

Re: General observations by Court relating to direct payment certifications

To the Bar:

I have not prepared reports on the 3/7/12 Lufkin docket; the 3/21/12 Tyler docket; and the 4/4/12 Beaumont docket in that, in my opinion, there were no significant cases that occurred on these dockets to report on. However, I did want to report about other comments made by the Court after the Lufkin and Tyler dockets concerning the proposed changes to the Court's Local Rules relating to certification by debtors of payment of post-petition mortgage payments.

General Announcements by Court after Court relating to the proposed changes to the Court's Local Rules—direct payment certifications:

As you know, the Court has posted on its website some proposed changes to the Court's Local Rules. Pursuant to the notice posted on the Court's website, the time deadline for public comment on these proposed changes to the Court's Local Rules was Wednesday, 3/28/12.

I previously implemented my own system for cases filed on or after 5/1/11 wherein the debtors would certify that they have made all of their post-petition mortgage payments and other direct payments. I also posted on my website a suggested form for this certification. The most pertinent part of the proposed changes to the Court's Local Rules that impacts the Chapter 13 practice relates to the Court requiring such a direct pay certification along with the adoption of an official Court certification form. This certification process will be in affect both Judge Parker's Court as well as Judge Rhoades' Court.

The Court will now require this new Certification be filed with the Court ten days prior to the confirmation hearing date. As I understand it, a new event code has been set up for the purpose of filing this certification with the Court. If confirmation of the proposed plan is denied, thereby requiring the setting of a new hearing on an amended plan, or if the confirmation hearing is continued for whatever reason to a new date, a new certification will need to be filed with the Court.

Judge Parker made some general comments about the purpose of this Certification: his primary concern in Chapter 13 cases is the feasibility of the case. Thus, the purpose for the direct pay certification was to ensure that the debtors could afford to make the payments proposed in the Chapter 13 plan as supported by the budget. Judge Parker also indicated that this procedure was the middle ground between his previous policy of not requiring any such certification and the policy implemented by other Courts of requiring on-going mortgage payments through the Plan. Judge Parker acknowledged that putting ongoing mortgage payment in the plan would be administratively burdensome both to the Court and my office but did indicate that such an option was not off the table.

I would suggest that the debtors' bar start using the new certification form and filing such with the Court as contemplated by the proposed changes in the Court's Local Rules.

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Eastern District of Texas