

## **CHAPTER 13 DAY HEARING EXPECTATIONS UNITED STATES BANKRUPTCY JUDGE ANN M. NEVINS**

Parties who appear in Chapter 13 cases in the New Haven Division should be familiar with Judge Nevins's expectations for hearings to consider confirmation of a Chapter 13 Plan. Nothing in this document modifies any rule, binds the court or the judge regarding entry of any orders the Bankruptcy Code or equity demand, nor creates any entitlement on the part of any party in interest.

### **Service Expectations**

A debtor or debtor's counsel is expected to have reviewed the effect of developments in the Chapter 13 case, including the filing of amended schedules and proofs of claim, on the notice and service requirements for a confirmation hearing under applicable rules and principles of due process. The review should take place at least (but usually more than) twenty-eight (28) days prior to the confirmation hearing.

It is the debtor's or debtor's counsel's responsibility to ensure that all parties in interest – including any party with an interest in any domestic support obligation, any party added to a schedule after the Clerk's service of the Notice of Hearing, and, any party filing a proof of claim after the Clerk's service of the Notice of Hearing – are served in accordance with any applicable rule and that such service is sufficient to meet the requirements of due process.

A debtor or debtor's counsel should expect the judge will ask about the service during the hearing on confirmation of the plan, and in the absence of an informed, affirmative representation that service of the Notice of Hearing and the objection deadline was served on all parties in interest with sufficient time to object as required under any applicable rule, the Chapter 13 Plan will not be confirmed at that time.

### **More Than One Week Prior to a Chapter 13 Plan Confirmation Hearing**

1. More than one week prior to scheduled Chapter 13 Plan confirmation hearing, a debtor should determine if the Chapter 13 Plan is likely to be confirmed, faces an objection, may be confirmed if scheduled for a later date, or, will require amendment before confirmation will be possible. See **Confirmation Hearing Expectations**, below.
2. Judge Nevins will consider a motion to continue confirmation hearings for Chapter 13 plans that are filed at least seven (7) days in advance, when it is represented that the Chapter 13 Plan is likely to be confirmed on a continued hearing date without material modification. Such motions shall comply with D.Conn.L.Civ.R. 7(b), and, shall include a particularized statement of the reasons for the continuance, including identification of any action the debtor has taken or will be taking to proceed toward confirmation, any unresolved factual or legal issues that must be resolved prior to confirmation, and, the status of plan payments to the Chapter 13 Trustee and post-petition installment payments on mortgages or car loans. Such motions, if granted, will result in the Chapter 13 Plan (that is already filed) being continued to another Chapter 13 hearing date.

This process is only to be used if the debtor and the Chapter 13 Trustee agree that the then-filed version of the Chapter 13 plan may be confirmed, subject to modifications that are merely technical in nature and that do not require further notice to creditors.

3. Motions to continue Chapter 13 Plan confirmation hearings filed less than seven (7) days in advance are likely to be denied. If such a motion is denied, the confirmation hearing will likely proceed as scheduled. As set forth in Local Bankruptcy Rule 3015-2(b), “[t]he Debtor’s attorney, or the Debtor, if not represented by counsel, must appear at the confirmation hearing unless specifically excused by Court order.” Also see **Expectations for Hearing Day Requests to Continue a Chapter 13 Plan Confirmation Hearing**, below.

### **One Week Prior to a Chapter 13 Plan Confirmation Hearing**

1. If a debtor intends to confirm a Chapter 13 Plan and the Chapter 13 Trustee agrees, the judge expects that one week prior to the scheduled hearing the Chapter 13 Trustee will file a Notice of Intent to Confirm Chapter 13 Plan.
2. The Notice of Intent to Confirm Chapter 13 Plan should only be filed if the version of the Chapter 13 Plan to be confirmed has already been filed by the debtor, subject only to amendments that are merely technical in nature or that do not require further notice to creditors.

### **Three Business Days Prior to the Confirmation Hearing (Monday at 11:59 p.m.)**

1. If a debtor expects to proceed with confirmation of a Chapter 13 Plan on the upcoming Chapter 13 calendar (generally held on a Thursday), the final version of the Chapter 13 Plan and any supplemental information such as amended bankruptcy schedules or stipulations should be filed by the prior Monday, by 11:59 p.m. During a hearing on a Thursday Chapter 13 calendar, Judge Nevins may disregard any documents filed after the preceding Monday at 11:59 p.m.

### **Confirmation Hearing Expectations**

1. Given that confirmation hearings in this District are scheduled after the proof of claim deadline has passed, Judge Nevins expects parties to plan ahead to make the confirmation hearing productive.
2. If a debtor and the Chapter 13 Trustee expect that a Chapter 13 Plan confirmation hearing will be contested, Judge Nevins expects the parties to meet and confer *well in advance of the hearing* regarding the necessary steps that will lead to the contested confirmation hearing. For example, if there are disputed facts, the parties are expected to discuss a discovery schedule and address the matters generally covered by Fed.R.Civ.P. 26(f) prior to the hearing date so they may report on the details of a pre-trial scheduling order that the judge would consider entering during the Chapter 13 day hearing. If there are disputed legal issues, the parties should meet and agree upon a briefing schedule prior to the Chapter 13 hearing day.

3. Judge Nevins generally asks a debtor or debtor's counsel several questions during her consideration of a Chapter 13 Plan. Counsel are expected to have obtained the information necessary to respond to these questions. The questions generally are as follows:
- a. How have applicable service requirements to all parties in interest been met for the court to consider confirmation of this Chapter 13 Plan today?
  - b. Has the Chapter 13 Trustee determined whether the Chapter 13 Plan complies with the requirements of the Bankruptcy Code and Rules?
  - c. Has the Chapter 13 Trustee completed a meeting pursuant to 11 U.S.C. § 341 to her satisfaction?
  - d. What is the status of the notice for the confirmation hearing?
  - e. Is the debtor current on Chapter 13 Plan payments to the Chapter 13 Trustee?
  - f. Is the debtor a party (as obligor or recipient) to a Domestic Support Order?
  - g. Is the debtor obligated on any student loan debt?
    - i. If so, what is the amount and status of such debt?
    - ii. Is the student loan debt treated in the plan?
    - iii. What is the effect of confirmation of the Chapter 13 Plan on the outstanding student loan debt (*i.e.*, will interest accrue or capitalize on such debt during the Chapter 13 Plan commitment period and if so, in what amount)?
  - h. Are the statements in the Chapter 13 Plan regarding whether certain relief is INCLUDED or NOT INCLUDED accurate?
    - i. Relief pursuant to 11 U.S.C. § 506?
    - ii. Relief pursuant to 11 U.S.C. § 522(f)?
    - iii. Relief pursuant to 11 U.S.C. § 365?
    - iv. Non-standard provisions?
  - i. Is any property being surrendered through the Chapter 13 Plan? If so, what are the expectations of the parties regarding the surrender?
  - j. Is the debtor current on post-petition payments on secured obligations like mortgages and car loans?
    - i. If counsel makes a representation the debtor is current, how does counsel know?

**Expectations for Hearing Day Requests to Continue a Chapter 13 Plan Confirmation Hearing or For Leave to File an Amended Chapter 13 Plan**

1. Oral requests to continue a hearing for a Chapter 13 Plan that the debtor and the Chapter 13 Trustee believe will be confirmable if additional time is provided will be considered during the hearing. Such requests should include a particularized statement of the reasons for the continuance, including identification of any action the debtor has taken or will be taking to proceed toward confirmation, any unresolved factual or legal issues that must be resolved prior to confirmation, and, the status of plan payments to the Chapter 13 Trustee and post-petition installment payments on mortgages or car loans.
2. Oral requests for an order to deny confirmation of a Chapter 13 Plan, with permission to file an amended plan by a specific date, will be considered during the hearing. Such requests should include a particularized statement of the reasons the current Chapter 13 Plan is not confirmable, and shall identify any action the debtor has taken or will be taking to proceed toward confirmation, any unresolved factual or legal issues that must be resolved prior to confirmation, and, the status of plan payments to the Chapter 13 Trustee and post-petition installment payments on mortgages or car loans. If an amended Chapter 13 Plan is not filed by the date set, the case will be dismissed without further notice or hearing. Judge Nevins will not retain jurisdiction to consider fee applications unless such a request is made on the record.