

POLICY FOR DOOMSDAY ORDERS IN CHAPTER 13 CASES

This sets forth Judge Kelley's policy on orders resolving Chapter 13 Trustee Motions to Dismiss (so-called "Doomsday Orders"). Doomsday Orders provide that if the Debtor defaults on a requirement specified in the Order, the Trustee can file an Affidavit of Default (Trustee Grossman) or Certification of Default (Trustee Garcia), and the case will be dismissed. The common defaults on Doomsday Orders include plan payments, filing a modified plan, filing a notice of conversion to Chapter 7, and providing the Trustee with tax returns and paying tax refunds. Depending on the nature of the default, the Order dismissing the case may be held for a brief period for Objections.

For cases in which the default is failure to file a notice of **conversion** by a deadline, Judge Kelley will not wait for the Trustee's affidavit of default or proposed order. For example, if the Order requires the Debtor to convert to Chapter 7 by February 12, 2014, Judge Kelley's staff will review the docket on February 13, 2014, and, if no notice of conversion has been filed, an order dismissing the case will be signed and docketed immediately.

For cases in which the default is failure to file a **modified plan** by a deadline, Judge Kelley will wait for the Trustee's affidavit of default, but will not wait 7 days (or any set period of time) before signing the dismissal order. For example, if the Trustee files an Affidavit of Default on February 14, 2014, stating that the Debtor failed to file a modified feasible plan by February 1, 2014, as required by a Doomsday Order, after reviewing the docket and confirming that the required plan has not been filed, Judge Kelley will sign the order dismissing the case immediately.

For cases in which the default is the failure to make timely **plan payments** or provide **tax returns** or pay one-half of the **tax refunds** (or file a modified plan to account for the tax refunds), Judge Kelley will hold the order dismissing the case for **7 calendar days** after the filing of an Affidavit of Default. For example, if the Trustee files an Affidavit of Default on March 10, 2014 stating that the Debtor failed to make the February plan payment, Judge Kelley will hold the order of dismissal until March 17, 2014. If no Objection has been filed to the Affidavit of Default, the order of dismissal will be signed on March 18, 2014.

Because of this policy, Judge Kelley will not sign a proposed Order that states that the case will be dismissed "without further notice or hearing" (or similar language) on the filing of an Affidavit of Default. Language that may be used for Stipulations and proposed Orders is attached.

Please remember that an **Objection to an Affidavit of Default should be saved for extraordinary circumstances**. If at all possible, seek relief from the Doomsday Order before the Affidavit of Default is filed.

If a case is dismissed and the Debtor wants the case reinstated, please review Judge Kelley's decision, *In re Dorff*, 480 B.R. 919 (Bankr. E.D. Wis. 2012) (available on this website under Judge Kelley decisions), before filing a Motion to Vacate the Order of Dismissal. Even if nobody objects to a Motion to Vacate the Dismissal, the Motion will be denied if satisfactory grounds are not shown.

SUGGESTED DOOMSDAY ORDER LANGUAGE

(Adapt dates, amounts and payment periods for your particular circumstances)

1. The Debtors must pay \$250 monthly to the Office the Chapter 13 Trustee on or before the last day of each month commencing with April 2014 and continuing through and including September 2014.
2. The Debtors must provide copies of the Debtors' 2012 state and federal tax returns to the Trustee on or before February 25, 2014. The Debtors must pay to the Office of the Chapter 13 Trustee one-half of the net 2012 tax refunds received by the Debtors, if any, or file a modified plan to account for those refunds on or before March 25, 2014.
3. The Trustee may file an Affidavit or Certification of Default and Order dismissing this case if the Debtors fail to comply with the deadlines stated above. These deadlines will be strictly enforced.
4. If the Debtors need relief from the deadlines for payments or providing tax returns or tax refunds, the Debtors should seek relief from these deadlines before the Trustee files an Affidavit or Certification of Default. Any Objection to a Trustee's Affidavit or Certification of Default for plan payments or tax refund/tax return defaults must be filed within 7 days of the filing of the Trustee's Affidavit or Certification, and should be filed only if the Debtors can prove either (a) that there was no default; or (b) the existence of extraordinary circumstances.
5. After the expiration of the deadlines and for the balance of the plan, the Trustee may renew the Motion by letter to the Court with a copy of the letter to the Debtors and Debtors' counsel, allowing the Debtors the opportunity to request another hearing. If no hearing is timely requested on a Motion that has been renewed by letter, this case will be dismissed without further hearing upon the filing of an Affidavit or Certification of no objection by the Trustee.

If the doomsday provision involves a deadline to convert to Chapter 7 or a deadline to file a modified feasible plan, the 7-day waiting period for objections does not apply.

For Orders requiring a modified feasible plan by a deadline, simply state:

Should the Debtors fail to file the modified feasible plan by the deadline, the Trustee may submit an Affidavit or Certification of Default and proposed Order dismissing this case.

For conversion deadlines, simply state:

Should the Debtors fail to file a notice of conversion by the deadline, the Court will enter an Order dismissing this case.