

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	CASE NO.	06-10021
)	CHAPTER	13
REED LEE PRANGER)	REG/tb	
DEBY SUE PRANGER)		
)		
Debtor(s))		

DECISION AND ORDER

At Fort Wayne, Indiana, on November 30, 2006.

This matter is before the court with regard to the Debtors' response to an order to show cause issued on November 16, 2006. That order was issued after the debtors filed a motion to modify their confirmed plan on September 5, 2006 and then took no action with regard to the prosecution of that motion during the next 60 days. Accordingly, the court issued an order to show cause as to why the motion should not be dismissed due to the lack of prosecution. See, N.D. Ind. L.B.R. B-7041-1. Counsel responded to the order to show cause by representing that the plan modification was not a material one, because it simply provided for an increase in payments, therefore notice was not necessary. The motion also states that if counsel is not correct in his perceptions he would like instructions from the court and that request for instructions is the reason for this decision.

In bankruptcy proceedings many things can take place only after a specified notice to creditors. See e.g., Fed. R. Bankr. P. Rules 2002-2 (general notice provisions), 3015(g) (post confirmation modification in chapter 12 and 13), 3019 (modification of a confirmed or accepted chapter 11 plan), 4001 (concerning relief from the automatic stay, credit and the use of cash collateral), 6006 (assumption or rejection of executory contracts), 6007 (abandonment of property). In some instances, the required amount of notice may be shortened or even dispensed with. See e.g.,

11 U.S.C. § 102(1), Fed. Bankr. P. Rules 6007(a) (“unless otherwise directed by the court . . .”), 9006(c). Nonetheless, absent authorization from the court, both the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure anticipate that notice will be given.

The local rules of this court embody the same philosophy found in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure concerning notice and the opportunity to object to certain actions. This court’s standard rule concerning noticing is Local Bankruptcy Rule B-2002-2. N.D. Ind. L.B.R. B-2002-2. It identifies twenty-four different requests for relief that the court will consider without a hearing unless a party in interest files a timely objection to the relief requested. Paragraph (b) of the Rule specifies the amount of notice time which must be given and, although a few matters require no more than 15 days notice to creditors, most require 20 days. Both the local rule’s requirement concerning which matters will be considered without a hearing following notice to creditors and the amount of notice required are subject to an exception which is: “Except as otherwise ordered” Consequently, it is possible not only to dispense with or shorten the notice required by local rule B-2002-2(b), but also to use the rule’s notice and opportunity procedure for requests other than those specified in paragraph (a), if the movant gets the court’s permission to do so. Getting that permission, however, requires a motion. See, Fed. Bankr. P. Rule 9013 (“ a request for an order . . . shall be by written motion . . .”). This motion should state “with particularity” both what the movant wants to do concerning notice and why that is an appropriate thing to do. Fed. R. Bankr. P. Rule 9013. It must also be filed separately from the underlying motion to which it relates. N.D. Ind. L.B.R. B-9013-1 (“every application, motion, or other request for an order from the court . . . shall be filed separately . . .”). See also, In re Minton, 2006 WL 533352 (Bankr. N.D. Ind. 2006). In the case of a motion which seeks to change or eliminate the notice otherwise required, if

it is granted the court will then proceed to consider the underlying request for relief. If, on the other hand, the motion to shorten or dispense with notice is denied, the movant is then expected to notice the motion in accordance with the prevailing requirements of the court's local rules.

The point which should be emphasized when it comes to changing the general nature of things is that doing so requires both a request from the movant and an order from the court. The movant cannot simply file a motion and then expect the court to sua sponte review it to determine whether or not it should be considered without the notice otherwise required by the Bankruptcy Code, the applicable rules of bankruptcy procedure, and the local rules of this court. Instead, if the movant wants to follow a course other than the one which is charted by those authorities, it is expected to take the initiative and seek the court's permission to follow a different route.

Moving from the theory to its actual application in this case, on September 5, 2006 the debtors filed what is styled an immaterial modification of the confirmed plan and on that same date a motion to approve the modification. These filings are in accordance with the procedure established by Rule 3015(g) of the Federal Rules of Bankruptcy Procedure, which requires the filing of both a motion to modify a confirmed plan together with a proposed modification. That rule, however, also requires that all creditors be given at least 20 days notice of the opportunity to object to the motion, as does the court's local rule B-2002-2. See, N.D. Ind. L.B.R. B-2002(a)(12). It was the movant's responsibility to prepare the appropriate notice and serve it upon all creditors and parties in interest. Id. at B-2002-2(d). While the court does have the ability to dispense with notice "with respect to creditors who are not affected by the proposed modification," Fed. Bankr. P. Rule 3015(g), this requires an order. Consequently, unless the debtor seeks and receives the court's permission to dispense with serving all creditors and parties in interest with notice of the motion for post-

confirmation modification, counsel must follow the path laid out by both Rule 3015(g) and Local Bankruptcy Rule B-2002-2.

Hopefully this explanation has been sufficient to apprise counsel not only of the court's expectations, but also of the reasons behind them, so that counsel now knows how to proceed with the motion for post-confirmation modification. Counsel shall have fourteen (14) days from this date within which time to file either (a) proof that all creditors and parties in interest have been served with notice of the motion, as contemplated by both Bankruptcy Rule 3015(g) and Local Bankruptcy Rule B-2002-2, or (b) a motion to dispense with that notice. The failure to do so will result in denial of the motion to modify without further notice or hearing.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court