

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
EMERY WAYNE MCCLENDON, SR.) CASE NO. 05-11552
QUEENIE ELOISE MCCLENDON)
)
Debtors)

**DECISION AND ORDER DENYING
MOTION FOR POST CONFIRMATION MODIFICATION**

At Fort Wayne, Indiana, on June 16, 2006.

This matter is before the court with regard to a motion to modify a confirmed plan and a proposed Chapter 13 Plan, both filed on June 5, 2006. By an order dated August 4, 2005, the court previously confirmed a Chapter 13 plan in this case. If the debtors want to change the obligations contained in their confirmed plan, the proper way to do so is to follow the procedure and meet the criteria established by the Bankruptcy Code and the applicable rules of procedure. See, 11 U.S.C. § 1329; Fed. R. Bankr. P. Rule 3015(g). That procedure does not contemplate filing a complete plan, but only a proposed modification that simply addresses the portions of the confirmed plan that are to be changed. This proposal is supposed to be accompanied by a separate motion asking the court to approve it, which should explain the nature of the proposed changes and the reasons for making them. All creditors and parties in interest are then entitled to notice of the motion and the opportunity to object thereto. Id. See also, N.D. Ind. L.B.R. B-2002-2. There is absolutely nothing about this procedure that would require the debtors to restate and thus give everyone the opportunity to object to the parts of the plan that are not being changed; those provisions are already binding. 11 U.S.C. § 1327(a). Furthermore, this procedure also has the additional virtue of making it far easier to tell precisely what about the confirmed plan is really being changed.

By apparently trying to propose a completely new plan, the debtors have not followed the proper procedure for modifying a confirmed plan.¹ Their motion to do so is therefore DENIED, without prejudice to resubmission.

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

¹Given this irremediable problem, the court sees no reason to wait until the expiration of the pending notice to creditors to address it.