

MARCH, 2007

Chapter 13 News

Office Of The Chapter 13 Trustee
Jeffrey M. Kellner, Trustee
Dayton, Ohio

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Chapter 13 News—Jeff Kellner

We are one and one-half years into BAPCPA. The one thing everyone agrees upon is that BAPCPA requires more time to file by the Debtors' Attorneys and more time to review and monitor by the Chapter13 Office. We are starting to see more decisions to give us guidance (*see Case Law Updates on pages 4 & 5*). The "Means Test" is still causing issues. The Chapter13 Office is having a half day seminar on Friday, April 13, 2007 at the Chapter 13 Office, beginning at 9:00 a.m. on the "Means Test" going through each line and explaining our, the U.S. Trustee's and the Court's position on each issue.

We fell behind on our confirmation, but are starting to catch up! Contact Brenda, at extension 130, if you have a case that is not confirmed and several months from the Meeting of Creditors' date. We have reports indicating these cases, but want to make sure we do not miss a case.

Debtors' Attorneys—tell your Debtors about our Debtor Educations class. It is free, convenient and informative. We talk about financial management, along with what the Debtors can expect from the Chapter13 Office and what we expect from them. Feel free to attend one yourself.

New Discharge/Closing Procedures

Effective Monday, March 12, 2007, the Bankruptcy Clerk and Chapter 13 Office has begun implementing new procedures for Chapter 13 cases for any **COMPLETED BAPCPA** case that is eligible for discharge. That is any case filed after October 17, 2005. New procedures and forms for completed cases, dismissed and converted cases and cases that are not eligible for discharge are available on the Dayton13.com website. These changes are detailed on page 7. Included also are flowcharts to help everyone with this change in procedure.

(Continued on page 7)

Party Notice (no, not that type of party)

The Chapter 13 Office is starting to review many pleadings filed by the Debtor bar that require all party notice on the Certificate of Service. Some of you are stating that the pleading was served on all parties on the attached matrix, but FAILING to attach the matrix to the pleading. We check PACER, but the attached matrix is not there. Unless you attach the matrix, this OFFICE will OBJECT to your pleading. Check out LBR 9019(c).

Special points of interest:

- New Forms for New Procedures
- New Hearing Resolution Guidelines
- New Case Law
- New Appraisers for Real Estate
- New Debtor Education Dates

New Limits

Effective April, 1, 2007, the limits for filing a Chapter 13 have increased. The new limits are: \$1,010,650.00 for secured debt and \$336,900.00 in unsecured debt. There are other monetary changes throughout the Code.

Pre-Confirmation Department

Attorney fees are your business' lifeline. We are experiencing a lot of discrepancies between the Application for Attorney Fees and the actual amount that is listed in the Chapter 13 Plan. When this occurs, we do not know which amount is correct so no fees will be paid until this matter is resolved. Please be sure to review these documents carefully so there will not be a delay in payment to your office.

We would like to welcome all the new attorneys that have started filing in our Court. Many of these new attorneys

are from the Cincinnati area since Warren County is now exclusively covered under our district. We would like to remind you that we have a standard Chapter 13 Plan that we use. It is on our website at www.dayton13.com, listed under "Forms", along with instructions of how to use the form.

If you are filing an Amended Plan or a post confirmation modification, do not forget to include your 20 day notice with the correct date and time for the proper judge. This is required for both pre and post

confirmation plans. Hearing dates can be found at www.dayton13.com under the "Hearing Dates" tab. Make sure you leave sufficient time between the end of the notice period and the hearing date (more than five working days).

If you file an Amended Plan and the "Means Test" works, do not forget that you still must meet the best interest test. When calculating your plans please make sure that you are now using the §341 Meeting of Creditors date as a starting date instead of the Confirmation date.



Claims Department

If a creditor has not filed a Proof of Claim, the Claims Department will send two Notices to notify the creditor, Debtor and Debtor's attorney. After the second notice is filed, monies will then be

released to other creditors. You should pay close attention to these notices as a relief from stay could be filed or a case could complete without ever paying a mortgage.

Confirmation/Closing Department

If you are using our web site, www.13network.com, to calculate cases when trying to determine pay off amounts, approximate remaining months of the plan or a payment calculation, please remember that plans must meet base. This is the equivalent of 36 months of plan payments or the dividend to the unsecured creditors, whichever is greater. Remember that when you use the calculation program on the website, you must reset the number of months remaining from the §341 Meet-

ing of Creditors date. This will eliminate a lot of objections and motions to dismiss. Remember the special plan provisions and IRS tax refunds also affect the base.

When cases are ready to be closed, all motions and orders are reviewed at that time. If you have not filed an Order on a Motion for Additional Attorney Fees, these fees may not be paid.



Tax Time

We are in that time period where some of the new Debtors have already filed their 2006 taxes. Prior to the §341 Meeting of Creditors, when you send in copies of the past four years taxes, if 2006 has already been filed please send us the 2003, 2004, 2005 and 2006 taxes. If the Debtor files the taxes after they file the Chapter 13, please ask them to bring the 2006 taxes to the §341. If the Debtor's 2006 taxes have not been filed yet, we will still need the 2002 tax return.

Official payoffs are becoming very cumbersome due to Debtors looking at what it will take to pay off their case. This is not the intent of an "Official" payoff. **Official payoffs** are for Debtors who put in writing, (via mail, e-mail or fax) 1) when they intend to pay off the case, 2) by what means **and** 3) where the funds are coming from. Cutting out unnecessary requests will help expedite serious Debtors in completing their cases.

Legal Department

It is that time of year again. You should have received your tax lists by the middle of February. If not, please call Cathy at extension 104 and she will send you a list. Let's get a good jump on this so we do not have a lot of hearings in September.

We have an issue getting cases resolved for hearing. The judges are not happy with late resolved cases, so we are changing our procedures for settling cases. If a hearing is set for Tuesday, the matter must be resolved (with the Trustee's office) by 3:00 p.m. Friday. We will no longer take any Trustee cases off the docket on Monday. Creditors cases will continue to come off if the creditor calls Scott, at extension 137, and Court about the resolution. If hearings are held on an off day, resolutions will have to be in place by 3:00 p.m. two days prior to the hearing date (i.e. if there is a Thursday hearing, cases must be resolved by 3:00 p.m. Tuesday). We will not take off cases the day before a hearing. Please check our website, www.dayton13.com, under "Dockets" to check cases. This is updated daily.

Introducing Janet Hager, Public Relations Clerk



Judge Walter does not want to hear about promises or hopes regarding dismissal cases. If the money is not received, it will not be resolved. Chances are better than 99% that the case will be dismissed. If you say you are going to modify the plan or take some other action in your response, then make sure it is done before the hearing. Judge Walter is looking for modifications, motions to suspend and objections to Proof of Claims. If you are proactive, you may have a chance to save the case, providing the Debtor has made a payment or is at least making an effort to make a payment.

Responses are getting bad again. They are not being responsive. The numbers in your responses are not supportive of a proper calculation of the case. Many of these responses are filed late. In some cases, attorneys have not even talked to the Debtor. Do not file a response to simply file a response. If you want a hearing on the matter, file the response after you have talked to your client. Late responses will no longer be accepted, especially if they are received by us the day before the hear-

ing. Our orders of dismissal state that it is being dismissed because no **timely** response has been filed.

These warnings are being given to avoid another "Blood Letting" day. Two alternatives are to have weekly hearings or that cases will no longer be resolved and all will be heard before the judge.

Motions for reinstatement of cases dismissed for no payment after the Debtor was placed on probation will, for the most part, be opposed. The Debtor had already received a break by being placed on probation.



12 Month Letters

We will begin preparing our annual 12 Month Letters the first of April and hope to have all of them mailed by the end of the month. The letters tell the Debtors to contact you for questions and that is basically what we will tell them if they call about the letters. If the Debtors find any discrepancies in the Receipts or Disbursements, please put the problem in writing and send it to our office as soon as possible so that we can research the discrepancy.

The Chapter 13 Office would like to welcome and introduce **Janet Hager** as our new Public Relations Clerk. Janet was a Real Estate Assistant with Century 21, Timber Creek, before joining the Chapter 13 Office in October, 2006.

Case Law Update



In re Sorrell, Judge Waldron, case number 06-31720. Chapter 7 and abuse under §707(b)(2) the Court found (1) In determining if abuse is presumed to exist under §707(b)(2)(A)(i), unemployment compensation is excluded in the calculation of current monthly income as defined in §101(10A); (2) If the Debtor files a statement of intention to surrender a secured motor vehicle, it is correct for the Debtor to include payments contractually due in calculating the Debtor's average monthly payments under §707(b)(2)(A)(iii)(1) and it is correct for the Debtor to deduct that local standard operating expense for that vehicle under §707(b)(2)(A)(ii)(T); (3) If a chapter 7 case of above median income, Debtor is determined not be subject to the presumption of abuse under §707(b)(2), or that presumption is overcome by special circumstances, it is correct to consider the Debtor's ability to pay under §707(b)(3) as part of the "totality of the circumstances...of the Debtor's financial situation."

In re Edmondsons, 2007 WL 656457 (Bankr.D.N.M.). Above-median income Debtors are restricted to the expenses proscribed by the IRS Standards as reported on Form B22C, but that in computing the income side of the "projected disposable income" calculus, it is appropriate to consider a Debtor's actual income as reported on Schedule I.

In re Marrama, 2007 U.S. Lexis 2651 ___S.Ct. ____ (2007). No absolute right to convert case from a chapter 7 to a chapter 13.

In re Parker, 351 B.R. 790 (Bankr.N.D.Ga.2006). Debtor eligibility requirements, including the credit counseling requirement, are non-jurisdictional in nature.

In re Chubb, 351 B.R. 478 (Bankr.E.D.Tenn.2006). Chapter 7 Debtors wishing to retain estate property securing creditor's claim no longer have the option of keeping the payment current on the property and retaining it over a creditor's objection.

In re Zehrung, 351 B.R. 675 (W.D.Wis.2006). Debtors' surrender of car in chapter 13 did not extinguish secured creditor's remaining unsecured claim for deficiency balance on 910 car loan.

In re Pool, 351 B.R. 747 (Bankr.D.Or.2006). Hanging paragraph permitted Chapter 13 Debtors to surrender vehicles that served as security for 910 loans, in full satisfaction of the debt.

In re Hinson, 352 B.R. 48 (Bankr.E.D.N.C.2006). Debtor satisfied her statutory obligations to perform her stated intent to reaffirm even absent reaffirmation agreement, where creditor rejected proposed reaffirmation agreement that did not include additional attorney fees based on an "ipso facto" bankruptcy clause in the contract. Accordingly, the stay was not terminated based on the Debtor's alleged failure to comply with her Statement of Intentions.

In re Wayman, 351 B.R. 808 (Bankr.E.D.Tex.2006). Just because an IRA distribution first became taxable within six months of the petition date did not mean that it had to be used to calculate the Debtor's CMI.

In re Hill, 352 B.R. 69 (Bankr.W.D.La.2006). Debtors' "mixed use" pickup truck was not acquired for "personal use".

In re Tran, 351 B.R. 440 (Bankr.E.D.Tex.2006). Proof of Claims for credit card debt, filed by assignee, had no prima facie evidentiary effect, and were stricken in Debtor's Chapter 13. Under Texas law, a credit card debt is an obligation based on a writing, and the failure to include a copy of the writing was fatal to the claim. The "account summary" did not satisfy the writing requirement.

"The thing I hate about an argument is that it always interrupts a discussion."

G.K. Chesterton
(1874-1936)
Writer

Case Law Update (continued)

In re Trejos, 352 B.R. 249 (Bankr.D.Nev.2006). Case holds that 910 car loan is still a “purchase money” loan, even though it has been assigned. The 910 “hanging paragraph” has five requirements for the anti-bifurcation provision to apply: 1) the creditor must have a purchase money security interest; and, 2) the purchase money security interest must secure a debt that is the subject of the claim; and, 3) the debt must be incurred no more than 910 days before the date of the Debtor’s filing; and, 4) the collateral for the debt must be a “motor vehicle” (defined in 49 U.S.C. §30102(a)(6)); and 5) that motor vehicle must have been acquired for the personal use of the Debtor.

In re Murray, 352 B.R. 340 (Bankr.M.D.Ga.2006). Creditor was a purchase money creditor, protected by the anti-bifurcation provision, despite the fact that the loan included monies for an extended service contract. The Court held that the service contract was inextricably related to the purchase of the vehicle itself, and therefore the cost would be considered part of the “price” of the vehicle.

In re Hudson, 352 B.R. 391 (Bankr.D.Md.2006). Debtor need not obtain credit counseling a minimum of one day prior to the petition date (as some Courts have held).

In re West, 352 B.R. 482 (Bankr.E.D.Ark.2006). Two years chapter 13 discharge bar added by the BAPCPA had to be interpreted according to its plain terms as seldom applicable-Court says the two year bar is measured from filing-to-filing. Not discharge to filing.

In re Robinson, 189 Fed.Appx.371 (6thCir.2006). Bankruptcy Court had authority to order attorney to disgorge attorney fees without a fee application or hearing, and to order the return of the \$200 re-filing fee to Chapter 7 Debtors incurred because original Chapter7 was filed without a creditor matrix.

In re Vagi, 351 B.R. 881 (Bankr.N.D.Ohio2006). Anti-bifurcation “910” provision applies to acquisition of a vehicle by Debtor for use of Co-Debtor spouse. And, Till’s formula for calculating interest applies to 910 loans.

In re Parker, 352 B.R. 447 (Bankr.N.D.Ohio2006). Tax refund attributable to earned income tax credit was not exempt “support”



*When someone gets
something for nothing,
someone else gets nothing
for something.*

Unknown

Attorney Fees

Effective with BAPCPA, attorney fees for Debtor representation increased to \$3,000.00. This \$3,000.00 fee includes all pre-confirmation work **PLUS** a review of the Proof of Claims **AND** to file any appropriate objections to claims (except real estate objections).

With this increase in fees, along with BAPCPA’s requirement to Debtors’ Attorney certifying that the schedules are correct, we expect Debtors’ Attorneys to review creditor reports, appraisals, lien and title searches, and tax returns of the Debtors prior to the filing of the Chapter 13 case. We are **NOT** seeing a lot of these reviews in many cases. We are reviewing claims with car titles not in Debtors’ names; claims filed as secured with a security interest in Debtors’ assets even though the creditor was listed as unsecured; and , claims being filed where the debt was not listed on Schedules D, E, or F.

If we find an attorney with repeated mistakes or failing to file plan and schedules that should be accurate but are not, we will begin to file motions to reduce fees. Not only are you causing a lot of extra work for all parties, but you are doing a disservice to your Debtor because we will pay those claims if you do not review the claims and object as necessary.



Look for In re Kolb, case number 06-32036, a Judge Walter case involving applicable commitment period and “Means Test” v. Projected Disposable Income. The decision is due around the end of March, beginning of April, 2007.

Appraisals, Appraisals, Appraisals

Effective January 1, 2007 our office is no longer arranging real estate appraisals for Debtors. This option will have been removed from our standard plan.

to the Plan. We would like these filed a minimum of one (1) week prior to the §341 Meeting of Creditors. If the appraisal is not received prior to the scheduled §341 Meet-

If your client had an appraisal from a previous case, we will accept appraisals up to one (1) year old. If the appraisal can be used in the instant case, do not forget to re-file it with Court in the new case.

You will now be responsible to order the appraisal. The appraisers listed here are certified or licensed appraisers who have indicated that they meet the qualifications and have an interest in doing appraisals or have already filed appraisals with our office. You are not limited to this list, but any appraiser used must be certified or licensed with the state. The certification number must appear on the appraisal and must include comparables and a picture of the property.

You will also have to pay for the appraisal or schedule the appraiser to be paid through the plan. If they are being paid through the plan, the appraiser will also need to file a Proof of Claim with Court. Once the appraisal is done, it must be filed with Court as a separate document or an attachment

Approved Appraisers

<i>Name</i>	<i>City</i>	<i>Phone Number</i>
Jim Heinz	Dayton	(937) 294-7352
Scott Eagle	Tipp City	(937) 669-5885
Dan McKean	Dublin	(614) 408-3580
Miami Valley Appraisers	West Milton	(937) 698-4808
Michael Moorhead	Kettering	(937) 439-0295
Mel Rutherford	Miamisburg	(937) 865-5211
Deborah Turner	Cincinnati	(513) 608-2846
Brian Wiser (Mac's old office)	Englewood	(937) 836-5169
Dennis Van Hoose	Urbana	(937) 652-2201
Geeding Appraisal Serv.	Eaton	(937) 456-2586
Amir Bunni	Centerville	(937) 434-7986
Jonathan L. Blackburn	Dayton	(937) 435-8683
Thomas J. Brady	Bellbrook	(937) 558-7974

If you are avoiding a second mortgage or a Certificate of Judgment, we recommend that you have a more recent appraisal to justify the value you have given.

If you are filing a post confirmation modification that decreases the percent to the general unsecured creditors from 100% to a compromise percentage, you will need to have an appraisal if one was not done originally.

Surrendered parcels of real estate and 100% plans also require an appraisal now. The Trustee will accept a tax appraisal on surrendered real estate.

ing of Creditors, we will object to the plan and require the case go to hearing. Additionally, we will no longer confirm cases without the appraisal.

Please be sure to place the Debtor's name and case number on the appraisal to insure it is applied to the proper case.

To find the Appraisal List, go to:

www.dayton13.com

Communication under Procedural Tips

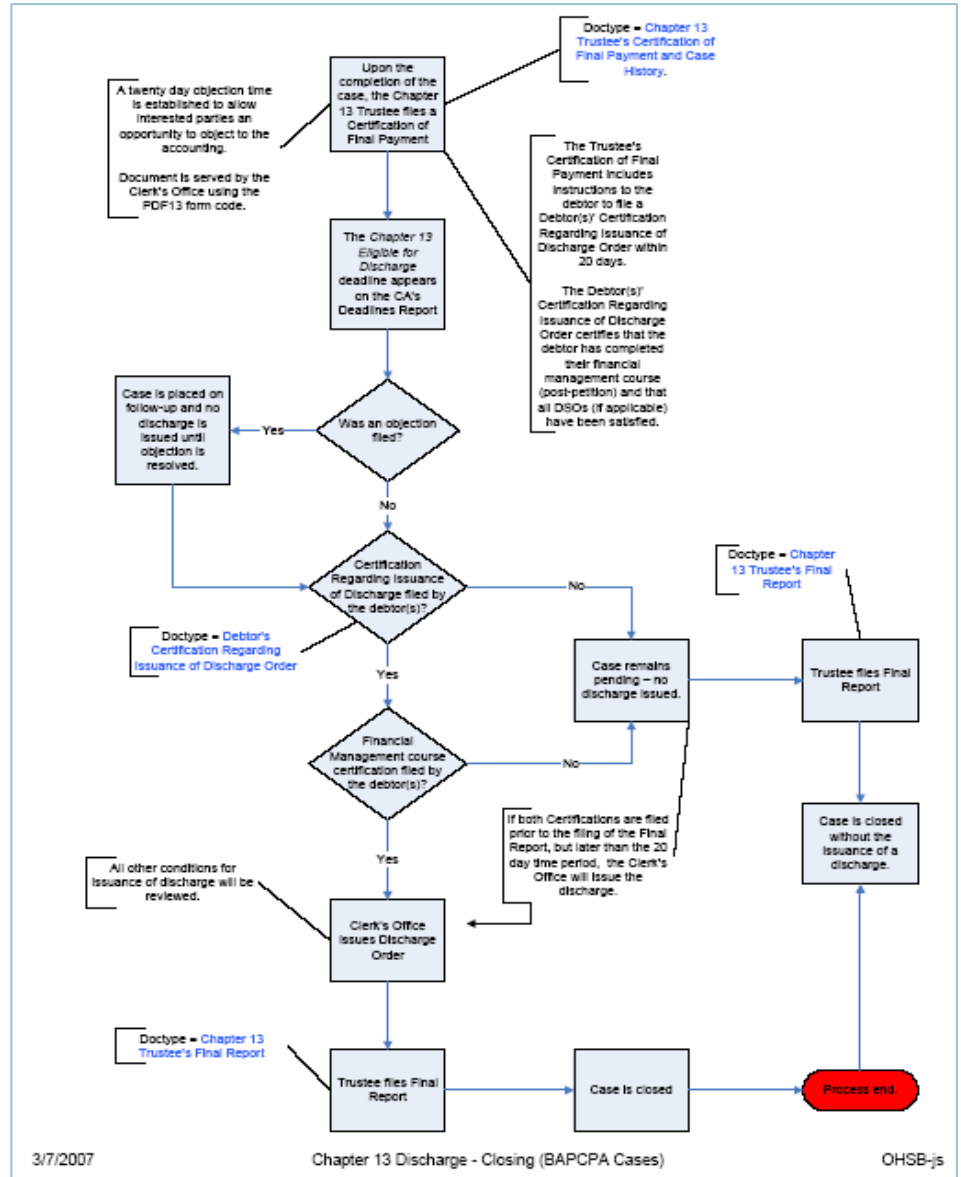


Trustee's Corner

The Chapter 13 Office has begun to execute the new procedure for completed BAPCPA cases. These changes also include new forms that will **require action on your part**. The "Debtor's Certification Regarding Issuance of Discharge Order" is now available on our website. You can download the form at: Dayton13.com, under Forms, "Certification by Debtor Discharge".

New Procedures:

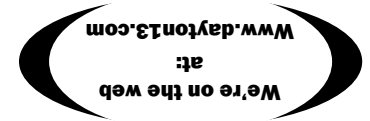
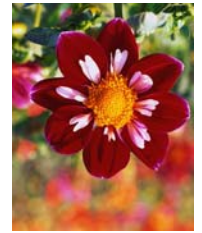
- 1) Upon completion of the Chapter 13 case, the Chapter 13 Trustee will file a "Chapter 13 Trustee's Certification of Final Payment: (this new form takes the place of our former Chapter 13 Final Report). In this Trustee Certification, we will list all receipts and disbursements, along with a paragraph telling Debtors' attorney to file the "Debtor's Certification Regarding Issuance of Discharge Order" within 20 days. The Clerk will serve this Certification on all parties.
- 2) **Debtor's Attorney will file** the "Debtor's Certification Regarding Issuance of Discharge Order" with the Clerk. The Debtor's Certification will state (or certify) that the Debtor has attended the debtor Education class (Financial Management Course, post-petition), not violated any of the provisions of Section 522(q)(1), and if a DSO is involved, the Debtor is current on his/her payments during the term of the chapter 13 case [Section 1328(a)]. This Certification must be served on the UST, Chapter 13 Trustee, Debtor and any DSO party. NOTE: If Debtor fails to file this Certification timely, then the Clerk's Office will close the case without the issuance of a discharge once the Chapter 13 Trustee files his Final Report.
- 3) Upon the filing of the "Debtor's Certification Regarding Issuance of Discharge Order" and providing no objections are filed (and presuming that the Debtor's Certification of Attendance of the Debtor Education Class has been filed), then the Clerk will issue the Discharge. When the Chapter 13 Trustee files his Final Report (upon the clearing of all checks in the case), the case will then be closed by the Clerk's Office.



Code cases do NOT require a Debtor's Certification. However, the forms that the Trustee will file will still be called a "Chapter 13 Trustee's Certification", in place of the old Final Report. The report that will be sent when all checks have cleared will be a Final Report (in place of the Final Account).

REMEMBER: This is only for COMPLETED cases that are eligible for discharge and filed after October 17, 2005 (BAPCPA).

For the Flowcharts and forms for Pre-BAPCPA completed cases, dismissed or converted cases, please visit our Dayton13.com website.



Phone: 937-222-8100
Fax: 937-222-7383
Email: gmunm@dayton13.com

131 N. Ludlow St.
Suite 900
Dayton, OH 45402

JEFFREY M. KELLNER, TRUSTEE
OFFICE OF THE CHAPTER 13

JEFFREY M. KELLNER, TRUSTEE



Debtor Education

Tuesday Classes

11:15 a.m.—1:15 p.m.

March 20
March 27
April 3
April 10
April 17
April 24
May 1
May 8
May 15
May 22
May 29

Saturday Classes

10:00 a.m. —12:00 p.m.

April 14
May 12

Debtor Education classes are going very well. We are receiving a lot of great comments from Debtors who have attended this free program.

Many Debtors are arriving, and do not realize that they will have to pay for parking the day of class.

Please inform your clients that valet parking is available for attendees at the Talbott Tower at a discounted rate of \$4.00 per day. Our office is only two (2) blocks from the U.S. Bankruptcy Court.

Certificates are emailed at the completion of the course to your office, so it is imperative that we have an updated email address that certificates are to be sent to. You can send this information or address Debtor Education questions to: debtoreducation@dayton13.com



Means Test Seminar

Friday, April 13, 2007

9:00 a.m.—12:00 p.m.

Chapter 13 Office

Talbott Tower

We will go through every line of the “Means Test” and let you know what our position is for every issue. We will cite cases relating to each issue. We have invited several attorneys and the U.S. Trustee to participate. We will also use several hypothetical cases to fill out the “Means Test” (Official Form 22C). This is a **FREE** seminar. You must reserve a spot by calling Ginger at: (937) 222-7600 ext. 114.