

Judge Hawkins' Chambers Procedures *Updated 11/16/23*

I. Evidentiary Support for Motions to Extend or Impose the Automatic Stay

In a case in which the debtor had a previous bankruptcy case dismissed within the 1-year period preceding the filing of the petition in the instant case, the automatic stay “shall terminate with respect to the debtor on the 30th day after the filing of the later case.” 11 U.S.C. § 362(c)(3)(A). In a case in which the debtor had two or more previous bankruptcy cases dismissed within the 1-year period preceding the filing of the petition in the instant case, the automatic stay “shall not go into effect upon the filing of the later case.” 11 U.S.C. § 362(c)(4)(A).

A debtor may file a motion to extend the automatic stay beyond the 30 days and, after notice and hearing:

the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

11 U.S.C. § 362(c)(3)(B).

Likewise, a debtor may file a motion to impose the automatic stay by filing a motion within 30 days of the petition and, after notice and hearing:

the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

11 U.S.C. § 362(c)(4)(B).

In almost every case regarding an extension or imposition of the stay, the facts will give rise to a presumption under 11 U.S.C. §§ 362(c)(3)(C) or 11 U.S.C. § 362(c)(4)(D) that the new case was not filed in good faith. The burden then shifts to the debtor to establish by clear and convincing evidence that the new case was filed in good faith, based on the totality of the circumstances. *See In re Muhammad*, 536 B.R. 469, 473 (Bankr. M.D. Ala. 2015). Clear and convincing evidence is “evidence [that] ‘produces in the mind of the trier of fact an abiding conviction that the truth of the factual contentions is highly probable.’” *Id.* at 475 (quoting *In re Ferguson*, 376 B.R. 109, 118 (Bankr. E.D. Pa. 2007)). Notably, a lack of opposition to a motion to extend stay does not obligate the Court to extend the automatic stay. *In re Montoya*, 342 B.R. 312, 316 (Bankr. S.D. Cal. 2006)

The Court encourages any debtor moving to extend or impose the automatic stay to attach an affidavit in support of the motion. However, should the debtor fail to attach an affidavit, the debtor should appear and testify at the hearing. If the debtor fails to file a sufficient affidavit, and the debtor fails to appear and testify, the Court may deny the motion.

Affidavits filed in support of these motions should be sufficient to meet the burden set forth in 11 U.S.C. § 362(c)(3)(C) and 11 U.S.C. § 362(c)(4)(D). The Court is not required to look beyond the four corners of the pleadings and affidavits, as it is the debtor's burden to prove good faith by clear and convincing evidence. The Court considers these motions and affidavits on a case-by-case basis. While each case is unique, below are some guidelines that – if followed – may assist the Court and potentially obviate the need for debtor's live testimony.

Affidavits supporting the motions should explain why the most recently dismissed case(s) failed and whether there has been a change of circumstances that will improve the debtor's prospects for success in the pending case. This will be driven by the reasons for the prior dismissal(s), and the affidavit should be tailored to the specific case. Examples include:

- If there was a dismissal for a failure to provide tax returns, the affidavit should explain why the tax returns were not filed and whether the debtor has provided tax returns to the trustee in the current case (or explain why tax returns still are missing).
- If there was a dismissal for a failure to file schedules or other documents such as pay advices, the affidavit should explain why the documents were not filed and whether the debtor has filed all required documents in the current case (or explain why documents are missing).
- If there was a dismissal for a failure to pay the filing fee, the affidavit should explain why the fee was not paid and whether the debtor has paid the filing fee in full in the current case.
- If there was a dismissal for a failure to make plan payments, the affidavit should explain what caused the failure and whether the debtor is off to a better start in the current case. A detailed explanation, rather than the attachment of relevant schedules, is required. In other words, an exhibit without an explanation as to its relevance to the determination of good faith likely will be insufficient. The explanation might include the following:
 - The debtor's employer and monthly gross income in the previous case(s), compared to the debtor's employer and monthly gross income in the current case.
 - Whether the debtor had a working income withholding order in the previous case.
 - Whether an income withholding order has been requested in the current case.
 - The debtor's expenses in the previous case(s) and the expenses in the current case, with an explanation for the change in the available monthly income (if any).
 - A description and comparison of the plans in the previous case(s) and the current case, including:

- Whether plan payments are higher or lower than in the previous case(s).
 - Whether the plan terms are the same, shorter, or longer than the plan in the previous case(s).
 - Whether the debtor is proposing to surrender collateral that was provided for as a secured debt in the previous case(s).
 - Whether the dividend to unsecured creditors is the same, higher, or lower than in the previous case(s).
- The affidavit should include the specific reason(s) why the debtor's change in circumstances will improve the chances of confirmation and why and how the debtor will be able to fully perform under the proposed plan.
 - Considering the debtor's specific circumstances, the affidavit should address head on any issues that might appear to an outsider to be indicative of bad faith or a manipulation of the bankruptcy process, including serial filings or strategic timing of prior dismissals.

Affidavits should be tailored to the relevant facts in the debtor's cases, and sometimes a short affidavit will be sufficient. Many motions to extend or impose the automatic stay relate to a change in the debtor's financial circumstances between the prior case(s) and the current case. To aid practitioners, attached to these Chambers Procedures is an affidavit filed in support of a motion to extend the automatic stay in which there was a change in financial circumstances. The Court believes this attachment may serve as a helpful example. However, neither the foregoing nor the attached affidavit is intended to provide bright-line guidance on the level of detail likely to meet the debtor's burden.

II. Orders Conditionally Denying Motions for Relief from Stay

The proposed Local Rules specify the terms on which the Court will approve proposed orders conditionally denying relief from the automatic stay, particularly with respect to provisions dealing with automatic termination upon a failure to cure a future default. Pending approval of the proposed Local Rules, the Court will approve proposed orders only to the extent consistent with these terms, which can be summarized as follows:

- The future relief provision must expire no later than twenty-four (24) months after entry of the conditional denial order.
- Termination of the stay cannot be based upon the number of default notices.
- The order shall provide that the creditor must mail any notice of default to a debtor with at least twenty-one (21) days' notice to cure and file it with the Court within one (1) business day of mailing.
 - The order shall further provide that, if the stay terminates pursuant to the terms of the conditional denial order, the creditor must file a notice of termination of stay

with the Court and mail a copy to the debtor, and that the stay termination is not effective until the notices described in this paragraph are filed with the Court.

- The notice of termination of stay filed with the Court on CM/ECF shall relate such notice to the conditional denial order and notice of default.
- The notice filings are for information only and will not be set for hearing.
- The conditional denial order must not contain a provision that the order should be binding upon the Chapter 7 Trustee in the event of conversion.
- The conditional denial order must not contain an open-ended provision for future attorney's fees or costs in addition to the fees and costs specifically authorized in the order.
- The creditor must file an amended or supplemental proof of claim for any post-petition arrearage or attorney's fees authorized by the conditional denial order to be paid by the Chapter 13 Trustee.
 - Any such proof of claim must be filed within sixty (60) days of the conditional denial order's entry.
 - A creditor filing a proof of claim under this subsection is not required to file the notice of fees, expenses, and charges under FED. R. BANKR. P. 3001.1(c).
- If the denial is conditioned upon current payments being made directly to the creditor, the order must state the date of the month when payments are due. The cure period after notice of default must be at least twenty-one (21) days from the date of mailing.
- If the denial is conditioned upon plan payments being made to the Chapter 13 Trustee, the order must not provide that the debtor is in default prior to the end of the month in which the plan payment is due.
 - The cure period after notice of default must be at least twenty-one (21) days from the date of mailing.
 - The Chapter 13 Trustee's records shall control as to the date payment was received.

III. Motions for Relief from Stay

All motions for relief filed should have supporting documents (i.e., affidavits, exhibits, etc.) filed as separate attachments in the same docket entry. Movant should attach an Affidavit and a Fact Summary Sheet to the motion for relief. This allows the Court to easily assess whether the movant has set forth evidence in support of the motion. A form Fact Summary Sheet can be found at: <https://www.almb.uscourts.gov/local-forms>.

IV. Suggestion of Death or Incompetency

When filing a Suggestion of Death or Incompetency on behalf of a debtor, the appropriate local form should be used. The Suggestion of Death or Incompetency form can be found at: <https://www.almb.uscourts.gov/local-forms>.

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

IN RE:

Remi Antonio Williams

Case No. 23-31726

Chapter 13

AFFIDAVIT OF DEBTOR

COMES NOW, the debtor by and through her attorney of record, and hereby states the following:

My prior case (20-32058) was dismissed for failure to pay. After my case was filed, my car was totaled in an accident and all insurance proceeds went to the lienholder (see Exhibit A). This Court allowed me to incur debt to get a replacement vehicle. However, this caused my expenses to increase to the point it was difficult to make my chapter 13 payments. Furthermore, in late June/early July of 2022 I lost my part time job. This, in combination with my new vehicle payment, caused my chapter 13 payments to be unaffordable and ultimately led to my case being dismissed.

In my prior case, my gross income was \$4,843.48 from Vectrus Systems Corporation (see Exhibit B). My net income after my payroll deductions and monthly expenses of \$3,079.75 was \$648.59 (see Exhibit B). Both these figures exclude the part-time job at Pike Road Schools listed in the schedules. I lost this job in the months prior to dismissal. An income order was requested in my prior case, but no payments were withheld. An income order will be requested in my current case.

The gross income in my current case from Vectrus Systems Corporation is \$5,566.80 and from UKG/STS Inc Alabama is \$622.25 for a total of \$6,189.05 (see Exhibit C). After expenses of \$3,606.00 and payroll deductions, my net income is \$1,381.70 (see Exhibit C). My increased net income from my prior case is due to my pay and hours increasing at my primary employer and from me getting another part time job.

My plan in the prior case had a term of 60 months, payments of \$78.00 bi-weekly and \$1,788.00 was being paid to unsecured creditors (see Exhibit D). \$1,788.00 was about 15.09% of my unsecured debt per the trustee's website. My plan in the current case is also for a term of 60 months. My payments are \$350.00 bi-weekly and unsecured creditors are being paid in full (see Exhibit E).

Due to my \$733.11 increase in monthly income, I believe that I can make this case work and receive a discharge.

Further, Affiant sayeth not.

Dated:

7 Sept 2023


Remi Antonio Williams

State of Alabama
County of Montgomery

Sworn to and subscribed before the undersigned Notary Public, in and for said county and state, on this the 7th day of September, 2023.


Notary Public
My Commission Expires 9-28-2024