

FEB 26 2004

UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO

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U.S. BANKRUPTCY COURT
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In re : **ADMINISTRATIVE ORDER NO.**
CHAPTER 13 CASES FILED BEFORE THE : **2004 - 02 (ESL)**
HONORABLE ENRIQUE S. LAMOUTTE :
_____ :

APPLICABILITY AND PURPOSE

1. This order supersedes Administrative Orders 2001 - 01 and 2002-02, and applies to all Chapter 13 cases filed before the Honorable Enrique S. Lamoutte after **February 29, 2004**. The purpose of the order is to secure the expeditious resolution of Chapter 13 cases.

FILING AND SERVICE OF PETITIONS, PLANS

2. The petition, Chapter 13 plan, schedules, and statement of financial affairs shall be filed with the court, along with a master mailing list, in the manner and form prescribed by the Local Bankruptcy Rules, the General Orders of this court, or by the Clerk.

3. a. If the Chapter 13 schedules, statement of financial affairs and plan are not filed with the petition, and the plan, schedules and statement are not filed within 15 days after the filing of the petition, the case may be dismissed, unless a motion to extend time is filed within said 15 days.

b. A motion for extension of time must be filed within 15 days from the entry of the order for relief and accompanied by a declaration showing specific cause for an extension of time, the amount of additional time requested, the date the petition was filed, and a proof of service evidencing that the motion and declaration were served on the Chapter 13 trustee. The court may consider the motion without a hearing. If any schedule, the statement of financial affairs, or Chapter 13 plan is not filed within the initial 15 days or within such additional time as the Court may allow in response to a motion for extension of time, or if a motion for extension of time is not timely filed, the Court may dismiss the case.

4. If the plan is not filed with the petition, the debtor or debtor's attorney shall serve a copy of the Chapter 13 plan on all creditors and parties in interest at. A proof of service shall be filed with the Court and served on the Chapter 13 Trustee within five (5) days from service.

1 **MEETING OF CREDITORS - § 341 (a)**

2 5. Notice of the § 341(a) meeting of creditors shall be served on all creditors and parties in
3 interest at least 20 days before the § 341 (a) meeting of creditors.

4 6. The debtor shall provide evidence of current income (such as pay stubs, tax returns or other
5 equivalent documentation) to the Chapter 13 trustee at or before the § 341 (a) meeting of creditors.
6 Failure to timely provide this evidence may result in dismissal of the case. The Chapter 13 trustee or
7 any party in interest may move the court within ten (10) days after the 341 meeting of creditors if there
8 are grounds for dismissal under this subsection.

9 7. The debtor and debtor's attorney shall attend the § 341 (a) meeting of creditors. If the case
10 is a joint case, both debtors shall appear. If the debtor does not appear, the case may be dismissed
11 without further notice.

12 8. a. A debtor who operates a business, or is self-employed, shall submit to the Chapter 13
13 trustee, at least 5 days prior to the scheduled § 341(a) meeting of creditors, the following documents
14 required to investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the
15 operation of the debtor's business, and the feasibility of such enterprise:

- 16 A. Projection of average monthly income and expenses;
- 17 B. Evidence of appropriate business insurance, licenses and applicable government
18 permits;
- 19 C. Inventory of goods as well as a list of furniture and equipment as of the date of the
20 filing of the petition;
- 21 D. Operating reports and interim statements;
- 22 E. Federal and State tax returns for the three years prior to the filing of the bankruptcy
23 petition.

24 b. Failure to timely submit any document required above may result in the dismissal of the case.
25 The Chapter 13 trustee or any party in interest may move the court within ten (10) days after the 341
26 meeting of creditors if there are grounds for dismissal under this subsection.

27 c. The Chapter 13 trustee may continue the 341 meeting of creditors by so stating at the meeting,
28 without further written notice to creditors.

1 d. The Chapter 13 Trustee or any party in interest may move the court within ten (10) days after
2 the 341 meeting of creditors if there are grounds for dismissal under this subsection.

3 **CONFIRMATION HEARING**

4 9. a. In cases that the Chapter 13 trustee recommends confirmation, and there are no objections
5 by creditors, or other pending motion(s) that may be dispositive of the case, the Chapter 13 trustee will
6 schedule and give notice of the date of the confirmation hearing at the 341 meeting of creditors. The
7 notice at the 341 meeting will be the notice of the fast-track confirmation hearing. If a creditor files an
8 objection prior to/or at the 341 meeting, or announces such intention thereat, the confirmation hearing
9 will be scheduled as a contested matter, and notice will be given to all creditors and parties in interest.

10 b. The debtor's attorney or the debtor, if not represented by an attorney, shall appear at the
11 confirmation hearing unless the matter has been placed on the consent calendar.

12 c. Cases will be placed on the consent calendar when:

13 (1) objections have not been timely filed, or if filed, have been withdrawn or otherwise
14 disposed of;

15 (2) the trustee has favorably recommended confirmation of the plan; and

16 (3) a motion to dismiss, convert, or abstain is not pending disposition.

17 d. If the Court declines to confirm the plan that has been placed in the consent calendar, or
18 if a party in interest appears at the confirmation hearing and is permitted for cause to lodge an untimely
19 objection, the Court will reschedule the hearing in open court.

20 e. The courtroom deputy will call for the record the cases on the consent calendar.

21 f. It is the responsibility of the debtor to insure that the plan being favorably recommended
22 by the trustee has been timely filed and docketed.

23 g. The court will consider at the confirmation hearing only those documents filed on or before
24 Wednesday of the week prior to the hearing.

25 **OBJECTIONS TO PLANS**

26 10. a. Objections, if any, to the confirmation of the plan shall be in writing, supported by
27 appropriate declarations or other admissible evidence, filed with the Court and served on debtors'
28 attorney, the debtor and the Chapter 13 trustee not less than five (5) business days prior to the 341

1 meeting of creditors, or fifteen (15) days before the confirmation hearing, if the confirmation hearing
2 has been scheduled as a contested matter.

3 b. An entity holding a secured claim that after due notice fails to file a timely objection to
4 confirmation of the plan, will be deemed to have accepted the plan for purposes of 11 U.S.C.
5 §1325(a)(5)(A).

6 **FILING OF CLAIMS BY DEBTOR**

7 11. a. The debtor must file a claim for any creditor specifically dealt with in the plan at least 15
8 days prior to confirmation hearing in the manner and form specified by the Federal Rules of Bankruptcy
9 Procedure.

10 b. The debtor must serve copy of the claim filed to the creditor and the Chapter 13 Trustee,
11 and file a certificate of service within five (5) days.

12 c. Failure to comply may result in the denial of confirmation and/or reduction of attorneys'
13 fees.

14 **AMENDMENTS TO PLANS AT THE CONFIRMATION HEARING**

15 12. a. Amendments to a plan that do not adversely affect any creditor may be made at the
16 confirmation hearing if the proponent of the plan establishes that it could not have been timely filed in
17 writing at least 15 days prior to the confirmation hearing. Failure to comply may result in the denial of
18 confirmation and/or reduction of attorneys' fees.

19 b. The filing of any document the same day that a matter is scheduled for a hearing, shall
20 be filed in open court and not with the Clerk's Office or in the drop box.

21 **TRUSTEE'S FEES**

22 13. The minimum trustee's fee for a Chapter 13 case that is not confirmed is \$100.00.

23 **MODIFICATION OF CONFIRMED PLANS**

24 14. a. A proposed modification of a confirmed plan that does not adversely affect any party in
25 interest may be submitted to the trustee for his approval. If the trustee approves it, the Court may
26 forthwith enter the order confirming the modified plan. A modification of a plan will be deemed to not
27 adversely affect a party in interest if the only potentially adverse factor is an extension of the length of
28 the plan for a period of not greater than one month, nor an aggregate (when computing all prior

1 modifications) of four months.

2 b. A proposed modified plan that adversely affects any party in interest will be served by
3 the debtor on all parties in interest. See Rule 3015(g) of the Federal Rules of Bankruptcy Procedure.
4 The time period within which a party in interest will file an objection will be forty [40] days. If there
5 are no timely objections and the Chapter 13 trustee favorably recommends the amended plan, the Court
6 may confirm the plan without a hearing.

7 c. Motions to amend a confirmed plan will be filed separately and will not be joined with a
8 demand in reply or opposition to a motion to lift stay or a motion to dismiss. The motion to amend a
9 confirmed/approved plan will state whether or not it exceeds the length of extensions referred to in
10 subparagraph a.

11 d. The motion to amend a confirmed plan will include a notice to all creditors stating that:
12 "parties in interest are notified that they have forty (40) days to object in writing to the proposed
13 modification of the plan. Absent good cause, untimely objections will be denied." The certificate of
14 service will indicate the name and address of each party served, including the trustee. This may be
15 accomplished by certifying that the parties served were those mentioned in the attached master address
16 list. The master address list that is current as of the date of the notice must be attached to the motion.
17 If the master address list is not attached to the motion, the same may be denied for lack of proper
18 service.

19 e. Absent a timely objection, the proposed post confirmation-modified plan becomes the plan
20 under 11 U.S.C. § 1329(b)(2) and Fed. R. Bankr. P. 2002(a)(5).

21 f. The Chapter 13 trustee is not required to file favorable recommendations. Unfavorable
22 recommendations will be considered objections to the approval of the post confirmation plan. In this
23 case, an order to show cause may be entered against the debtor(s) or a hearing may be scheduled by the
24 Court.

25 **PLAN PAYMENTS TO CHAPTER 13 TRUSTEE**

26 15. a. Funding for all Chapter 13 plans shall be by payroll deduction unless otherwise agreed
27 to by the trustee or ordered by the Court.

28 b. All plan payments shall be made by the debtor and transmitted to the Chapter 13 trustee

1 until a payroll deduction order is effective. If a payroll deduction order is not issued upon confirmation
2 of a plan, the Chapter 13 trustee is authorized to issue such a request and to serve it upon the debtor's
3 employer, the debtor and debtor's counsel whenever a plan payment is more than thirty (20) days late.

4 MOTOR VEHICLES

5 16. The plan may provide that current motor vehicle payments are made directly to the creditor,
6 provided the claim is fully secured. Arrearage, however, must be paid through the Chapter 13 trustee.
7 If the plan changes the amount of payment or duration due to the fact that any portion of the claim is
8 deemed unsecured, then all payments so provided must be paid through the Chapter 13 trustee. All
9 motor vehicles must be insured to cover the secured debt until fully paid.

10 SPOUSAL AND CHILD SUPPORT

11 17. The plan may provide for current payments of spousal and child support directly to the
12 beneficiary or creditor. Generally, arrearage will be paid through the Chapter 13 trustee, unless specific
13 cause is shown and supported by a declaration.

14 PAYMENTS ON MORTGAGES

15 18. a. Failure to make timely post-petition mortgage payments will generally result in dismissal
16 of the case. Except as otherwise specifically provided herein, default on a payment coming due on the
17 date the petition is filed is considered a pre-petition default.

18 b. The debtor shall tender evidence of having made all mortgage payments that accrue post-
19 petition to the Chapter 13 trustee not later than 15 days before the hearing on confirmation. However,
20 if the debtor has filed any bankruptcy case(s) that was/were pending within six months before the date
21 the pending case was filed and such previous case was dismissed, the post-petition mortgage payments
22 referred to herein will also include the fewer of: (1) all such payments coming due after the previous case
23 was filed, or (2) all such payments coming due during the six months prior to filing of the pending case.
24 Evidence of these particular mortgage payments must also be received by the Chapter 13 trustee not later
25 than 15 days before the hearing on confirmation unless the court orders otherwise.

26 c. In determining whether a post-petition mortgage payment has come due, the Court does
27 not consider payments as to which a late penalty has not yet accrued or which are due on the date of the
28 confirmation hearing.

1 d. The mortgage holder may accept payments without prejudice to pending foreclosure
2 proceedings.

3 **TAX RETURNS**

4 20. a. The debtor will file any due but unfiled tax returns prior to the §341 meeting of creditors,
5 unless the time to do so is extended by the Court. When the tax return is filed, the debtor will file with
6 the clerk and serve on the Chapter 13 trustee a notice of the filing of the tardy return, which will disclose
7 the amount of the tax liability or refund. A hearing on the confirmation of a plan will not be adjourned
8 solely for the reason that a tax return has not been timely filed.

9 b. Failure to comply with subsection [a] must be disclosed and the reason[s] for the non-
10 compliance explained by motion.

11 **MOTIONS FOR DISMISSAL OR CONVERSION**

12 21. a. A motion or notice by the debtor to dismiss a Chapter 13 case will be served on all
13 creditors and parties in interest. A motion to dismiss will be accompanied by a declaration that states
14 whether the case has been converted from another chapter of the Bankruptcy Code and will disclose
15 whether or not any motion for relief from, annulment of, or conditioning of the automatic stay is
16 pending against the debtor.

17 b. Pursuant to Rule 1017 of the Federal Rules of Bankruptcy Procedure, the conversion of
18 a Chapter 13 case to a case under Chapter 7 will be effective upon the filing by the debtor with the Clerk
19 of the Bankruptcy Court of the following: evidence of having paid the conversion fee or a request that
20 the same be paid from the funds on hand held by the Chapter 13 trustee, a notice of conversion pursuant
21 to 11 U.S.C. § 1307 (a), and a proof of service evidencing that the notice of conversion was served upon
22 creditors, parties in interest, the United States Trustee, and the Chapter 13 Trustee.

23 **CLAIMS TO BE PAID BY THE TRUSTEE**

24 22. Generally, all allowed claims will be paid by and through the Chapter 13 trustee unless the
25 debtor sets forth in the plan the justification for remitting payment of a claim directly to the creditor.
26 If there is a timely objection to such a plan provision, it will be heard at the confirmation hearing.

1 **MOTION PRACTICE**

2 23. All motions shall be accompanied by a supporting memorandum that contains the points and
3 authorities in support of the party's position, together with any affidavits or documents in support
4 thereof; the memorandum must also include specific reference to the applicable provisions of the
5 Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, or other
6 controlling authority. The motion and memorandum may be combined in a single pleading.

7 **BANKRUPTCY ETHICS AND ATTORNEY'S FEES**

8 24. The issue of fees generates inherent tension between the lawyer's interests and those of the
9 client. Braucher, Jean, "*Counseling Consumer Debtors to Make Their Own Informed Choices – A*
10 *Question of Professional Responsibility*," 5 Am. Bankr. Inst. L. Rev. 165 (Spring, 1997). Local Rule
11 83.5 of the Local Rules of the United States District Court for the District of Puerto Rico, establishes
12 that the Model Rules of Professional Conduct adopted by the American Bar Association govern the
13 conduct of attorneys appearing before this court. The local rule is an embodiment of the Court's inherent
14 responsibility to enforce the ethical responsibilities of attorneys appearing before it. Enforcement of the
15 canons of ethics is necessary to preserve the decorum of the Court and the respectability of the legal
16 profession. *Ex parte Burr*, 22 U.S. (9Wheat.) 529, 530 (1824).

17 **COURT'S EXPECTATIONS**

18 25. For the purposes of this order, the Court reaffirms its holding in *In re Lopez Rodriguez*, 76
19 B.R. 252 (Bankr. D.P.R. 1987), on its basic expectations from attorneys representing debtors in Chapter
20 13 cases and who request as attorney's fees the maximum fee allowed without filing an application for
21 compensation under the "loadstar" analysis. These are:

22 Of particular interest to this Court are the generally accepted factors of quality of
23 representation and results obtained. A Chapter 13 case that reaches the confirmation
24 hearing with all reasonably foreseen problems already solved, or, at least, with the
25 appropriate legal and/or administrative action underway is prima facie evidence that the
26 attorney provided the expected quality of representation and obtained the results relied
27 upon by the debtor when he/she hired the attorney. Those cases that continue to the
28 confirmation hearing with the same problems indicated by the Chapter 13 trustee at the
341 meeting hearing or by an objection to confirmation of the Chapter 13 plan denote a

1 quality of representation that warrants the adjustment “down” of the agreed rate.

2 **ATTORNEY’S CONTINUING DUTY OF REPRESENTATION**

3 26. An attorney who represents a debtor in the Bankruptcy Court at the time a petition under
4 Chapter 13 is filed, or when a case under another chapter of the Bankruptcy Code is converted to Chapter
5 13, has a continuing duty to represent the debtor in all proceedings in the Bankruptcy Court until the
6 occurrence of the earliest of: (a) dismissal of the case; (b) closing of the case; or (c) the entry of an order
7 allowing the attorney to withdraw from further representation of the debtor.

8 **ATTORNEYS’ FEES**

9 27. a. The Court may approve attorneys’ fees in non business cases at the confirmation hearing
10 without filing a detailed application if the fees, costs and expenses [excluding the filing fee] do not
11 exceed \$1,500.00. Applications in excess of this limit will be under the “ loadstar” analysis to determine
12 the reasonableness of the fee. In order that the disclosure of information be adequate and complete, the
13 debtor’s attorney will list in the Rule 2016 statement any fee paid in a prior Chapter 13 petition, and
14 whether the plan was confirmed or the cases dismissed.

15 b. When allowing the flat fee, the Court will consider whether counsel for the Chapter 13
16 debtor has discharged the following responsibilities:

- 17 (1) Meet with the debtor to review the debtor’s debts, assets, liabilities, income, and
18 expenses.
- 19 (2) Counsel the debtor regarding the advisability of filing either a Chapter 7 or Chapter
20 13 case, discuss both procedures with the debtor, and answer the debtor’s questions.
- 21 (3) Explain which payments will be made directly by the debtor and which payments will
22 be made through the debtor’s Chapter 13 plan, with particular attention to mortgage and
23 vehicle loan payments, as well as any other claims that may accrue interest.
- 24 (4) Explain to the debtor how, when and where to make the Chapter 13 plan payments.
- 25 (5) Explain to the debtor how the attorney’s fees and trustee’s fees are paid and provide
26 an executed copy of this document to the debtor.
- 27 (6) Explain to the debtor that the first plan payment must be made to the Trustee within
28 30 days of the date the plan is filed.

1 (7) Advise the debtor of the requirement to attend the 341 Meeting of Creditors, and
2 instruct the debtor as to the date, time and place of the meeting.

3 (8) Advise the debtor of the need to file any due tax returns prior to the 341 Meeting of
4 Creditors.

5 (9) Advise the debtor of the necessity of maintaining liability, collision and
6 comprehensive insurance on vehicles securing loans or leases.

7 (10) Timely prepare and file the debtor's petition, plan, statements and schedules.

8 (11) Appear at the 341 Meeting of Creditors with the debtor.

9 (12) Respond to objections to plan confirmation, and where necessary, prepare an
10 amended plan.

11 (13) Prepare, file and serve necessary amendments to the plan which may include
12 suspending, lowering or increasing plan payments.

13 (14) Prepare, file, and serve necessary amended statements and schedules, in accordance
14 with information provided by the debtor.

15 (15) Prepare, file, and serve necessary motions to sell real property when appropriate.

16 (16) Object to improper or invalid claims, if necessary, based upon documentation
17 provided by the debtor.

18 (17) Represent the debtor in motions for relief from stay and motions to dismiss.

19 (18) If appropriate, prepare, file, and serve necessary motions to avoid judicial liens on
20 real or personal property.

21 (19) Provide such other legal services as are necessary for the administration of the
22 present case before the Bankruptcy Court.

23 **FORM AND CONTENT OF AN APPLICATION FOR AWARD**
24 **OF ADDITIONAL ATTORNEY'S FEES AND EXPENSES**
IN A CHAPTER 13 PROCEEDING

25 28. a. Applications in Chapter 13 cases for attorney fees and/or expenses relating to post
26 confirmation services shall comply with Bankruptcy Rule 2016(a), and in addition shall:

27 (1) State separately the total amount of fees and expenses previously approved and the
28 amount that has been disbursed by the trustee;

1 (2) Identify the time period during which the services for which the award is sought were
2 rendered;

3 (3) Describe the services rendered, and state why the matter could not have been
4 reasonably foreseen at or prior to the confirmation hearing;

5 (4) Identify each specific instance in which an award is sought for the services of more
6 than one attorney and paralegal and the justification for each such specific instance; and

7 (5) Attach an exhibit containing an itemized time record in chronological order of each
8 specific service for which an award of compensation is sought. This exhibit will:

9 (A) State the date each service was rendered;

10 (B) Identify the attorney(s) and paralegal(s) who performed the service;

11 (C) Describe with particularity the services rendered; and

12 (D) State the time spent performing the service in increments of tenths of an hour.

13 b. An application that seeks allowance of fees and expenses totaling \$500.00 or less may
14 be approved if it has the endorsed approval of the debtor and the Chapter 13 trustee. If the application
15 lacks their approval, it will be noticed to the debtor and Chapter 13 trustee. If no objections are filed
16 within 20 days from the date of notice, the court may approve the application.

17 c. At the request of any party in interest, or at the court's own initiative, the failure to
18 perform any act required by this order in a timely manner may result in a decrease or disgorgement of
19 the reasonable attorney fee allowed by the Court for the services of the case attorney, or in an order for
20 payment of fees subject to adequate protection payments.

21 SANCTIONS

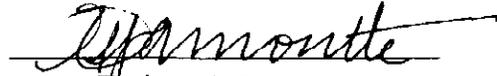
22 29. a. Unless good cause is shown, the failure to have all necessary amendments, appraisals,
23 stipulations, proposed orders, pleadings or other papers timely filed or submitted, or the failure to
24 perform any act required by this order in a timely manner, may result in a decrease or disgorgement of
25 the reasonable attorney fee allowed by the Court for the services of the case attorney, or such other action
26 as is appropriate, including denial of confirmation and dismissal of the case.

27 b. If confirmation is denied and the Court grants time to file an amendment, pleading or other
28 paper to put the plan in a posture for confirmation, the time granted to the debtor by the Court will

1 commence from the date of the oral order issued at the confirmation hearing. If such amendment,
2 pleading or other papers are not timely filed, the case may be dismissed without further notice to the
3 debtor or other parties in interest.

4 SO ORDERED

5 Dated at San Juan, Puerto Rico this 26th day of February, 2004.

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8 Enrique S. Lamoutte
9 U.S. Bankruptcy Judge
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