

SPECIAL POINTS OF INTEREST:

- Tips from the Departments
- Staff information
- CM/ECF Changes
- New Case Law
- Attorney No No's
- Luncheons

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Debtor Education, A Smart Start

Debtor Education

classes have begun at the Chapter 13 Trustee's Office. **Jeffrey M. Kellner, Chapter 13 Trustee** provides the first hour of training from a legal standpoint. He highlights how the Chapter 13 program works and what is expected of the Debtor while they are in Chapter 13 bankruptcy.

John Haber, Debtor Education Coordinator, at debtoreducation@dayton13.com, provides useful information that Debtors can take home and put to use right away.

The United States Trustee Program (www.usdoj.gov/ust) lists other approved providers of the financial management instructional course if the Debtors are interested. The Dayton Chapter 13 two hour program is **free of charge** through our office. Classes are filling quickly for

Debtors who have filed Chapter 13 and who have attended or will be attending their 341 Meeting of Creditors. The course is held on Tuesdays and runs from 11:15 am to 1:15 pm.



Receiving your Certificate of Completion right from the beginning is a smart start.

This course will not interfere with 341 meetings that are scheduled for that day. The program is held in the Chapter 13 Trustee Office's conference room on the 9th floor of the Talbott Tower, 131 N. Ludlow St.,

Dayton, Ohio. Debtors and attorneys can call ahead to reserve their seat for upcoming classes at **(937) 222-7600 ext. 112**.

Once the Debtors have completed the course, they will receive a Certificate of Completion from our office. Additionally, the Certificates will be sent via email to the attorneys for filing purposes with Court. Receiving a certificate at the onset of the case is a smart start for Debtors. Valuable information about budgeting can make the Chapter 13 process run a lot smoother for Debtors and their attorneys over a three to five year period. The course will provide them with necessary information and tools to have a successfully discharged case and provide them with skills that can be used for a lifetime. The information they receive allows them to make smarter choices to help themselves to a successful "fresh start".

Debtor Education Class Schedule Tuesdays

October
24th & 31st

November
7th, 14th & 28th

December
5th, 12th & 19th
(no class the 26th)

January
2nd, 9th 16th, 23rd & 31st

**Saturday Classes Starting
2007 from 10 am-12 pm**
Jan. 20th, Feb. 10th
& Mar 10th

Are you a member of the "One List"?



Do you want to know about **new case law, Dayton Chapter 13 and Court policy changes, meeting and seminar notices, general questions and answers**? If so, become a member of the "One List". You will be kept up to date with the all the latest information you need to build and maintain a thriving practice.

To Join: email Tim of the Chapter 13 Trustee's Office at tledford@dayton13.com to receive the E-mail Agreement. Simply return the completed form to Tim and open a new world of information at your fingertips.

Pre-Confirmation Department



Life is sweet.

Appraisals

Appraisals can be done by any **certified appraiser** of real estate. If you prefer an appraiser of your choice, please remember that once the appraisal has been done, it needs to be filed with Court. We would like to have those appraisals filed at least one week prior to the Debtor's scheduled Meeting of Creditors. This allows the Pre-Confirmation Department to work the **Best Interest Test** on the case. If we do not receive the appraisal before the Meeting of Creditors, an objection to confirmation is automatically filed due to our inability to

run the Best Interest Test. This leads to a lot of extra work for both our office and yours. Receiving the appraisals earlier will ensure a smoother Meeting of Creditors and will also allow the case to confirm quicker, which means that attorney fees will be paid sooner. Also, Court will now be tracking the appraisals to make sure that the amount listed on Schedule A is close to the amount filed on the appraisal.

Email your tax returns (four years) and pay advices prior to the 341 Meeting of Creditors to bmcdaniel@dayton13.com

Amended Plans and Modifications

When you find it is necessary to file an Amended Plan or Modification (pre or post confirmation), you do not need to refile the whole plan. There are forms on the Trustee's website (www.dayton13.com), listed as "**Amended Plan Prior to Confirmation and Notice**" and "**Motion for Modification of Plan Post Confirmation and Notice**", that can be used. It is a lot easier for all parties if you use these forms. If you have any questions, please contact Valerie at 222-7600 ext. 113 or Mary at ext. 111.

"Success isn't permanent, and failure isn't fatal."

*Mike Ditka
Professional Football Coach*

Closing/Confirmation Department

We have recently received a large influx of payoff requests. These are coming in the form of official payoffs due to refinancing. Please be patient as we work through these large number of cases. Additionally, if you or your client would like an unofficial payoff (a form generated from our computer), please have your client put the request in writing to our office. This information is calculated by our computer

and does not account for variables that may affect their particular case, but can be very helpful if a client wants a "ball park" figure. Attorneys can look at the same case information at www.13network.com. If a debtor needs an official payoff, requests should be made in writing to our office including the appropriate information: 1) the source of the funds to pay off the plan, 2) the date the funds will become

available, and 3) a statement that they are serious about paying off the plan. **There are many official requests that are sent to Debtors that do not ever pay off the plan.** Please make sure that your client(s) understand the differences in the payoff requests. Once again, please be patient as we work through these official refinancing payoffs.

Life can seem lonely, but we are here to help.



Claims Department



Do not forget to check your client's liens. With the new ACT in place, this requirement should already be a set procedure within your office. The requirement includes **all liens**, not just mortgages.

We can always learn from one another.

Motions to Sell Real Estate

Do not forget to include the hearing date on the motion. When a response is filed, the hearing date is already set and additional notices will not need to be sent. Please check and make sure **all parties** are served on the motion and order or this may also delay closings. It is **imperative** that you **timely file the order** that allows the sale of real estate. Our office receives many calls from anxious Debtors, title and closing agencies waiting for orders to be filed with Court to proceed with the sale. Failing to timely file orders can

lead to the buyers backing out from the sale, closings not being held when scheduled or the entire transaction never going through.

Debtor Objections

When filing Debtor objections and orders, please make sure the creditor name and claim amount match. We are receiving creditor names with claim amounts that are actually another creditor. Double checking this matter will help eliminate questions and errors from our office and may resolve matters quicker. Make sure you list both the Court and Trustee's claims number on your objection.

341 Plan Payments

Beginning November 28, 2006, we will no longer accept payments at the 341 Meeting of Creditors.

Instead, we will send out a letter to the Debtors on the same day we receive the Plan. The packet will include the Debtor's Red Book, the green sheet advising the Debtors what to bring to the 341 Meeting of Creditors, the Debtor website information, Debtor Education meeting information and a letter that lists the Debtor's 341 date and time. This letter will include instructions that the Debtors must mail their payment **in good funds** to our lockbox by a specific date (**10 days before the 341**). We will check all of the payments on the Monday before the 341 Meeting of Creditors and if a payment has not been received, we will do our normal Motion to Dismiss for Non-Payment.

"A moment's insight is sometimes worth a life's experience."

Oliver Wendell Holmes (1809-1894)

Chapter 13 Welcomes Megan Wallenhorst



The Chapter 13 Office would like to introduce and welcome **Megan Wallenhorst** to our office as our Controller.

Megan is originally from Cleveland, Ohio. She attended Wright State University where she received her Bachelor's Degree in Accounting. She worked as a Staff Accountant for Flagel, Huber & Flagel before being hired with our office. She joined the Chapter 13 Office in August 2005 and has been helping the office with various financial and H.R. matters. She is continuing

her education and will be finishing her Master's Degree at Wright State University after the fall quarter. She continues to provide innovative and new ways for our office to function better.



Just when you think you've got it...think again.

CM/ECF Program Changes

We wanted to give you notice about some changes that have taken place with ECF. The CM/ECF program was upgraded on October 16, 2006. A lot of these changes are on Court's end as they are now collecting statistics for Washington.

Pre-confirmation modifications must now be titled as

"Amended Plan" or you will receive a deficiency from Court. This language also needs to be reflected in the body of the document as well.

Post-confirmation modifications must have orders submitted as "Order Confirming Modified Plan."

The CA's are now keeping new statistics on whether appraisals that are filed agree with, are higher or lower than the scheduled amount. You may want to have an appraisal before you file.

Please refer to all notifications from Court regarding these changes.

Chapter 13 Trustee's Office Staff and Phone Extensions

Barb	Tax Returns and Pay Advices	Ext. 136 or bmcdaniel@dayton13.com
Brenda	Official Pay Off and 60 Month Letter	Ext. 130
Cathy	Real Estate Transactions, I.R.S. Insurance Proceeds	Ext. 104
Ginger	Newsletter	Ext. 114
John	Debtor Education	Ext. 112 or debtoreducation@dayton13.com
Linda	Disbursement Issues	Ext. 126
Lisa or Sandy	Credit Authorizations, Refinancing, Sale of Assets	Lisa Ext. 134 or Sandy Ext. 135
Michelle	Claims, Mortgage Problems, Mortgage Payment Changes	Ext. 138
Scott	Legal Issues	Ext. 137
Susan	Probation and Dismissals	Ext. 102
Valerie or Julie	341 Hearing Dates	Valerie Ext. 113 or Julie Ext. 110
Valerie or Mary	Pre-Confirmation Amended Plan and Post-Confirmation Modifications	Valerie Ext. 113 or Mary Ext. 111
Valerie	Chapter 13 Plans and Pre-filing Questions, Means Test Calculations	Ext. 113

Ten Things We Do Not Like In Chapter 13

It's never too late to be who you might have been."

George Eliot
(1819-1888)
Writer

1. Attorneys not returning phone calls, letters or faxes—not filing orders when timely.
2. Pro se debtors—usually after a number of failed attempts, using the same forms and schedules.—Either use the internet or a petition preparer to file front page filing, then nothing (same number for filing in installments, only mortgages as creditors).
3. Debtors' attorneys who fill out the means test with no justification or support for the line item amounts.
4. Petitions, schedules and Statement of Financial Affairs not complete or numerous mistakes. It is obvious that no one has proofread it or reviewed it. Using old plans or plans that do not tell anything.
5. When debtor's attorneys do not ask the right questions, or fail to get the needed credit reports and searches prior to filing the petition and plan.
6. When creditor attorneys fail to read the plan carefully and file inaccurate objections or stay lifts.
7. Attorneys failing to properly serve the pleadings, not attaching a twenty (20) day notice, or forgetting to set a hearing date in the event of a response.
8. Making the Trustee be the bad guy and turn down the new 2007 pickup for \$40,000. (with a 25% interest rate) in a 0% dividend plan. You generally know what we will approve and will not.
9. On Schedule I and J—using extremely high numbers with no explanations or evidence.
10. Petition preparers or foreclosure firms that give inaccurate information.



REPORTED DECISIONS FROM THE DAYTON BANKRUPTCY JUDGES *Thanks to Neil Berman and Colleen Militello.****In re Cleaver*, 333 B.R. 430 (Bankr. S.D. Ohio 2005)**

Debtor filed chapter 13. Motion for a temporary “waiver” pursuant to § 109(h)(3) was filed. The Debtor stated a sheriff sale was the next day, the petition was filed to stop the sale and there was insufficient time for credit counseling. The court found the filing was not an affidavit or declaration, but with the included signature of the debtor and his counsel, marginally qualified as a certification under the statute. The court found the circumstances of an imminent foreclosure were exigent. However, the court also ruled that the certification did not comply with the requirement that counseling must be requested and unavailable within 5 days. In dicta, the court raised the issue of whether someone could prospectively demonstrate that services would not be available within five days and also whether a request to a single agency was sufficient.

***In re Rudicil*, 343 B.R. 181 (Bankr. S.D. Ohio 2006)**

In avoiding a lien pursuant to § 522(f), a debtor cannot include dower as a lien on the property. See also *Brinley v. LPP Mte., Ltd (In re Brinley)*, 403 F.3d 415 (6th Cir. 2005) (providing the formula under § 522(f) for lien avoidance).

***In re Burkett*, 329 B.R. 820 (Bankr. S.D. Ohio 2005)**

The exclusive bases to object to a proof of claim are in § 502, not Official Form 10 or Bankruptcy Rule 3001. However, substantial compliance with Official Form 10, as required by Bankruptcy Rule 3001, is required for a proof of claim to be entitled to “prima facie validity.” The claim must be sufficient to establish the validity, ownership and amount of the claim. A proof of claim corroborated by the debtor’s schedules may require no additional documentation. If the proof of claim varies from the schedules, documentation of the amount or ownership of the claim may be scrutinized before a proof of claim can receive prima facie validity. A proof of claim need not have a complete account number or precisely conform with Official Form 10.

***In re Jackson*, __ B.R. __, 2006 WL 2431376 (Bankr. S.D. Ohio 2006)**

A widow allowance, received pursuant to Ohio Revised Code § 2106.13(A), may be exempted pursuant to Ohio Revised Code § 2329.66(A)(11), subject to the requirement that funds are reasonably necessary for the support or maintenance of a debtor or her dependents. The court concluded the term “allowance” was used in both § 2106.13(A) and § 2329.66(A)(11) had no technical meaning and, thus, should be given its plain meaning.

***In re McGuiness*, __ B.R. __, 2006 WL 2431377 (Bankr. S.D. Ohio 2006)**

Due to a mistake of their counsel, admissions were not responded to timely by the Debtors. Following the holding in *Kerry Steel, Inc. v. Paragon Indus., Inc.*, 106 F.3d 147 (6th Cir. 1997), the court found it was appropriate to deem the admissions withdrawn where the case could be presented on the merits and no prejudice resulted to the other party. In the context of Federal Rule of Civil Procedure 36(b), applicable by Bankruptcy Rule 7036, prejudice does not mean having to convince the fact finder a previously admitted fact, but “relates to special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal or amendment of an admission.”

***In re Ogleby*, 333 B.R. 788 (Bankr. S.D. Ohio 2005)**

The Debtor can claim a \$1 exemption in 6 parcels of property using the Ohio “wildcard” exemption [Ohio Revised Code § 2329.66(A)(18)] for purposes of § 522(f). The court noted that, under these facts, the result would be the same if all the blanket liens could be applied separately to each property or if the properties were considered in a hypothetical “mass” sale.

***In re Murray*, __ B.R. __, 2006 WL 2594838 (Bankr. S.D. Ohio 2006)**

Mortgage creditor in a chapter 13 moved for an order finding the automatic stay did not apply. The court found that the stay did not apply because the Debtor had two prior cases dismissed within a year of the petition date of the current case and neither prior case was dismissed pursuant to § 707(b). See § 362(c)(4)(A)(ii). Under the plain language of § 362(c)(4), the automatic stay was not in effect. However, the court also determined the bankruptcy court had exclusive jurisdiction in actions involving property of the estate. See 28 U.S.C. § 1334(e). The absence of the stay was not the equivalent of an abandonment of the property. See § 554. Additionally, the chapter 13 plan had been confirmed. Since the confirmation order used in Dayton does not vest property back to the debtor [Cf. § 1327], the absence of the stay would not, by itself, allow the creditor to pursue state court remedies against the real property.

***In re Minton*, __ B.R. __, 2006 WL 2524046 (Bankr. S.D. Ohio 2006)**

The court sustained the Trustee's objections to the Debtor's exemption in a tax refund and exclusion of a child tax credit from property of the estate. The court held that the debtor could not exempt a tax refund as "personal earnings" pursuant to Ohio Revised Code § 2329.66(A)(13). In addition, the court held that a child tax credit was properly considered property of the estate because it was a contingent interest on the date of filing even if the tax year had not yet ended.

***Noland v. Wilmington Savings Bank (In re D & K Aviation, Inc.)*, __ B.R. __, 2006 WL 2589383 (Bankr. S.D. Ohio 2006)**

Trustee filed an adversary complaint against Wilmington Savings Bank to avoid its prepetition security interest in the Debtor’s 3/8th interest in an airplane. The Trustee alleged that a postpetition loan transaction between the Debtor, the Debtor’s principals and the bank was not a consolidation of a secured prepetition obligation, but, instead, created a new distinct loan or novation that paid off the prepetition loan and released the security interest. Trustee filed a motion for summary judgment. In its decision denying summary judgment, the court noted that it is a fundamental commercial principle that satisfaction of an underlying debt extinguishes the corresponding security interest. However, whether the purpose of a new loan is to discharge the old debt or renew it and retain the same security depends on the intent of the parties. In this case, the court concluded that the postpetition loan documents were unclear as to whether the new loan was intended to extinguish the old debt. The court also noted that in Ohio there is a presumption in favor of renewal when a new note has been executed. The court held that a trial would be necessary to determine the intent of the parties as well as other issues, including whether the post-petition loan transaction constituted a stay violation.

***In re Eley*, 331 B.R. 353 (Bankr. S.D. Ohio 2005)**

Debtors objected to Trustee’s Final Report for its inclusion of irrevocable trust funds as distributable assets. Court held that trust was excluded from bankruptcy estate under § 541(c)(2) because it contained a valid restriction on transfer, or “spendthrift clause,” even though the enforcement of the spendthrift clause was subject to the discretion of the trust’s trustee. In addition, the court held that, because this was an *inter vivos* trust, as opposed to a testamentary trust, the post-petition distribution of assets from the trust did not become property of the estate under § 541(a)(5)(A).


JEFFREY M. KELLNER, TRUSTEE

Office Of The Chapter 13 Trustee

131 N. Ludlow St.
Suite 900
Dayton, OH 45402
Phone: 937-222-8100
Fax: 937-222-7383
www.dayton13.com



Brown Bagging It Again

Next One 11/21/06

We will be once again holding brown bag lunches for attorneys and staff. These are very informational for yourself and the people that work for you. Everyone that practices Chapter 13 bankruptcy in this district is highly encouraged to attend these meetings.

Not only do they provide valuable information about changes as a result of B.A.P.C.P.A., but they also will inform you of changes in our office policies and procedures. This can help everyone get a better picture of how everything works. By getting everyone on the same page, it will reduce the number of motions we have to file for deficiencies, reduce the number of objections that need to be filed and allow Proof of Claims to be paid in a timely manner.

If you are interested in a particular area of bankruptcy that you would like more information about, please contact Jeff to see that it is added to



**Don't forget your milk
and cookies.**

an agenda to help enlighten everyone. If you have information you think would be helpful to other attorneys or staff members, please feel free to contact Jeff to become part of the presentation for a brown bag lunch or to have your information listed in the agenda.

The goal is to help everyone in the district have a better understanding of the Chapter 13 practice in the Dayton Court and the Chapter 13 Office.

The next brown bag lunch is scheduled for **November 21, 2006 at 11:30 am** in the Chapter 13 Trustee Office's Conference Room.