

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**FOR CHAPTER 13 PRACTITIONERS:
RECENT DEVELOPMENTS REGARDING
MOTIONS TO MODIFY PLAN**

The recent local rules change shifting responsibility for noticing any motion to modify a confirmed plan has brought to light some new concerns about common practices. In addition, many have sought from Court staff guidance on the required service of the notice of the motion to modify. After discussion at a recent meeting, the Judges directed the Clerk to share the following with the bar:

1. Distributing the Notice of the Motion to Modify. Close review of the Federal Rules of Bankruptcy Procedure reveals that the question of which parties should receive notice of a motion to modify has no easy answer. Fed.R.Bankr.P. 2002(a)(5) states that all creditors must receive notice of the time fixed to accept or reject a proposed modification of a plan. However, Fed.R.Bankr.P. 3015(g) provides that the Court can exclude from the notice parties that are not affected by the modification. Given this ambiguity, Court staff cannot provide guidance as to proper distribution of the notice on the motion to modify.

2. Settlement of Motion to Dismiss May Require Motion to Modify. Quite frequently, a trustee's or creditor's motion to dismiss the case is resolved by an agreement - that changes the terms of the plan and qualifies as a modification. For example, 11 U.S.C. §1329(a)(2) provides that an extension or reduction in the timing of plan payments is a modification. The practice has developed of resolving all motions to dismiss by agreed entries or stipulations. The Judges will accept those agreed entries and stipulations filed through **Friday, November 16th**. Thereafter, an agreed entry or stipulation resolving a motion to dismiss may be denied without prejudice if it should have been filed as a motion to modify the plan - with appropriate notice given.

Some examples of when an agreed entry or stipulation would NOT be a plan modification include the debtor's agreement to convert by a date certain; and an agreed entry resolving a motion to dismiss that was prompted by the debtor's failure to provide tax return or other financial information.

Counsel are free to challenge these determinations in any particular case as they see fit. This notice is not intended to be an advisory opinion but to share the Court's sentiments and encourage review of a standard practice that may run afoul of the Code and the Rules.

November 5, 2012

/s/ Kevin P. Dempsey
Clerk