

MEMO

From: Elena Paras Ketchum, Chair

To: Members of District Wide Steering Committee

Re: Judicial Response to Recommendations of District
Wide Steering Committee's Memo Regarding Stay
Relief for Discussion and Consideration

Dated: July 7, 2013

As you know, the District-Wide Steering Committee formulated and circulated a survey with respect to the procedures related to stay relief in order to determine if there are procedures which can be unified on a district-wide basis. Upon receiving the survey results, the Committee reviewed, analyzed and discussed the results and submitted recommendations to the Judges of the U.S. Bankruptcy Court for the Middle District of Florida. The Committee's recommendations (the "Recommendations") are outlined below in red.

The Committee has received a preliminary report from the Judges to the Recommendations. The response of the Judges is set forth below in blue. As you will see below, the Judges generally agreed with the Committee's Recommendations and, in the case of affidavits/verifications, actually went further. There may be some clarifications and tweaks by the Judges which will be reflected in the final report to be published by the Judges in the July Court Connection.

I have been asked to relay to the Committee how valuable the Committee's work on the survey and recommendations were in the Judge's discussion and decisions. From the Judges – **"We highly value your input and appreciate the considerable time it took."**

1. When is negative notice appropriate?

Committee Recommendations:

- a. In all chapter 7 cases. The negative notice guidelines already provide for this.
- b. With respect to chapter 13 cases, negative notice should be permitted in the following instances:
 - i. When debtor has indicated that collateral is being surrendered;
 - ii. When debt/collateral is not addressed in the debtor's plan; and
 - iii. When the debt is being paid outside the plan.

With respect to co-debtor stay, a motion seeking relief from the co-debtor stay may be filed under negative notice if the treatment of the debt by the debtor falls within (i), (ii), or (iii) above.

If a stay relief motion does not include a negative notice legend, the motion will automatically be set for hearing.

The committee would request the judges consider whether it is preferred that motions related to co-debtor stay be filed jointly with motions for relief from the automatic stay for the debtor or are to always be filed separately. The committee has no preference but does ask that this be addressed to determine if uniformity can be achieved. The responses in the survey indicate a desire for uniformity in this matter.

JUDICIAL RESPONSE:

All divisions currently are uniform in Chapter 7 cases. All use negative notice.

Starting on August 1, 2013, all divisions will allow negative notice in Chapter 13 cases in the three situations requested by the Steering Committee. (The Permissive Negative Notice Chart will be revised effective August 1 and, because this will cause a significant change in procedure in Jacksonville, the Court will start advising attorneys in the next few days about the change).

As to requests to lift the Co-Debtor stay, parties can use negative notice for ALL such requests. However, any request for relief from a Co-Debtor must be made by separate motion. Attorneys cannot combine the request with a motion seeking relief from the stay as to the Debtor.

2. When should a hearing be set?

Committee Recommendations:

An attorney may file a stay relief motion without negative notice and the motion will automatically be set for hearing.

Judicial Response:

If a motion for relief is filed without negative notice, either the Court or, in the near future, the moving party will notice a preliminary non-evidentiary hearing on the motion.

3. Should a stay relief motion always be accompanied by an affidavit or verification?

Committee Recommendations:

Motions for Stay Relief filed under negative notice shall be accompanied by either an affidavit or verification.

Judicial Response:

The Court will no longer require that an affidavit or verification accompany any motion for relief from stay, although the movants are still permitted to submit such an affidavit or verification if

they would like to establish standing or other factual issues.

4. Should there be a district wide form for stay relief motions?

Committee Recommendations:

The Committee would recommend a district wide suggested form of stay relief motion; provided, however, the form be flexible enough to be revised or changed as required by the case. Generally, the Committee is not in favor of a procedure which would call for a motion to be automatically denied by the clerk's office if the suggested form is not utilized. The Committee does understand some level of uniformity is needed in order for the internal procedures of the Clerk's Office to run efficiently and effectively but would prefer that the form of the motion be able to be determined by counsel based upon the particulars of the case. That being said, it is helpful to have a suggested form available on the Court's website for run of the mill type of motions.

One issue highlighted by the survey is the denial of motions that are deficient therefore requiring creditor's counsel to file a new motion and pay a second filing fee. The remedy suggested by the survey participant is for an order of abatement giving the creditor time to correct the perceived deficiencies be entered. The Committee requests the judges consider this issue.

Judicial Response:

The Court will not require the use of any form motions or orders. However, the Judges are working to finalize sample "approved" motions and orders that parties voluntarily can use in all divisions. The forms are optional but could help newer attorneys and their staff.

As to deficiencies in motions or orders, the Court is developing a list of possible deficiencies. Once the list is identified, the Court plans to implement a district wide procedure to address the deficiency without requiring the movant to repay the filing fee. The Judges will provide more information soon.

5. Whether the form orders used for motions for relief from stay filed in the Orlando Division are sufficient?

Committee Recommendations:

The commenters to the question regarding the Orlando form orders being sufficient overwhelming indicated that they are not sufficient to reach every situation, though there is a desire for form orders in general.

Judicial Response:

See response to #4 above.

6. Whether the orders granting stay relief motions filed under negative notice should clearly provide such orders are effective after 14 days?

Committee Recommendations:

This issue was raised in the survey. The Committee requests the judges consider whether this is a significant issue and if so, consider whether such an explicit statement in the orders would remedy the issue.

Judicial Response:

Request to waive the 14 day period will be granted if: (1) the Motion seeks the relief, and (2) the motion either attaches an affirmative consent from the debtor (not just a lack of response to a motion served by negative notice), OR the motion involves stay relief affecting Real Property.

7. How should uniform procedures be codified and disseminated?

Committee Recommendations:

Uniform procedures are to be codified via Local Rule and disseminated via Court website and Email notification.

Judicial Response:

Uniform procedures are to be codified via Local Rule and disseminated via Court website and Email notification.

8. Uniformity in Hearing Times

Committee Recommendations:

There was a comment in the survey which requested consideration of standard hearing times for stay relief motions. The Committee requests that this issue be discussed by the judges to determine if this is possible given other scheduling procedures utilized by the Clerk's Office.

Judicial Response:

The Judges are sympathetic to this request and are gathering information to determine if this is possible or not. The Judges will get back to the Committee on this request.