\_\_
7. Total debt and administrative expenses ..... \$ \_\_\_\_\_

**B. RECONCILIATION WITH CHAPTER 7**

1. Assets available to Class Four unsecured creditors if Chapter 7 filed
  - a. Value of debtor's interest in non-exempt property ..... \$ \_\_\_\_\_

Property	FMV	less Costs of Sale	less Liens	X Debtor's Interest	less Exemptions	= Net Value

- b. Plus: value of property recoverable under avoiding powers ..... \$ \_\_\_\_\_
  - c. Less: estimated Chapter 7 administrative expenses ..... \$ \_\_\_\_\_
  - d. Less: amounts payable to priority creditors other than costs of administration ..... \$ \_\_\_\_\_
  - e. Equals: estimated amount payable to Class Four creditors if Chapter 7 filed (if negative, enter zero) ..... \$ \_\_\_\_\_
2. Estimated payment to Class Four unsecured creditors under the Chapter 13 Plan ..... \$ \_\_\_\_\_  
plus any funds recovered from "other property" described in Section II.A.3 below.

**II. PROPERTIES AND FUTURE EARNINGS SUBJECT TO THE SUPERVISION AND CONTROL OF THE TRUSTEE**

**A.** The debtor submits to the supervision and control of the Trustee all or such portion of the debtor's future earnings or other future income as is necessary for the execution of the Plan, including:

1. Future earnings of \$ \_\_\_\_\_ per month which shall be paid to the trustee for a period of approximately \_\_\_\_\_ months, beginning \_\_\_\_\_, 20\_\_\_\_.
2. Amounts necessary for the payment of Class Five post-petition claims: \$ \_\_\_\_\_.
3. Other property (specify): \_\_\_\_\_.

**B.** Debtor agrees to make payments under the Plan as follows:

VOLUNTARY WAGE ASSIGNMENT TO EMPLOYER:  
(Employer's Name, address, telephone number)

DIRECT PAYMENT: From Debtor to Trustee

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
( ) \_\_\_\_\_

Paid in the following manner: \_\_\_\_\_

\$ \_\_\_\_\_ to be deducted \_\_\_\_\_ (weekly, monthly, per pay period, etc.)

**III. CLASSIFICATION AND TREATMENT OF CLAIMS**

**A. Class One -- Claims entitled to priority under § 507, Title 11, United States Code.** Unless other provision is made in paragraph III(C), each creditor in Class One shall be paid in full in deferred cash payments prior to the commencement of distributions to any other class (except that the payments to the Trustee shall be made by deduction from each payment made by the debtor to the Trustee) as follows:

- 1. Allowed administrative expenses
  - (a) Trustee's compensation (10% of amounts paid by debtor under this Plan) ..... \$ \_\_\_\_\_
  - (b) Attorney's Fees (estimated and subject to allowance) ..... \$ \_\_\_\_\_
  - (c) Attorney's Costs (estimated and subject to allowance) ..... \$ \_\_\_\_\_
- 2. Federal Taxes ..... \$ \_\_\_\_\_
- 3. State Taxes ..... \$ \_\_\_\_\_
- 4. Other Taxes (describe)..... \$ \_\_\_\_\_
- 5. Other Class One Claims (if any) ..... \$ \_\_\_\_\_

None

Priority support arrearage: Debtor owes past due support to \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_ that will be paid as follows:

Distributed by the Trustee pursuant to the terms of the Plan; or

Debtor is making monthly payments via a wage order  or directly  (reflected on Schedule I or J) in the amount of \$ \_\_\_\_ to \_\_\_\_\_. Of that monthly amount, \$ \_\_\_\_\_ is for current support payments and \$ \_\_\_\_\_ is to pay the arrearage.

Other: \_\_\_\_\_

**B. Class Two -- Defaults**

1. **Class Two A (if none, indicate) -- Claims set forth below are secured only by an interest in real property that is the debtor's principal residence.** Defaults shall be cured and regular payments shall be made.

None

Creditor	Total Default Amount to be Cured <sup>1</sup>	Interest Rate	Total Amount to Cure Arrearage	No. of Months to Cure	Regular Payment per ____ (i.e. month, week, etc.) to be Made Directly to Creditor and Date of First Payment

2. **Class Two B (if none, indicate) -- Pursuant to 11 U.S.C. §1322(b)(5), secured (other than claims secured only by an interest in real property that is the debtor's principal residence) or unsecured claims set forth below on which the last payment is due after the date on which the final payment under the Plan is due.** Defaults shall be cured and regular payments shall be made:

None

Creditor	Collateral	Total Default Amount to be Cured <sup>1</sup>	Interest Rate	Total Amount to Cure Arrearage	No. of Months to Cure	Regular Payment per ____ (i.e. month, week, etc.) to be Made Directly to Creditor and Date of First Payment

<sup>1</sup> The lesser of this amount or the amount specified in the Proof of Claim.




3. **Class Two C – Executory contracts and unexpired leases.** Executory contracts and unexpired leases are rejected, except the following which are assumed:

Other Party to Lease or Contract	Property, if any, Subject to the Contract or Lease	Total Amount to Cure, if any	No. of Months to Cure	Regular Monthly Payment Made Directly to Creditor and Date of First Payment

*In the event that debtor rejects the lease or contract, creditor shall file a proof of claim or amended proof of claim reflecting the rejection of the lease or contract within 30 days of the entry of the order confirming this plan, failing which the claim may be barred.*

**C. Class Three -- All other allowed secured claims (other than those designated in Classes 2A and 2B above) shall be divided into separate classes and provided for as follows:**

1. The following creditors shall retain the liens securing their claims, and they shall be paid the amount specified which represents the lesser of:
  - (A) the value of their collateral or
  - (B) the remaining balance payable on the debt over the period required to pay the sum in full.

Creditor	Specify Treatment (select A or B above)	Description of Collateral	Fair Market Value of Collateral	Amount of Debt as Scheduled	Interest Rate	Total Amount Payable

*If debtor is proposing to modify the rights of a secured creditor, debtor must specifically serve such creditor in the manner specified in Fed.R.Bankr.P. 9014 and 7004.*

2. The debtor surrenders the following property securing an allowed secured claim to the holder of such claim:

Creditor	Property	Anticipated Date of Surrender

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Relief from the automatic stay to permit enforcement of the liens encumbering surrendered property shall be deemed granted by the Court at the time of confirmation of this Plan. With respect to property surrendered, no distribution on the creditor's claim shall be made unless that creditor shall file a proof of claim or an amended proof of claim to take into account the surrender of the property.

3. **Adequate Protection:** The following creditor(s) shall receive payments in the nature of adequate protection as follows:

Creditor	Collateral	Adequate Protection Payment Paid Through the Trustee	Adequate Protection Payment Paid By the Debtor(s)	Number of Months Until Regular Payments Under Plan

None

**D. Class Four -- Allowed unsecured claims not otherwise referred to in the Plan.** Class Four Claims are provided for as follows (check one):

- Class Four claims are of one class and shall be paid pro rata \_\_\_\_\_% of such claims (or shall share pro rata the sum of \$\_\_\_\_\_ ) and shall be paid all funds remaining after payment by the Trustee of all prior classes; or
- Class Four claims are divided into more than one class as follows:

**E. Class Five -- Post-petition claims allowed under § 1305, Title 11, United States Code.** Post-petition claims allowed under § 1305 shall be paid as follows: \_\_\_\_\_

None

**IV. OTHER PROVISIONS**

**A.** Payment will be made directly to the creditor by the Debtor(s) on the following claims:

Creditor	Collateral, if any	Monthly Payment Amount	No. of Months to Payoff

**B.** The effective date of this Plan shall be the date of entry of the Order of Confirmation.

**C. ORDER OF DISTRIBUTION:**

- The amounts to be paid to the Class One creditors shall be paid in full, except that the Chapter 13 Trustee's fee shall be paid up to, but not more than, the amount accrued on actual payments made to date. After payment of the Class One creditors, the amounts to be paid to cure the defaults of the Class Two A, Class Two B and Class Two C creditors shall be paid in full before distributions to creditors in classes Three, Four, and Five (strike any portion of this sentence which is not applicable). The amounts to be paid to the Class Three creditors shall be paid in full before distributions to creditors in classes Four and Five. Distributions under the plan to unsecured creditors will only be made to creditors whose claims are allowed and are timely filed pursuant to Fed.R.Bankr.P. 3002 and 3004 and after payments are made to Classes One, Two A, Two B, Two C and Three above in the manner specified in Section III.

2. [ ] Distributions to classes of creditors shall be in accordance with the order set forth above, except:

\_\_\_\_\_

**D. MOTIONS TO VOID LIENS UNDER 11 U.S.C. § 522(f).** In accordance with Fed.R.Bankr.P. 4003(d), Debtors intend to file, or have filed, by *separate motion served in accordance with Fed.R.Bankr.P. 7004*, a motion to void lien pursuant to 11 U.S.C. § 522(f) as to the secured creditors listed below:

Creditor	Collateral	Date Motion to Void Lien Filed	Date of Order Granting Motion or Pending

**E. STUDENT LOANS:**

- No student loans  
 Student loans are to be treated as follows: \_\_\_\_\_

**F. RESTITUTION**

- No restitution owed  
 Debtor owes restitution in the total amount of \$ \_\_\_\_\_ which is paid directly to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month for a period of \_\_\_\_\_ months.  
 Debtor owes restitution to be paid as follows:

**G. OTHER**

\_\_\_\_\_

**V. REVESTMENT OF PROPERTY IN DEBTOR**

All Property of the estate shall vest in the debtor at the time of confirmation of this Plan.

**VI. INSURANCE**

Insurance in an amount to protect liens of creditors holding secured claims is currently in effect and will [ ] will not [ ] (check one) be obtained and kept in force throughout the period of the Plan.

Creditor to Whom This Applies	Collateral Covered	Coverage Amount	Insurance Company, Policy No. and Agent Name, Address and Telephone No.

[ ] Applicable policies will be endorsed to provide a clause making the applicable creditor a loss payee of the policy.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Attorney for Debtor

\_\_\_\_\_  
Signature of Co-Debtor Spouse

\_\_\_\_\_  
Attorney's Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_  
Telephone Number

**Local Bankruptcy Form 320.4, 13 Motion**

**Exhibit E**

[Caption as in Bankruptcy Official Form No. 16B]

**Motion to Confirm Chapter 13 Plan**

THE DEBTOR MOVES FOR ORDERS AS FOLLOWS:

(1) For an order confirming plan filed \_\_\_\_\_ [insert date] \_\_\_\_\_.

(2) For an order pursuant to 11 U.S.C. § 506(a) valuing secured claims which are to be paid through the plan at the amount payable as specified in the plan for each such creditor.

(3) For an order pursuant to § 1325(a)(5) determining that the property to be distributed under the plan to holders of secured claims is not less than the allowed amount of each such claim.

CREDITORS SHALL TAKE NOTICE THAT IN THE ABSENCE OF A WRITTEN OBJECTION BY A CREDITOR, THE AMOUNT PAYABLE WHICH IS SPECIFIED IN THE PLAN TO BE PAID TO EACH OF THE SECURED CREDITORS WILL BE ACCEPTED BY THE COURT AND SHALL BE USED IN THE COURT'S DETERMINATION THAT THE PLAN COMPLIES WITH § 1325(a)(5).

(4) For an order pursuant to 11 U.S.C. § 362(d) granting relief from stay of the enforcement of liens of creditors which encumber property being surrendered under the plan.

(5) For an order approving the classification of claims (if applicable).

(6) For an order authorizing the assumption of executory contracts as provided for in the plan.

(7) For an order authorizing the payments under the plan to extend more than 36, but not more than 60, months (if applicable and if cause is shown as described below).

In support of the foregoing, the debtor(s) show(s) the court as follows:

A. The PLAN ANALYSIS contained in the plan is true and correct and shows that unsecured creditors will receive at least as much in dividends under the plan as would be received by them in Chapter 7.

B. The Amount Payable to secured creditors under the plan is equal to the lesser of the value of the collateral for such claims or the balance due the creditor. The debtor believes the collateral has a value at least equal to the Amount Payable because \_\_\_\_\_.

C. The capitalization rate specified in the plan was chosen because \_\_\_\_\_.

D. If the plan classifies unsecured claims into separate classes, such classification complies with 11 U.S.C. § 1322(b)(1) and does not discriminate unfairly among subclasses because \_\_\_\_\_.

E. Cause exists to extend the plan payments over more than 36 months because \_\_\_\_\_.

F. I (We) have filed debtor's tax returns for the three years immediately preceding the order for relief and any which are due as of the date of this Motion, along with evidence of current regular income, and provided copies thereof to the Chapter 13 Trustee.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Spouse

\_\_\_\_\_  
Signature of Attorney for Debtor

\_\_\_\_\_  
Attorney's Address

\_\_\_\_\_  
City, State, and Zip Code

\_\_\_\_\_

Telephone Number

**Verification**

Under penalty of perjury, I (we) do hereby adopt the statements contained in this motion and state that those statements are true to the best of my (our) knowledge and belief.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Spouse