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IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION  
AT AKRON

U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

IN RE: ❖  
❖ Administrative Order Number 03 - 07  
CHANGE IN PROTOCOL FOR ❖  
INTERNAL PROCESSING OF ❖ JUDGE MARILYN SHEA-STONUM  
MOTIONS FOR RELIEF FROM STAY ❖  
/ ABANDONMENT ❖

**AS OF DECEMBER 1, 2003**, the current protocol for the internal processing of a motion for relief from stay / abandonment (a "Relief/Abandonment Motion") filed in the Akron Bankruptcy Court location in cases pending under chapters 7 and 13 of the Bankruptcy Code will be supplemented as follows:

1. The Court will no longer send a "Notice of Deficiency" on a Relief/Abandonment Motion which is substantively non-compliant with (a) General Order 99-1, (b) all applicable local bankruptcy rules and/or (c) Judge Shea-Stonum's Administrative Order 02-03<sup>1</sup> when it has become apparent that the individual attorney or law firm filing the deficient Relief/Abandonment Motion has continually failed to follow the Court's well-publicized filing requirements. The determination of whether the Relief/Abandonment Motion is substantively non-compliant and/or whether counsel has continually failed to abide by the Court's filing requirements is within the sole discretion of the Court.
2. If substantive non-compliance in a Relief/Abandonment Motion has been found and if such motion was filed by an individual attorney or law firm that has continually failed to follow filing requirements, a notation will be made on the docket that the preliminary hearing on the Relief/Abandonment Motion will be held as scheduled. The Relief/Abandonment Motion will then be denied by a Court order which will be entered after the preliminary hearing on the Relief/Abandonment Motion has been held. Such denial will be without prejudice to the moving party being able to file a new Relief/Abandonment Motion with the payment of another filing fee. Counsel for the moving party and any other party in interest is free to attend the preliminary hearing.

Counsel **SHALL NOT** call either chambers or the Clerk of Court's office to inquire as to whether a deficiency in a Relief/Abandonment Motion has been detected, what such a deficiency may be and/or whether a "Notice of Deficiency" will be issued. Any counsel so doing will be reported to Judge Shea-Stonum who may, in her sole discretion, schedule a hearing requiring that counsel to show cause why he or she should not be sanctioned for failing to abide by the terms of this Administrative Order.

The foregoing protocol for the internal processing of a Relief/Abandonment Motion filed in the Akron Bankruptcy Court location supplements the Court's current protocol which has been as follows:

- [1] **Case Manager / Law Clerk Review:** Shortly after a Relief/Abandonment Motion is filed, it is reviewed by a case manager to ensure compliance with the requirements of (a) General Order 99-1, (b) all applicable local bankruptcy rules and (c) Judge Shea-Stonum's Administrative Order 02-03. If any non-compliance is found, the Relief/Abandonment Motion is forwarded to one of Judge Shea-Stonum's law clerks and, if appropriate, a "Notice of Deficiency" is issued.<sup>2</sup>
- [2] **Issuance of a "Notice of Deficiency:"** If a "Notice of Deficiency" is issued, the time frame set forth in 11 U.S.C. §362(e) will not begin to run and a preliminary hearing on the Relief/Abandonment Motion will not be held unless and until all necessary amendments have been filed with the Court.<sup>3</sup> Counsel is required to remedy all deficiencies by not later than 15 days after entry of the "Notice of Deficiency" or the Relief/Abandonment Motion may be denied for a failure to prosecute.<sup>4</sup>

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<sup>2</sup> If the Relief/Abandonment Motion is not deficient and if an objection or response to the Relief/Abandonment Motion is not filed then movant and/or movant's counsel need not appear at the preliminary hearing on the Relief/Abandonment Motion but must, thereafter, submit an appropriate proposed order granting relief on a default basis. See Administrative Order 02-03 at ¶6.

<sup>3</sup> See Administrative Order 02-03 at ¶5.

<sup>4</sup> In the context of secured creditors, the initial burden of going forward on *any* motion for relief from stay abandonment is on the moving creditor who must establish (1) the amount of the debt owing to it by debtor, (2) that the moving creditor holds a perfected security interest in property of the estate and (3) a showing of the right to the relief it seeks under either 11 U.S.C. §§362(d)(1) or (d)(2). See, e.g., *In re Planned Systems, Inc.*, 78 B.R. 852, 859-60 (Bankr. S.D. Ohio 1987).

Through use of this protocol the Akron Bankruptcy Court sought to promptly identify deficiencies and bring them to the attention of the moving party or their counsel.<sup>5</sup> Additionally, by giving the moving party an opportunity to remedy deficiencies through the filing of an amended Relief/Abandonment Motion - instead of merely denying the deficient motion for a failure to prosecute (*see* footnote 4, *supra*) - the moving party need not file a new Relief/Abandonment Motion and pay another filing fee. These efforts were undertaken in the hope that counsel would learn from the mistakes noted in the deficiency notices and take corrective action.

Since implementing such protocol, the Court has found [1] that at least 26% of all Relief/Abandonment Motions filed in the Akron Bankruptcy Court location from January 2, 2003 through April 15, 2003 were deficient and [2] that the percentage of deficient Relief/Abandonment Motions filed after April 15, 2003 has not decreased. The need to issue a "Notice of Deficiency" on such a large percentage of Relief/Abandonment Motions has added to the burden of chamber's staff and the Clerk of Court's Office during a time in which the overall rise in filings in the Akron Bankruptcy Court location has taxed the Court's limited resource of personnel. Accordingly, the protocol for the internal processing of a Relief/Abandonment Motion is being supplemented as set forth in this Administrative Order.

**IT IS SO ORDERED.**

  
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**MARILYN SHEA-STONUM**  
**Bankruptcy Judge**