

# Dayton Chapter 13 News

## Office Of The Chapter 13 Trustee

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Chief Judge Thomas F. Waldron

## Chief Judge Thomas F. Waldron Retiring Saying Goodbye to an Icon

### Special points of interest:

- Guy R. Humphrey—New Judge
- Upcoming Chapter 13 Seminar
- Office Contacts
- New Case Law
- Web Site Information

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Jeffrey Kellner, Chapter 13 Trustee, has requested of me - as the first Code Chapter 13 Trustee in Dayton - to contribute an article as to The Honorable Thomas F. Waldron, United States Bankruptcy Judge.

I don't know whether to be serious or non-serious, so I will do both. I appeared before him more times - which neither of us would like to admit - than any other attorney ever. I had been Chapter 13 Trustee for five years when he was appointed in 1985. At that time we both had black hair, but he had the black robe and I had the wrinkled suit. We both now have minimal or no black hair - probably from me appearing before him - but the robe is still black - albeit worn in the seat and the seams stressed. I, and the wrinkled suit, have been retired over six years and he and the black robe are now following me into retirement.

In my opinion he is the best thing that ever happened to the Bankruptcy Court in Dayton. He came from Cincinnati, without any preconceived conceptions of any of the local bankruptcy attorneys, so he started with a clean state and mind. He, along with the support of The Honorable William A. Clark, implemented extremely practical local rules, court decorum, courtroom control, courtesy to those who appeared before them and no nonsense litigation tactics.

I have heard many attorneys who seldom appear in bankruptcy court say that it was a pleasure to appear in his courtroom because he "cut to the chase" and rendered timely and cogent opinions. (Of course he and I sometimes didn't see eye-to-eye on what was a cogent opinion - but he still had the black robe.)

I appeared before him - after I retired - representing an insurance company and he was ripping the debtor's attorney and I'm feeling smug as a bug in a rug. He then turns to me, peers over his glasses - which was never a good sign - stomps on my rug, and says, "Mr. Ledford, What are you doing here?" with emphasis on the "what" and proceeded to destroy my case. I haven't been back!

It has indeed been a great pleasure knowing Judge Waldron both as a Judge and as a person.

By:  
George W. Ledford, Esq.



## Guy R. Humphrey

### Practice Concentration

Practices in the areas of commercial debtor/creditor law, bankruptcy representation, receivership, and litigation. Extensive commercial bankruptcy experience. Has represented debtors, secured creditors, unsecured creditors, committees, and purchasers of assets from financial institutions and bankruptcy estates in a variety of areas, including businesses engaged in manufacturing, real estate, hotel/motel, retail, construction, restaurant/food service, delivery/transportation, and the provision of electricity and gas (regulated and unregulated).

**Achievements and Awards** Listed in Ohio Super Lawyers, Bankruptcy and Debtor-Creditor Rights

Listed in Best Lawyers in America, Bankruptcy and Debtor-Creditor Rights

### Education

Kent State University (B.S. *summa cum laude*, 1981)

The Ohio State University (J.D. degree, *cum laude*, 1984)

### Bar Admissions

Ohio

U.S. District Court, Southern and Northern Districts of Ohio

U.S. Court of Appeals, Sixth and Eighth Circuits

U.S. Supreme Court

### Professional Memberships and Community Service

Columbus Bar Association – Member

Columbus Bar Association – Bankruptcy Law Institute Planning Committee (Co-Chair 2006-2007)

Ohio Bar Association – Member

American Bar Association – Member Federal Bar Association – Member

Commercial Law League of America

Turnaround Management Association

Director of Ohio Township Association Leasing, LLC

ADR Mediator for the U.S. Bankruptcy Court (Southern District)

Red Cross 5+ Gallon Blood Donor

Boy Scouts of America (Law Explorer Post Advisor 1987-1988; Cub Scout Den Leader 1997-2000; Troop Committee Member 2000-Present; Merit Badge Counselor 2003-Present)

### Speeches and Publications

Frequent lecturer concerning bankruptcy and debtor-creditor issues

# Introducing

## Guy R. Humphrey

*Mr. Humphrey will be sworn in to the United States Bankruptcy Court, Southern District of Ohio, Western Division at Dayton, as the new Bankruptcy Judge on October 2, 2007.*

## Hearing Dates

When you are preparing Motions, Amended Plans or anything that requires scheduling a future hearing date, we would like to clarify which dates are to be used.

Our website (address below), has a tab for **Hearing Dates**. The dates, (as shown on the right), have already been approved by the Judges and our Office for hearings before the Court.

When you file a motion with a twenty (20) day notice, you need to check future dates that allow 20 days for the notice period plus 5 days for mailing at a minimum. Example: If you file a motion on July 1, 2007, for a

Judge Walter case, you need to allow the notice and mailing period, which would allow you to set the hearing date of August 7, 2007. July 24, 2007, would be too soon.

We are finding a lot of issues with the notices on Amended Plans and Modifications as well.

You must allow the twenty (20) day period to pass before scheduling the hearing. Many plans are being noticed with hearing dates before the objection period is over.

Proper hearing dates allow cases to be confirmed quicker, changes to be applied faster and issues resolved sooner.



[www.dayton13.com/hearing\\_dates.htm](http://www.dayton13.com/hearing_dates.htm)

## Pre-Confirmation Department

### Attorney Fees

Please make sure that the numbers on the plan match the numbers on the Application for Allowance of Attorney Fees. In other words, you request \$3,000 and took \$1,000 up front. The plan should show under Amount Fee Requested \$3,000, Fee Due in Plan \$2,000 and monthly amount (over at least 12 months), your per monthly figure. The Application for Allowance of Attorney Fees should show for attorney fees, "I have agreed to accept \$3,000 prior to filing. I have received toward my attorney fees \$1,000 and balance due as to attorney fee \$2000." If the numbers do not match then no attorney fee is awarded.

Are changes in procedures and requirements leaving you feeling a little cloudy?

Be Enlightened! Sign up for our Chapter 13 Seminar!

## Judges' Confirmation Hearing Dates For 2007

All hearings are held at **1:30 P.M.** Unless otherwise designated

### Judge Waldron

June 5, 2007  
 July 6, 2007, at 9:00 a.m.  
 July 10, 2007  
 July 31, 2007  
 August 14, 2007  
 September 4, 2007

### Judge Walter

June 26, 2007  
 July 17, 2007  
 July 24, 2007  
 August 7, 2007  
 August 21, 2007  
 September 18, 2007

### TAXES ONLY

September 26, 2007 at 9:00 am

September 26, 2007

### Judge Humphrey

October 2, 2007  
 October 23, 2007  
 November 13, 2007  
 December 11, 2007

### Judge Walter

October 16, 2007  
 November 20, 2007  
 December 18, 2007

6/19/07

## Orders, Orders, Who Is Taking Orders?

Are you receiving phone calls looking for orders to satisfy motions? Well, it is probably our Office looking to resolve issues and keep cases moving forward.

Whenever you file a motion, we must receive the order before we will make any changes to a case. Our goal for confirmation orders is the original confirmation order to be sent by our Office after the objection period has expired. After the case is confirmed, any post-confirmation modifications filed by your office must be followed by the Order Confirming Modified Plan, if there is no opposing objection. You must upload the order after the objection period has passed. Timely or-

ders are especially important if there are outstanding relief from stay issues or a Debtor is waiting for a reduction of payment, sale of real estate and/or personal property, timely completion, etc.

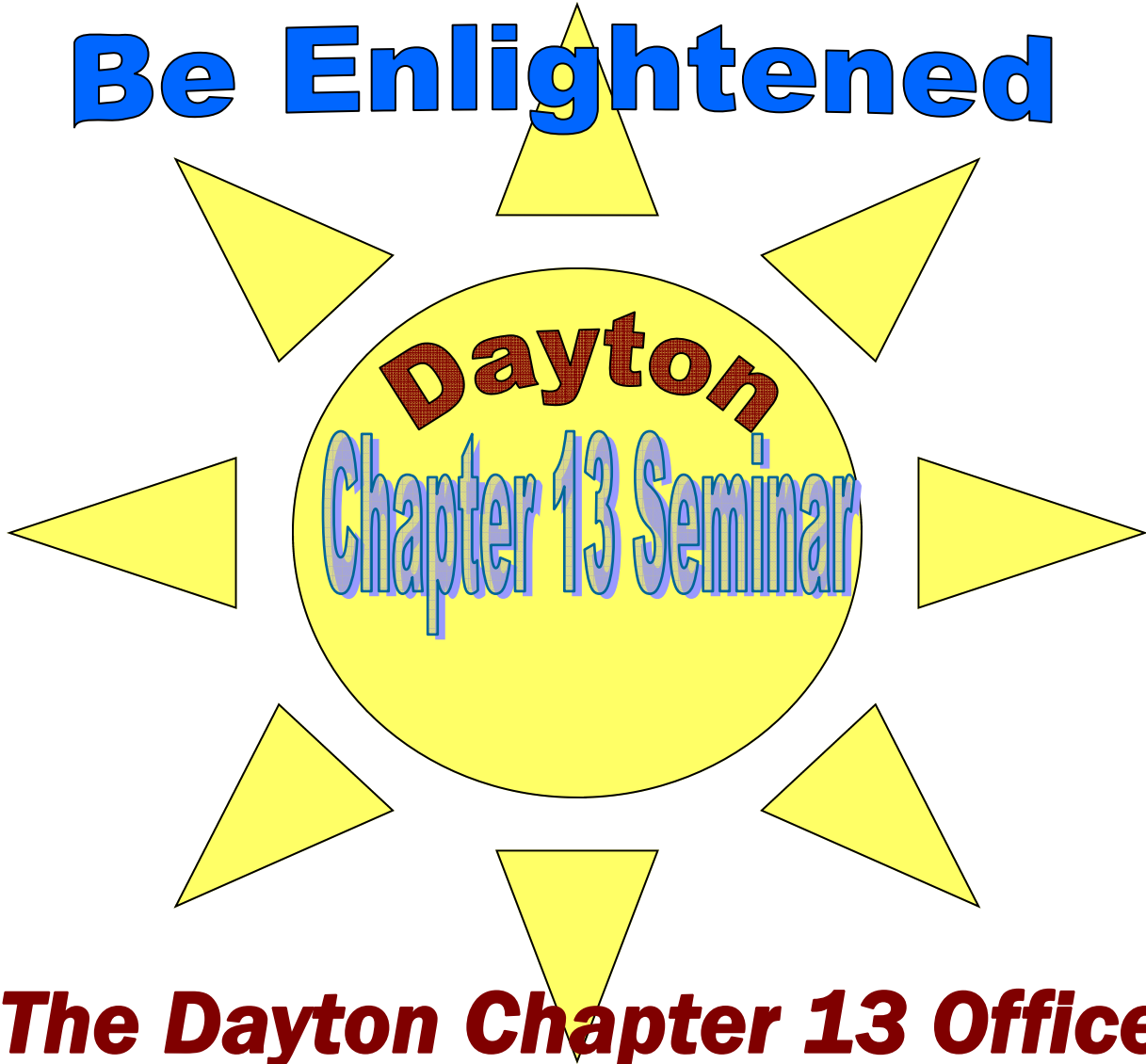
When cases are completing, do not forget your order on attorney fee applications or you may not receive payment.

**Who is taking orders?**

**WE ARE!**

Hope to see yours soon!

# Be Enlightened



## ***The Dayton Chapter 13 Office***

*is proud to present*

a **Dayton Chapter 13 Seminar**

to be held **October 19, 2007,**

at the **Dayton Downtown Doubletree Hotel**

*Presenters include: the U.S. Trustee, Local Bankruptcy Judges,  
Debtor and Creditor Attorneys and the Chapter 13 Staff*



**More Information and Registration to Come**

**OFFICE OF THE CHAPTER 13 TRUSTEE**  
*Jeffrey M. Kellner, Chapter 13 Trustee, Dayton, Ohio*

<u>Name</u>	<u>Ext.</u>	<u>Title</u>	<u>Email Items</u>	<u>Email Address</u>
Barb	136	Service Clerk	Pay Advices & Taxes	<a href="mailto:bmcdaniel@dayton13.com">bmcdaniel@dayton13.com</a>
Brenda	130	Senior Supervisor	Official Pay Offs	<a href="mailto:bledford@dayton13.com">bledford@dayton13.com</a>
Cathy	104	Special Procedures Analyst	IRS/Insurance	
Claire	129	Closing Clerk		
Gina	116	Confirmation/Closing Analyst		
Ginger	114	Legal Assistant	Hearing Dates, Newsletter	<a href="mailto:gmun@dayton13.com">gmun@dayton13.com</a>
Janet	142	ECF Clerk		
Jeff	128	Trustee		<a href="mailto:jmkellner@dayton13.com">jmkellner@dayton13.com</a>
Jenny	125	Confirmation/Closing Analyst		
Joan	144	Claims Clerk		
John	112	Pre-Confirmation Analyst	Debtor Education	<a href="mailto:debtoreducation@dayton13.com">debtoreducation@dayton13.com</a>
Johnnie	115	Legal Clerk		
Julie	110	Pre-Confirmation Analyst		
Linda O.	140	Claims Analyst		
Linda W.	126	Operations and Personnel Manager	Operations Matters	<a href="mailto:lwright@dayton13.com">lwright@dayton13.com</a>
Lisa	134	Receipts Clerk		
Mary	111	Modification Analyst		
Megan	127	Controller		
Michelle	138	Clms. Supervisor & Asst. Operations Mgr.		<a href="mailto:meads@dayton13.com">meads@dayton13.com</a>
Phyllis	146	Claims Analyst		
Sandy	135	Receipts Clerk		
Sara	101	Public Relations Clerk		
Scott	137	Staff Attorney	Hearing Information, Legal	<a href="mailto:sgstout@dayton13.com">sgstout@dayton13.com</a>
Shawna	118	Confirmation/Closing Analyst		
Shelley B.	143	Claims Analyst/Trainer		
Shelly C.	145	Process Clerk		
Stephanie J	109	Pre-Confirmation Analyst		
Stephanie M	117	Pre-Confirmation Analyst		
Susan	102	Delinquency Clerk		
Takelia	108	Pre-Confirmation Analyst		
Tim	105	Systems Manager	Web access agreement	<a href="mailto:tledford@dayton13.com">tledford@dayton13.com</a>
Traci	133	Claims Analyst		
Valerie	113	Pre-Confirmation Supervisor		<a href="mailto:vwalker@dayton13.com">vwalker@dayton13.com</a>

## Case Law Update

### **In re Kolb, 2007 W.L. 960135 (Bkcy.S.D.OH. 2007) Judge Walter**

Judge Walter ruled that line 58 of the Means Test is the controlling number and must be paid to unsecured creditors with very few exceptions except with special circumstances. The Court ruled that while acknowledging divergent judicial views on the issue, the Court determined that “projected disposable income” is simply monthly “disposable income” applied to each future month of a Chapter 13 Plan. As the Debtors failed to satisfy the requirements of Section 1325(b), the Court denied confirmation.

The decision cited Hanks, a Utah case, to allow an exception to the Means Test only for unique circumstances such as military duty or medical disability. In this case the Court stated the Debtor did not raise any issue of “special circumstances” under Section 707(b)(2)(B) and the Court was left with no statutory basis for adjusting the calculation of disposable income for Debtor’s plan payments. The Court did note that the timing and nature of post-petition plan modifications will likely be impacted by the Court’s interpretation of Section 1325(b). The Court did not rule on whether the Applicable Commitment Period was temporal and/or a multiplier as this case had to result in a 100% plan.

### **In re Storey, Case No. 06-50198 (Bky. S.D.OH. 2007) (Judge Preston)**

Chapter 13 Trustee filed a motion to modify Debtor’s plan to increase the dividend as claims filed would make the projected length less than the applicable commitment period for an above median income Debtor. Debtors objected, stating the confirmation order was *res judicata*, and any modification would require an unanticipated and substantial change in Debtors’ circumstances. The Court, however, followed the Fields decision which found that post-confirmation modification is within the discretion of the court after consideration of the totality of the circumstances. The Court also found the “Applicable Commitment Period,” to be a temporal term determining plan length. The Court stated the Debtors must commit to their Plan all of their projected disposable monthly income for a period of 60 months.

### **Horr v. Smart Mart, 07-CV-00010, (S.D. OH 2007)**

District Court affirmed the decision of the Bankruptcy court in Cincinnati. The issue was whether the “910” hanging paragraph was discretionary or mandatory. Debtors had proposed cramming down two vehicles even though the vehicles had been purchased within the 910 days prior to filing. The District Court found the plain language of the statute and the overwhelming weight of the case law supports that the hanging paragraph provisions are mandatory.

### **See also, Sparks v. HSBC Auto Finance, 06CV 670, (D.S. OH 2007)**

District Court affirmed the decision of the Cincinnati Bankruptcy Court that the provisions of the hanging paragraph are mandatory and the car could not be crammed down.

### **Matter of Wright, No. 07-1483 (7th Cir. July 3, 2007)**

The 7th Circuit ruled the Chapter 13 Debtors cannot surrender their cars in full satisfaction of PMSI cars purchased within 910 days of filing. The Court found the creditor’s unsecured deficiency claim was determined by state law and the parties’ contract.

(Taken from the Columbus Chapter 13 Trustee Messenger, Summer 2007, newsletter)

### **In re Graham, Case No. 06-54764, In re Lammers, Case No. 07-50793**

Issue is whether surrendered secured payments can be deducted on lines 47 and 48 of the B22C form even if the collateral is to be surrendered in the Chapter 13 Plan? Following Judge Waldron’s decision in In re Sorrell, 2007 Bankr. Lexis 161 (Bankr. S.D.Ohio 2007), Judge Preston held that both Chapter 7 and Chapter 13 debtors may deduct this expense on surrendered property on Form 22. See, In re Graham, Case No. 06-54764 (Judge Preston March 6, 2007); In re Lammers, Case No. 07-50793 (Judge Preston May 17, 2007).

### **In re Upton, 2007 Bankr. Lexis 813 (Bky. S.D. OH 2007)**

The income and expenses reported on Form B22C do not, however, control the “projected disposable income” that a debtor must pay into the Chapter 13 plan pursuant to 11 U.S.C §1325(b). Reference to Schedule I and J is still the appropriate method to determine projected disposable income. Judge Preston held that income from Social Security benefits, which is specifically excluded from the definition of “current monthly income,” is also excluded from projected disposable income. Nonetheless, the court went on to find that where the debtors had a surplus of actual income on Scheduled I and J, the plan may not meet the good faith requirement of 11 U.S.C §1325(a)(3).

### **In re Reid, Case No. 06-57080 (Judge Preston, March 9, 2007) (Bky. S.D. OH 2007)**

In this case, a family of two sought to retain a \$470,000 house through a plan with a 3% dividend. The debtors’ total housing expenses were \$3,225 per month, while the plan would have paid approximately \$2,600 to unsecured creditors. The Court denied confirmation of the plan as not proposed in good faith.

## Legal Department

### Be proactive!

Many of you are waiting for a phone call from our office before reviewing issues on the Court docket. As motions and objections are filed in cases, please take the time to review the facts and be proactive.



Objections that require you to file an amended plan will automatically reset any creditor's

objection to the notice date of the Amended Plan. If you agree to a "D+14" (denial of plan with 14 days to file an Amended Plan), do not wait until the date of the required Amended Plan to sign and fax back the order. The agreed order will take the hearing off the docket, but the matter hangs in limbo until the order is approved by all parties and uploaded with Court. If you agree to the denial, it sustains the objection allowing you to file a confirmable plan. Many of you are filing Amended Plan after Amended Plan when you only need an increase of payment or

dividend. This can easily be done through a modification at bar. This keeps you from having to file numerous plans, us from working and following new plans and allows the cases to confirm a lot faster.

Do not wait until the hearing to start looking for resolutions. Remember, no response, no hearing. With so many cases to maintain, motions to dismiss are automatically tickled for a dismissal order. **You must file a response to the matter for it to be set for hearing.**



Do you feel like we are raining on your parade? Look for registration of our Chapter 13 Seminar.

**We can shed some light.**

## Claims Department

Please make sure to caption your notice, motion or order according to the information in the body of the filing. We are receiving many documents with docket numbers only for a title. If you are withdrawing an objection, please refer to that objection and whom you are representing. (Ex. Withdrawal by GMAC to Objection to Proof of Claim).

Correctly identifying documents will allow us to process them faster and more efficiently.

Review Debtor's car titles. Titles must be in the Debtor's name with the correct lien holder and vin number. Checking these at the beginning of a case will save everyone a lot of time and clarify questions that may arise in the future.

As part of your verification of Debtor's debts, you should be reviewing the titles prior to filing the case. If our Office is filing repeated objections to Proof of Claims due to the title not being in the Debtor's name, we will file a Motion to Reduce Fees.



## The Chapter 13 Office Welcomes Sara Vincent



She is a graduate of Tri-County North High School. She came to us from the Securitas Company where she held a supervisor position as a security guard for four (4) years. She is currently attending Sinclair Community College to attain an accounting degree.

Sara is the friendly voice you have been hearing when you call the Chapter 13 Office. She is our new Public Relations Clerk.

**Sara Vincent** is our newest addition to the Chapter 13 Team.

### PERSONAL FINANCIAL MANAGEMENT COURSE

#### SCHEDULE FOR JUNE -SEPTEMBER 2007

Sat., August 11, 2007	10:00 A.M. - 12:00 P.M.
Tues., August 14, 2007	11:15 A.M. - 1:15 P.M.
Tues., August 21, 2007	11:15 A.M. - 1:15 P.M.
Tues., August 28, 2007	11:15 A.M. - 1:15 P.M.
Tues., September 4, 2007	11:15 A.M. - 1:15 P.M.
Sat., September 8, 2007	10:00 A.M. - 12:00 P.M.
Tues., September 11, 2007	11:15 A.M. - 1:15 P.M.
Tues., September 18, 2007	11:15 A.M. - 1:15 P.M.
Tues., September 25, 2007	11:15 A.M. - 1:15 P.M.



## *Trustee's Corner*

We will soon be coming to the two year mark of BAPCPA. It has been, at times, difficult trying to implement all of the changes resulting from BAPCPA. I'm sure attorneys will agree with this statement. We are now beginning to receive decisions from the bankruptcy and appellate courts around the country which will help in our planning process. However, there are still many issues to be decided, both on local and circuit levels.

The Means Test continues to be a prime source of problems and issues. We still have a number of unresolved areas in the Means Test, including the determination of number in household, secured debt treatment, conversion matters and the marital adjustment (this is a major issue).

Attorneys – Check the Chapter 13 Trustee Website ([www.Dayton13.com](http://www.Dayton13.com)) weekly for your meeting of creditors' schedule. You should never miss a 341 meeting by stating you did not receive the notice. If you cannot be at the meeting due to a conflict, check the website to see if another attorney can handle the hearing for you. If you are running late or caught in traffic, call the 341 meeting phone at: **937-241-3243**. You look bad in front of your debtors if you do not show without any phone calls or notification to the Trustee at the 341 examination room. Plus, we will file a motion to reduce attorney fees if no one contacts us.

If you have a contested matter hearing, check the website to determine if the hearing is still on, resolved or continued. Call your Debtors to let them know.

Many debtors' attorneys are not preparing for their case prior to the meeting of creditors (or even after). This would include a failure to have the appraisal completed prior to filing of the Chapter 13 plan, which then affects whether the debtor can avoid a lien on their real estate. We are seeing the appraisal received at or near the 341 meeting and the valuation changes the plan, which slows up the entire process. Upon the initial review of the debtors' case and if the numbers are close, order the appraisal to determine what options are available to the debtors on lien avoidance.

Also remember that the increased attorney fees in Chapter 13 INCLUDE a review of the claims and the filing of any objections to claims (except mortgage objections). You need to review the claims on PACER and our Notice of Intention to Pay Claims.

The Montgomery County Treasurer has recently filed 580 Proofs of Claims for post-petition delinquent real estate taxes. This may cause your Chapter 13 plan to extend over 60 months. Review the claim (you will be notified by our Office by a Notice of Intent to Pay Claim). Make sure the numbers are correct.

Mark your calendar for **Friday, October 19, 2007** for our local Chapter 13 seminar. It will include judges, US Trustee staff, local attorneys for both debtors and creditors, and the Chapter 13 Trustee's Office. We will cover many topics and issues, especially the Means Test and case law update, and will provide a "Procedures Manual" for Chapter 13 practice. The seminar is for attorneys and their staff.

By:

*Jeffrey M. Kellner*

Dayton Chapter 13 Trustee

Have you checked out our website lately? [www.dayton13.com](http://www.dayton13.com)



### A wealth of information at your fingertips

#### Docket

Updated Court dockets for both Judges, consent dockets and the 341 schedule

#### Hearing Dates

Judge's approved hearing dates through the end of 2007.

#### Newsletter

Need to refer to a previous newsletter? They are here.

#### Communications

Approved Appraisers List and new case law

#### Forms

Need a form? We have everything from our standard Chapter 13 Plan to Applications to Incur Credit, Blank Proof of Claims, Special Counsel forms for workers compensation, etc., Application to Sell or Dispose of Personal Property and **MUCH MORE!**

#### Links

Debtor Education Schedule, PACER, 13Network, Web Access Agreement, National Data Center, Pledge of Excellence and NACTT

#### Seminars

Check this area for our upcoming Chapter 13 Seminar and registration information

#### Debtor Education

Class dates and information

**You won't believe what you have been missing!**

*Office Of The Chapter 13 Trustee*

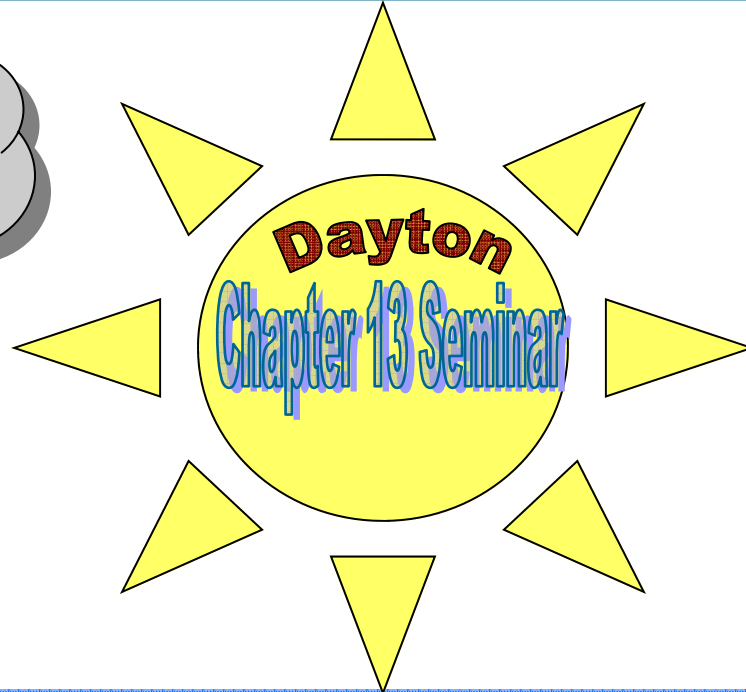
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We're on the Web!

[example.microsoft.com](http://example.microsoft.com)

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**Be Enlightened! Sign up for  
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**Mark your Calendar for:**  
***Friday, October 19, 2007***