

06 - BK-048



James
Ishida/DCA/AO/USCOURTS

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To Gale Mitchell/DCA/AO/USCOURTS@USCOURTS, Jennifer
Noell/DCA/AO/USCOURTS@USCOURTS

cc

bcc

Subject Fw: Bankruptcy Form B22C

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"hank hildebrand"
<hank13@ch13nsh.com>

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To <Rules_Comments@ao.uscourts.gov>

cc

Subject Bankruptcy Form B22C

I have read the comments of Judge Keith Lundin in reference to the defects that currently exist in the form B22C and I encourage the rules committee to consider these comments carefully. The B22C is the gateway for a trustee determination of the funds that will be allocated to unsecured creditors and, as such, is a critical form for every chapter 13 case. The use of inconsistent language and the efforts of the rule makers to tweak the statute into something that it is not by use of the form will create a situation where the practice will be dictated by the form rather than by the statute.

Specifically, the comments made by Judge Lundin in reference to Lines 3 and 4 cause the applicable Commitment Period in a chapter 13 to be determined by net income. It appears that the statute, by reference to Current Monthly Income, requires this determination to be made by gross income. This form defect will cause plans to underpay secured creditors for debtors engaged in business.

Judge Lundin makes references in several places to the confusing language of the form, where the form deviates from the terms of the statute. To insure more uniform application of the form, I believe that the form should use the language of the statute whenever possible.

None of the forms used make an effort to disclose the debtors "monthly net income" a required disclosure under 521(a)(1). Perhaps that is what Schedule I should be.

The statute does not require a debtor to include a nonfiling spouses income and then make a deduction for the amounts not contributed to the household. The statute works in a method that is exactly opposite from the form. This is unduly confusing and should be corrected by the Committee.

Judge Lundin makes a very good point when he critiques the forms references to the United States Department of Justice web site for the determination of the amounts to be deducted. The statute requires reference to the Internal Revenue Service. The Department of Justice is the agency that enforces much of the form. Should the enforcer also define the variables in the form? Is there any review for whether the amounts determined by the Department of Justice are correct? (For example, the IRS does not separate the components of "Local Standards: Housing and Utilities" deduction. The Department of Justice does).

I would note that Judge Lundin's comments on the charitable contributions for above median income debtors on the B22C may have been mooted by legislation subsequent to his comment.

I encourage the Committee to carefully review this form. It appears that in many cases the form is driving the statute instead of the other way around.

Henry E. Hildebrand III
Chapter 13 Trustee
PO Box 190664
Nashville, TN 37219
615.687.3213
hank13@ch13nsh.com