

JUDGE WHIPPLE'S PROCEDURES FOR CHAPTER 13 DISCHARGE AND CASE CLOSING ON CASES COMMENCED ON AND AFTER OCTOBER 17, 2005

As part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Congress enacted several new provisions governing a Chapter 13 debtor's discharge. The national Interim Rules (Revised) and forms drafted to address the BAPCPA amendments do not provide complete guidance to clerks and judges on how these provisions are to be implemented, nor have local rules, general orders or generally accepted procedures been adopted at this time. Confirmed plans on cases filed on or after October 17, 2005, the effective date of the relevant provisions of BAPCPA, are now beginning to be completed. Pending adoption of rules, orders and forms to address these new provisions, discharge and closing procedures on those Chapter 13 cases governed by BAPCPA assigned to Judge Mary Ann Whipple will generally be implemented as follows:

1. Section 1328(g)(1) states that the court shall not grant the debtor a discharge unless the debtor has completed after the filing of the petition an instructional course concerning personal financial management. Interim Rule (Rev.) 1007(b)(7) requires debtor to file a statement regarding completion of the course prepared on the appropriate Official Form. The Official Form that has been drafted to implement this rule is Official Form 23. Under Interim Rule (Rev.) 1007(c) the statement must be filed no later than the last payment by debtor on the plan. Upon filing of the Chapter 13 Trustee's Final Report and Account certifying that the plan is completed, the case will be processed for discharge. If Official Form 23 is not filed, the case will be closed without entry of discharge. No deficiency notices or orders to show cause regarding the absence of Official Form 23 will be entered.

2. If Official Form 23 has been filed at the time the clerk reviews the case for discharge, the court will enter two additional orders as a predicate to entry of discharge.

(A) Under Section 1328(a), debtors who are required by a judicial or administrative order, or by statute, to pay a domestic support obligation must certify that all amounts so payable and due on or before the date of the certification have been paid. The court is directed to enter discharge after such certification.

To implement this provision, the court has drafted a standard form of certification and an order requiring the form of debtor certification to be filed with the court. A copy of the form of order and certification is attached to this memorandum. This order directing the filing of the certification will be entered in all cases after filing of the Chapter 13 Trustee's Final Report and Account showing that the plan has been completed and where an Official Form 23 has been filed by the debtor. The standard order requires the certification to be filed within 28 days from the date of service on the debtor and debtor's counsel if any. In a joint case, a separate certification form must be executed and filed by each debtor.

If there is no response and no certification is filed on or before 28 days after service of the order, the case will be closed without discharge. No deficiency notices or orders to show cause will be issued to address the missing certification document once the deadline has passed. Extensions of the deadline may be requested in accordance with the Federal Rules of

Bankruptcy Procedure and applicable local rules governing motions.

If debtor certifies that she/he is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the case will be processed for discharge.

If debtor certifies that she/he is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, and that all amounts so payable up to the date of certification have been paid, the case will be processed for discharge.

If debtor certifies that she/he is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, and that all amounts so payable up to the date of certification have not been paid, the case will be closed without discharge.

(B) Under Section 1328(h), the court may not grant a debtor a discharge unless it makes certain findings after notice and an opportunity for hearing, including that there is no reasonable cause to believe that Section 522(q)(1) may be applicable to the debtor and that no proceeding of the kind described in Section 1328(h)(2) is pending as to the debtor. Debtors subject to this provision are required by Interim Rule (Rev.) 1007(b)(8) to file a statement in this regard. While it is extremely unlikely that this provision will apply to any Chapter 13 debtor in this district, the statute appears to require the court to make the findings in all cases. The court has drafted a standard form of order for making these findings and providing notice and opportunity to contest it. A copy of the standard form of order is attached to this memorandum. It will be entered by the court after the Chapter 13 Trustee files his Final Report and Account showing the plan completed and where Official Form 23 has been filed. No response is required by the debtor or any other party in interest unless the court's findings are incorrect, in which case a hearing must be requested within the time frame set forth in the order.

3. Under Section 1328(f), certain debtors who have received discharges in prior cases are not entitled to a discharge in the successive Chapter 13 case. There are now conflicting interpretations of this provision and how the time frames should be calculated. Judge Whipple is not monitoring or enforcing application of this provision and believes that this issue should properly be brought to the attention of the court and addressed by the parties in interest. If a party in interest, including the debtor, believes that no discharge should be entered due to a prior case filing within the scope of Section 1328(f), an appropriate objection to entry of the Chapter 13 discharge must be filed by a party in interest, or debtor may file a written waiver of discharge. The objection by a creditor or other party in interest will be treated by Judge Whipple as a contested matter to be determined after notice and an opportunity for hearing. Absent an objection to entry of discharge or a waiver of discharge filed before the clerk completes processing of discharge on the items set forth above, the discharge will be entered if otherwise appropriate even if the case may fall within the time frames set forth in Section 1328(f).

M.A.W.
08/07/07

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:)	Case No.
)	
)	Chapter 13
)	
Debtor(s).)	
)	JUDGE MARY ANN WHIPPLE
)	
)	

ORDER AND NOTICE REGARDING 11 U.S.C. § 1328(a)

The Chapter 13 Trustee has filed his Final Report and Account showing that payments due under the confirmed Chapter 13 plan have been completed. This case is before the court for a determination under 11 U.S.C. § 1328(a) as to whether a discharge may be entered. That section provides as follows:

Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid...the court shall grant the debtor a discharge...

In order to implement this provision, Debtor(s) are hereby **ORDERED** to file the attached document certifying the facts that are appropriate to Debtor(s)' individual circumstances. In a joint case separate documents must be filed for each Debtor. **The completed document(s) must be filed on or before 28 days from the date of service of this Order**, or within any time set by the court upon a motion for extension

filed by Debtor(s) before the expiration of the deadline.

If the completed certification document is not timely filed as required by this order, the court will presume that Debtor(s) is required by a judicial or administrative order, or by statute, to pay a domestic support obligation and that all amounts payable under such order or such statute that are due have **not** been paid. In that event the case will be closed without discharge.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:)	Case No.
)	
)	Chapter 13
)	
Debtor(s).)	
)	JUDGE MARY ANN WHIPPLE
)	
)	

DEBTOR'S CERTIFICATION REGARDING 11 U.S.C. § 1328(a)

1. I, _____, the Debtor in the above styled case, certify that I am not required by any judicial or administrative order, or by statute, to pay a domestic support obligation.

2. I, _____, the Debtor in the above styled case, certify that I am required by a judicial or administrative order, or by statute, to pay a domestic support obligation, and that all amounts payable under such order or such statute that are due on or before the date of certification below (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid.

3. I, _____, the Debtor in the above styled case, hereby certify that I am required by a judicial or administrative order, or by statute, to pay a domestic support obligation, and that all amounts payable under such order or such statute that are due on or before the date of certification below (including amounts due before the petition was filed, but only to the extent provided for by the plan) have **NOT** been paid.

I certify under penalty of perjury that the information provided above is true and correct.

Date Signed and Date of Certification

Signature of Debtor

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re:)	Case No.
)	
)	Chapter
)	
Debtors.)	
)	JUDGE MARY ANN WHIPPLE
)	
)	

ORDER REGARDING 11 U.S.C. § 1328(h)

This case is before the court for a determination under 11 U.S.C. § 1328(h) as to whether a discharge may be entered. That section provides as follows:

The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that--

(1) section 522(q)(1) may be applicable to the debtor; and

(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

11 U.S.C. § 1328(h). Section 522(q)(1) may apply only if a debtor claims as exempt an interest in property described in § 522(p)(1) that exceeds the aggregate sum of \$125,000.

A review of the docket in this case shows that Debtor(s) has not claimed an exemption in property described in § 522(p)(1) that exceeds the aggregate sum of \$125,000 and has not filed the statement required by Interim Bankruptcy Rule 1007(b)(8) when such exemptions are claimed. Thus, the court finds that there is no reasonable cause to believe that (1) § 522(q)(1) may be applicable to Debtor(s) and (2) there is pending any proceeding in which the Debtor(s) may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B). **ABSENT AN OBJECTION CONTESTING THIS FINDING AND A REQUEST FOR HEARING FILED BY A PARTY IN INTEREST WITHIN TEN DAYS OF THE DATE OF SERVICE OF THIS ORDER, AND TO THE EXTENT**

DEBTOR(S) IS OTHERWISE ENTITLED TO A DISCHARGE IN THIS CASE, THE COURT WILL ENTER AN ORDER OF DISCHARGE.