

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
JERRY GREER and) CASE NO. 04-61798 JPK
VIVIAN GREER,) Chapter 13
)
Debtors.)

NOTICE/ORDER REGARDING DEFECTIVE SIGNATURES

A motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b) theoretically alleviates some of the hardship which might otherwise be experienced by a debtor for failure to complete a Chapter 13 plan. The procedural mechanics of filing such a motion, and of serving it and an accompanying notice under N.D.Ind.L.B.R. B-2002-2(a)(21), theoretically should not impose a hardship upon anyone, including counsel for the debtor and the Court. Unfortunately, in seeking to alleviate the consequences of the debtors' inability to complete the Chapter 13 plan in this case, counsel for the debtor has imposed significant hardships upon both himself and upon the Court.

A Motion for Hardship Discharge was filed by debtors' counsel David Dabertin on July 7, 2006. A certificate of service, together with the form of notice utilized by counsel purportedly pursuant to N.D.Ind.L.B.R. B-2002-2(a)(21) were also filed on that date. Both of these documents evidence significant deviations from signature requirements imposed by applicable laws and rules.

First, the signature "block" on both documents fails to state the telephone number of the filing attorney, as required by paragraph 11(a) of the Court's Fifth Amended Order Authorizing Electronic Case Filing – a relatively minor deviation from required format. Far more significant is the fact that the signature block on both documents does not contain a signature in the form required by the foregoing paragraph of the Fifth Amended Order: merely typing the attorney's name does not constitute a "signature" as required by that provision.

The certificates of service affixed to both documents are also defective. Fed.R.Bankr.P. 9011(a) requires that every motion and other paper filed in a case "shall be signed by at least one attorney of record in the attorney's individual name". In addition, Fed.R.Bankr.P. 7005/ Fed.R.Civ.P. 5(d) requires the filing of a certificate of service with respect to service of any paper made upon a party. The form of certificate of service is specified by N.D.Ind.L.B.R. B-9013-4(a), which requires the certificate of service to identify the document served, state the date upon which service was made, and state the manner in which service was made upon each entity served. The certificates of service utilized in the above-designated documents do not state the manner in which service was made upon the parties designated in the lists attached to the respective documents. Again, more significantly, the certificates of service have not been "signed" in the manner required by the above-quoted provisions.

Because the Motion for Hardship Discharge was not properly signed, it presents nothing to the Court and is in essence a nullity. The same is true for the form of notice utilized with respect to that motion. Because it will be necessary for counsel for the debtor to re-file the motion and the notice in proper form, the Court deems it appropriate at this time to address the form of notice which counsel for the debtors utilizes under N.D.Ind.L.B.R. B-2002-2. Sub-paragraph (c) of that rule provides that Form 3-a (LBF-3a), Form 3b (LBF-3b) or another form of notice substantially similar to those forms "shall be used to give creditors and parties-in-interest notice of the motion and the opportunity to object thereto". That rule specifies that any form of notice must conform to the seven specific requirements designated therein. The form of notice customarily employed by debtors' counsel routinely fails to designate the date upon which the document which is the subject of a particular notice was filed [sub-paragraph (c)(2)]; fails to state the relief being sought by the motion [sub-paragraph (c)(3)]; fails to clearly state the date by which objections to the motion are to be filed [sub-paragraph (c)(5)]; fails to state the complete mailing address of the Clerk of the United States Bankruptcy Court for the

Northern District of Indiana [sub-paragraph (c)(5)]; fails to "contain a statement to the effect that if no objections are filed by the date due, the Court may grant the relief requested without holding a hearing [sub-paragraph (c)(7)]; states no clearly identifiable date as the date upon which it was served [sub-paragraph (c)(7)]; and does not state the telephone number for counsel [sub-paragraph (c)(7)]. It would seem to the Court to be a very simply thing to adopt either Form 3a or Form 3b as the format utilized by an attorney who practices in this Court for all notices which that attorney is required to provide under N.D.Ind.L.B.R. B-2002-2, as contrasted to the utilization of a form which so substantially deviates from the requirements of that rule. The Court strongly encourages the debtors' counsel to create a word processing form, or a .pdf/word processing document completed by means of a template, which simply reproduces one of the two forms designated in N.D.Ind.L.B.R. B-2002-2(c) as his routine notice form. Based upon the parade of non-conformities designated in this paragraph, the Court finds that the form of notice included in docket record entry 105 does not substantially comply with applicable rules, and that thus even if certificate of service problems and signature problems on documents are corrected, it will be necessary for counsel for the debtors to redo this entire exercise with respect to the Motion for Hardship Discharge.

IT IS ORDERED that the Motion for Hardship Discharge filed on July 7, 2006 is denied, without prejudice to the debtors' filing a motion for the same relief in conformity with applicable law and rules.

Dated at Hammond, Indiana on August 9, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee