



MEMORANDUM

To: Bankruptcy Practitioners, Middle District of Georgia
From: Kyle George, Clerk of Court
Subject: Proposed Changes to LBR 1017-2(c), 1019-1, and 2016-1(a) April 15, 2016

NOTE: THE BELOW MEMORANDUM WAS ISSUED ON MARCH 8, 2016 FOR COMMENT. AFTER THE COMMENTARY PERIOD WAS COMPLETE, THE JUDGES DECIDED NOT TO IMPLEMENT THE RECOMMENDED CHANGE TO LBR 1019-1.

1. In April 2015, the United States Trustee directed that Trustee fees in Chapter 13 cases be collected upon the Trustee's receipt of plan payments by the debtor(s). Our local rules LBR 1017-2(c), LBR 1019-1, and LBR 2016-1(a) should be updated to remove provisions which are superfluous under the United States Trustee's revised fee collection procedures. An additional revision to LBR 2016-1(a) is required by the Supreme Court's recent decision of *Harris v. Viegelhan*.

a. LBR 1017-2 (c) (Trustee Fee Allowable Upon Dismissal) should be revised to eliminate provisions rendered superfluous by the change in Trustee fee collection procedures by the U. S. Trustee:

(1) Old LBR 1017-2(c):

(c) Trustee Fee Allowable Upon Dismissal. If a Chapter 13 case is dismissed prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 Trustee shall be allowed to retain the percentage of the plan payments received as allowed by the United States Trustee Program as an administrative expense without further motion or order of the Court. However, prior to the payment of any such expense, the Chapter 13 Trustee shall pay any unpaid portion of the filing fee.

(2) New LBR 1017-2(c):

~~(c) Trustee Fee Allowable Upon Dismissal. Filing Fee Payable Upon Dismissal.~~ If a Chapter 13 case is dismissed prior to

confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 Trustee ~~shall be allowed to retain the percentage of the plan payments received as allowed by the United~~

~~States Trustee Program as an administrative expense without further motion or order of the Court. However, prior to the payment of any such expense, the Chapter 13 Trustee~~ shall pay any unpaid portion of the filing fee.

NOTE: THE RECOMMENDED RULE CHANGE TO LBR 1019-1 WAS NOT IMPLEMENTED b. Likewise, LBR 1019-1 (Conversion – Procedure Following), should be revised to eliminate provisions rendered superfluous by the change in Trustee fee collection procedures by the U. S. Trustee:

(1) Old LBR 1019-1:

LBR 1019-1. Conversion – Procedure Following

(a) Trustee Fee Allowable Upon Conversion. If a Chapter 13 case is converted prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 Trustee shall be allowed to retain the percentage of the plan payments received as allowed by the United States Trustee Program as an administrative expense without further motion or order of the Court.

(b) Duty of Trustee Upon Conversion. Upon conversion of a case from Chapter 13 or Chapter 7 to any other chapter under Title 11, the Trustee shall file an account of all receipts and disbursements made in the case and a report on the administration of the case pursuant to § 704(a)(9) and § 1302(b)(1). The Trustee is discharged from the case 30 days after the filing of the required reports.

(c) Disposal of Pending Motions to Dismiss Upon Conversion. All pending motions to dismiss filed by the Trustee prior to the conversion of a case shall be deemed terminated as moot.

(d) Duty to Amend. Upon conversion of a case, the debtor shall, within 14 days of the effective date of conversion, file inventories, schedules, and statements of financial affairs as may be applicable, or amend such items to include any interest in property acquired since the entry of the order for relief in the original chapter. The amendments shall account for any material additions, deletions, or other changes in the debtor's assets or liabilities. The amendments shall add to the mailing matrix any post-petition, pre-conversion

creditors. If no amendments or additional inventories, schedules, or statements are necessary, the debtor shall file a certificate to that effect within the 14-day period.

(e) Duty to Attend Scheduled § 341(a) Meeting of Creditors. The filing of a motion to convert a Chapter 7 case shall not relieve the debtor and debtor's counsel from attending the § 341(a) Meeting of Creditors scheduled in the Chapter 7 case unless the motion has been granted prior to the Meeting.

(2) New LBR 1019-1:

LBR 1019-1. Conversion – Procedure Following

~~(a) Trustee Fee Allowable Upon Conversion. If a Chapter 13 case is converted prior to confirmation of a Chapter 13 plan, or prior to any disbursement to creditors, the Chapter 13 Trustee shall be allowed to retain the percentage of the plan payments received as allowed by the United States Trustee Program as an administrative expense without further motion or order of the Court.~~

~~(b)~~ **(a) Duty of Trustee Upon Conversion.** Upon conversion of a case from Chapter 13 or Chapter 7 to any other chapter under Title 11, the Trustee shall file an account of all receipts and disbursements made in the case and a report on the administration of the case pursuant to § 704(a)(9) and § 1302(b)(1). The Trustee is discharged from the case 30 days after the filing of the required reports.

~~(c)~~ **(b) Disposal of Pending Motions to Dismiss Upon Conversion.** All pending motions to dismiss filed by the Trustee prior to the conversion of a case shall be deemed terminated as moot.

~~(d)~~ **(c) Duty to Amend.** Upon conversion of a case, the debtor shall, within 14 days of the effective date of conversion, file inventories, schedules, and statements of financial affairs as may be applicable, or amend such items to include any interest in property acquired since the entry of the order for relief in the original chapter. The amendments shall account for any material additions, deletions, or other changes in the debtor's assets or liabilities. The amendments shall add to the mailing matrix any post-petition, pre-conversion creditors. If no amendments or additional inventories, schedules, or

statements are necessary, the debtor shall file a certificate to that effect within the 14-day period.

~~(e)~~ (d) Duty to Attend Scheduled § 341(a) Meeting of Creditors.

The filing of a motion to convert a Chapter 7 case shall not relieve the debtor and debtor's counsel from attending the § 341(a) Meeting of Creditors scheduled in the Chapter 7 case unless the motion has been granted prior to the Meeting.

c. Finally, our LBR 2016-1(a) (Compensation of Professionals) requires a revision both because of the change in Trustee fee collection procedures and due to the Supreme Court's decision in *Harris v. Viegelhan*, 135 S.Ct. 1829 (2015), holding that, "...a debtor who converts to Chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee." Due to the holding of *Harris*, LBR 2016-1(a) must be updated to eliminate portions of the rule that conflict with this decision.

(1) Old LBR 2016-1(a):

LBR 2016-1(a). Compensation of Professionals

(a) Compensation Payable Upon Dismissal or Conversion of Chapter 13 Cases. Upon dismissal or conversion of a Chapter 13 case before confirmation of the debtor's plan, and prior to the Chapter 13 Trustee refunding any funds on hand to the debtor, the Trustee shall disburse the funds in the following priority:

(1) The Chapter 13 Trustee shall pay any unpaid portion of the filing fee;

(2) The Chapter 13 Trustee shall be allowed to retain the percentage of the plan payments as allowed by the United States Trustee Program as an administrative expense without further motion or order of the Court;

(3) Attorney Fees:

(A) The Chapter 13 Trustee is authorized to pay from the remaining funds on hand an attorney fee of \$800, less any fee paid as disclosed in the FRBP 2016 disclosure, to the attorney for the debtor, without any further motion, application, or order of this Court;

(B) If the Chapter 13 Trustee has cause to believe the \$800 fee is inappropriate, the Chapter 13 Trustee shall file a request with the Court to reduce the amount to be paid pursuant to this Rule;

(C) If the attorney for the debtor requests a fee in excess of \$800, the attorney shall file an attorney fee application.

(2) New LBR 2016-1(a):

LBR 2016-1(a). Compensation of Professionals

(a) Compensation Payable Upon Dismissal ~~or Conversion~~ of Chapter 13 Cases. Upon dismissal ~~or conversion~~ of a Chapter 13 case before confirmation of the debtor's plan, and prior to the Chapter 13 Trustee refunding any funds on hand to the debtor, the Trustee shall disburse the funds in the following priority:

(1) The Chapter 13 Trustee shall pay any unpaid portion of the filing fee;

~~(2) The Chapter 13 Trustee shall be allowed to retain the percentage of the plan payments as allowed by the United States Trustee Program as an administrative expense without further motion or order of the Court;~~

~~(3)~~ (2) Attorney Fees:

(A) The Chapter 13 Trustee is authorized to pay from the remaining funds on hand an attorney fee of \$800, less any fee paid as disclosed in the FRBP 2016 disclosure, to the attorney for the debtor, without any further motion, application, or order of this Court;

(B) If the Chapter 13 Trustee has cause to believe the \$800 fee is inappropriate, the Chapter 13 Trustee shall file a request with the Court to reduce the amount to be paid pursuant to this Rule;

(C) If the attorney for the debtor requests a fee in excess of \$800, the attorney shall file an attorney fee application.

2. Please review the proposed local rule changes. I would very much appreciate comments back to me via email no later than April 8, 2016. My email address is Kyle_George@gamb.uscourts.gov. Your assistance in this matter is greatly appreciated.