

NEW KID IN TOWN

Jeffrey P. Norman
Standing Chapter 13 Trustee
Southern District of Ohio
Eastern Division
One Columbus
10 West Broad Street
Suite 900
Columbus, Ohio 43215
jeff.norman@ch13columbus.com
614 420 2555 Telephone
614 420 2550 Fax

CEC Fall Seminar
November 4, 2011
Columbus

Jeffrey P. Norman

Mr. Norman was appointed as a Standing Chapter 13 Trustee in the Southern District of Ohio, Eastern Division on May 19, 2011. He had for the twenty six years prior been a practicing bankruptcy attorney in the Southern District of Texas. He has bankruptcy experience representing a variety of debtors and occasionally, creditors in all aspects of bankruptcy matters. He is Board Certified in Consumer Bankruptcy by the Texas Board of Legal Specialization and the American Board of Certification. He is AV rated by Martindale Hubble and is a chapter author of Bankruptcy Road Map, published by State Bar Books in 2010. Prior to moving to Ohio he was named a Texas Monthly Super Lawyer in bankruptcy for 5 consecutive years. He is licensed in the Southern District of Texas, Fifth Circuit Court of Appeals and the Southern District of Ohio. He obtained his Bachelor of Science in accounting and finance from Houston Baptist University in 1982 and his Doctor of Jurisprudence from South Texas College of Law in 1985.

NEW KID IN TOWN

➤ SEARCHING FOR GENERAL INFORMATION ABOUT THE NEW CHAPTER 13 TRUSTEE?

When all else fails visit the Chapter 13 Trustee web site. www.ch13columbus.com

JEFFREY P. NORMAN

CHAPTER 13 TRUSTEE
COLUMBUS, OHIO

- Home
- Communications
- Contacts
- Hearing Dates
- Debtor Education
- Docket
- Forms
- Case Decisions
- Links
- Trustee Position Statements
- Seminars / Materials
- National Data Center

13 Network

To access a case, please [CLICK HERE](#)

Docketing Website

For Access to the Trustee's Docketing Website, please [CLICK HERE](#).

Debtor Information

The Chapter 13 Trustee cannot give you legal advice. **Please contact your attorney for assistance.**

Chapter 13 Standing Trustee Pledge of Excellence

Contact Information:

Please see [Contacts](#) for email addresses and direct line extensions. Email is our preferred method of contact.

Payments Address: (Include Case Number and make Payable to Jeffrey P. Norman, Trustee)

Jeffrey P. Norman
Chapter 13 Trustee
P.O. Box 1718
Memphis, TN 38101-1718

Postal Address:

Jeffrey P. Norman
Chapter 13 Trustee
One Columbus
10 West Broad Street, Suite 900
Columbus, OH 43215-3449

Please see [Forms](#) for Trustee generated forms.

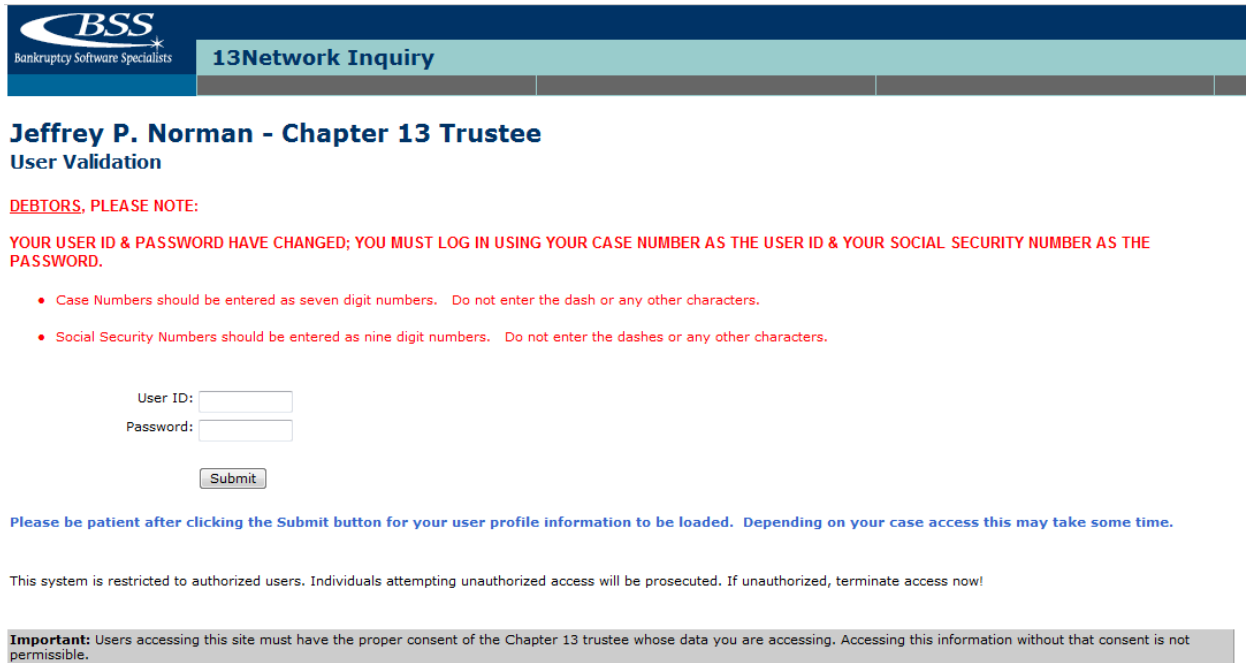
Please see [Links](#) for National Bankruptcy forms.

If you need a login for 13Network, please download the [website access agreement](#).

Effective 10/1/2011 the Trustee Percentage Fee is 4.5%.

➤ WHAT WILL I FIND?

- a. A link to 13 Network. Your virtual portal to the Chapter 13 Trustee's office.



BSS
Bankruptcy Software Specialists

13Network Inquiry

Jeffrey P. Norman - Chapter 13 Trustee User Validation

DEBTORS, PLEASE NOTE:
YOUR USER ID & PASSWORD HAVE CHANGED; YOU MUST LOG IN USING YOUR CASE NUMBER AS THE USER ID & YOUR SOCIAL SECURITY NUMBER AS THE PASSWORD.

- Case Numbers should be entered as seven digit numbers. Do not enter the dash or any other characters.
- Social Security Numbers should be entered as nine digit numbers. Do not enter the dashes or any other characters.

User ID:
Password:

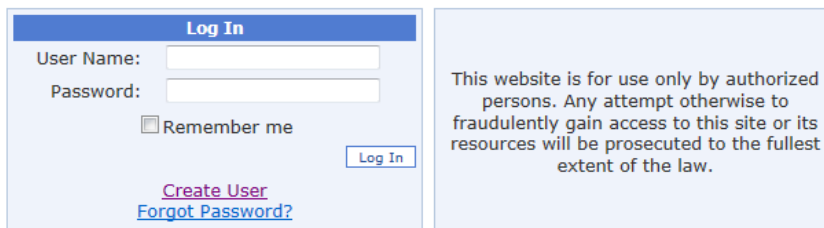
Please be patient after clicking the Submit button for your user profile information to be loaded. Depending on your case access this may take some time.

This system is restricted to authorized users. Individuals attempting unauthorized access will be prosecuted. If unauthorized, terminate access now!

Important: Users accessing this site must have the proper consent of the Chapter 13 trustee whose data you are accessing. Accessing this information without that consent is not permissible.

- b. A link to the docketing web site.

OFFICE OF JEFFREY P. NORMAN CHAPTER 13 TRUSTEE



Log In

User Name:
Password:

Remember me

[Create User](#)
[Forgot Password?](#)

This website is for use only by authorized persons. Any attempt otherwise to fraudulently gain access to this site or its resources will be prosecuted to the fullest extent of the law.

- c. The Chapter 13 Standing Pledge of Excellence. Please direct any complaints to the Chapter 13 Trustee.

Standing Trustees are appointed by United States Trustees under 28 U.S.C. 586 to administer chapter 13 bankruptcy cases. The following "Pledge of Excellence" was developed by the U.S. Trustee Program in conjunction with the National Association of Chapter 13 Trustees to reflect that standing trustees are committed to the highest standards of professional, moral and ethical conduct.



Standing Trustee Pledge of Excellence

Standing Trustees are committed to excellence and to providing a high level of trust and service to chapter 13 debtors and creditors. Creditors, debtors, attorneys, judges and others who come into contact with Standing Trustees are entitled to service which adheres to the highest standards of professional, moral and ethical conduct.

1. The Trustee's office should be open and operating Monday through Friday during regular business hours.
2. The Trustee should have a system in place to promptly respond in a meaningful manner to inquiries from debtors, creditors, attorneys, and other interested parties.
3. If the trustee is not personally available, the trustee should have competent staff available to assist or to respond to inquiries.
4. The trustee should work to ensure that debtors comply with their obligations under the Bankruptcy Code and Rules.
5. The trustee should work to ensure that debtors comply with the provisions of their plan and should take appropriate action if the debtor fails to commence plan payments when required or if there is a subsequent default in plan performance.
6. The trustee should maintain a system which efficiently tracks the progress and the receipts and disbursements in every chapter 13 case, from the time it is filed until the case is closed.
7. The Trustee should have a system to timely and accurately record all receipts and disbursements on the appropriate debtor ledger.
8. The trustee should disburse plan payments to creditors on a monthly basis, and should have procedures in place to properly classify and pay creditor's claims and to detect and recover any erroneous payments.
9. The trustee should ensure that all trust account ledgers and accounts are balanced on a monthly basis and should have a procedure to regularly review all cases with significantly large balances on hand or other fund irregularities.
10. The trustee should maintain a reasonably comprehensive system of internal controls over accounting and office operations, both paper and electronic, to safeguard estate assets and trust funds.

- d. A payment address and mailing address.

Payments Address: (Include Case Number and make Payable to Jeffrey P. Norman, Trustee)

Jeffrey P. Norman
Chapter 13 Trustee
P.O. Box 1718
Memphis, TN 38101-1718

Postal Address:

Jeffrey P. Norman
Chapter 13 Trustee
One Columbus
10 West Broad Street, Suite 900
Columbus, OH 43215-3449

- e. Contact information including telephone, email and fax numbers.

Main Office Number: (614) 420-2555

Main Office Fax: (614) 420-2550

Email tax returns to taxreturns@ch13columbus.com. Include the tax returns in pdf form, and **only** the case number in the subject line. (ex. 11-12345)

Email pay stubs to paystubs@ch13columbus.com. Include the pay stubs in pdf form, and **only** the case number in the subject line. (ex. 11-12345)

Name	Extension	Title	Email Address	Direct Fax
Anita Melick	305	Plan Analyst	anita.melick@ch13columbus.com	614-420-2570
Anita Pannell	301	Post Confirmation Closing	anita.pannell@ch13columbus.com	
Brenda Chapman	409	Case Setup Lead	brenda.chapman@ch13columbus.com	614-420-2579
Brittney Caldwell	107	Legal Secretary	brittney.caldwell@ch13columbus.com	
Cindy Steele	402	Comptroller	cindy.steele@ch13columbus.com	614-420-2590
David Thompson	303	Plan Analyst	david.thompson@ch13columbus.com	614-420-2574
Heather Mauro	408	Plan Analyst Supervisor	heather.mauro@ch13columbus.com	614-420-2586
Heather Roark	104	Financial Clerk Receipts	heather.roark@ch13columbus.com	
Jeannie Bohlander	202	Case Setup - Analysis Claim Coding	jeannie.bohlander@ch13columbus.com	
Jeff Norman	405	Trustee	jeff.norman@ch13columbus.com	614-420-2576
John Kennedy	407	Staff Attorney	john.kennedy@ch13columbus.com	614-420-2581
Karen Stover	103	Financial Clerk Coding	karen.stover@ch13columbus.com	614-420-2582
Lindsay Stover	203	Case Setup Clerk	lindsay.stover@ch13columbus.com	
Michelle Czarniecki	102	Post Confirmation Case Administrator	michelle.czarniecki@ch13columbus.com	614-420-2577
Molly Hartnell	306	Plan Analyst	molly.hartnell@ch13columbus.com	614-420-2572
Shannon Lynn Shaver	410	Closing Lead	shannon.shaver@ch13columbus.com	614-420-2584
Shaun Kemp	204	Systems Manager	shaun.kemp@ch13columbus.com	614-420-2567
Tammy Gollihue	101	Post Confirmation Case Administrator	tammy.gollihue@ch13columbus.com	614-420-2564
Tim Adams	403	Receipts Lead	timothy.adams@ch13columbus.com	614-420-2588
Tina Williamson	404	Post Confirmation Supervisor	tina.williamson@ch13columbus.com	614-420-2566

f. Chapter 13 Trustee generated forms.

[Website Agreement](#)

[Chapter 13 Monthly Operating Report - pdf](#)

[Chapter 13 Monthly Operating Report - Word](#)

[Business Income and Expense](#)

[Profit and Loss Report](#)

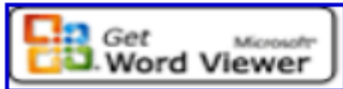
[Tax Calculator](#)

[Application to Borrow](#)

To view PDF documents you may require Adobe Reader. You can download the latest version free of charge using the icon below.



To view DOC documents you may require Microsoft Word. You can download Word Viewer free of charge using the icon below.



g. National Bankruptcy Forms and links to other sites.

[Bankruptcy PACER Login Form](#)

[13 Network](#)

[Chapter 13 Bankruptcy Case Information - National Data Center](#)

[NACTT](#)

[United States Department of Justice - Bankruptcy Forms](#)

- h. The current Chapter 13 Trustee fee.

Effective 10/1/2011 the Trustee Percentage Fee is 4.5%.

- i. A link for the National Data Center.

National Data Center, to access please [CLICK HERE](#)

In 1999, born out of a concept imagined by Jimmy Bone, Chapter 13 Trustee (Atlanta, GA) and Rick Yarnall, Chapter 13 Trustee (Las Vegas, NV) the National Association of Chapter 13 Trustees (NACTT) took concept to task to begin to consolidate Chapter 13 case information into a national database. This effort was in direct response to requests from large national creditors interested in improving communication. The concept promised to provide creditors and servicers a more expeditious solution to accessing to Chapter 13 case information versus interacting with 200+ different Chapter 13 Trustees or websites.

The initial NACTT project effort was named the National Data Center. The NDC project goal was to provide "parties-in-interest" with secure access to national Chapter 13 case information via a single, secure Internet site. Today, participation has risen to 200 Trustees, representing approximately 98% of all Chapter 13 Case and Claims data nationwide. This data is processed and updated nightly. Subscribers include Ford, Resurgent, Becket & Lee, Litton Loan Servicing, VISA, Bank of America, CompuCredit, National Capital Management, Lender Processing Services (FNFS), Wells Fargo Bank (7 divisions and growing) and several others. The secure website enjoys over 1 million hits per month delivering secure access for parties in interest to review their specific case information, which they review 24-hours a day.

Please visit the website for login instructions.

- j. Trustee Position Statements

[Trustee Position on Commitment Period](#)

[Trustee Position on Late Filed Claims](#)

[Chapter 13 Trustee Position Statement Student Loans](#)

[Chapter 13 Trustee Position on Telephonic Attendance at 341 Meetings](#)

k. Hearing Dates and Times.

The Trustee Calendar is available under the Calendar tab on the 13network. Please [Click Here](#) to log in for Hearing Date information.

October Dates:

10/4/2011 - Hoffman Misc. Hearing - 2:00pm

10/12/2011 - 341 Meeting - Time - All Day

10/18/2011 - Hoffman Confirmation - 1:00pm

10/21/2011 - 341 and Confirmation for St. Clairsville. Confirmation starts at 12:30pm, 341 time - 9:30am to 10:30am

10/24/2011 - Caldwell Confirmation - 1:00pm

10/25/2011 - Caldwell Misc. Hearing - 1:00pm

10/26/2011 - 341 Meeting - Time All Day

November Dates:

11/1/2011 - Hoffman Misc Hearing - 2:00pm

11/9/2011 - 341 Meeting - All Day

11/15/2011 - Hoffman Confirmation - 1:00pm

11/21/2011 - Caldwell Confirmation 1:00pm

11/22/2011 - Caldwell Misc 1:00pm

11/23/2011 - 341 Meeting - All Day

December Dates

12/6/2011 - Hoffman Misc Hearing 2:00pm

12/5/2011 - Caldwell Confirmation 1:00pm

12/9/2011 - 341 and Confirmation for St. Clairsville. Confirmation starts at 12:30pm, 341 time - 9:30am to 10:30am

12/19/2011 - Caldwell Misc 1:00pm

12/20/2011 - Hoffman Confirmation 1:00pm

12/14/2011 - 341 Meeting - All Day

12/28/2011 - 341 Meeting - All Day

i. Seminar Materials

[Consumer Chapter 7 and 13 for the Non-Bankruptcy Attorney](#)

[Bankruptcy 101](#)

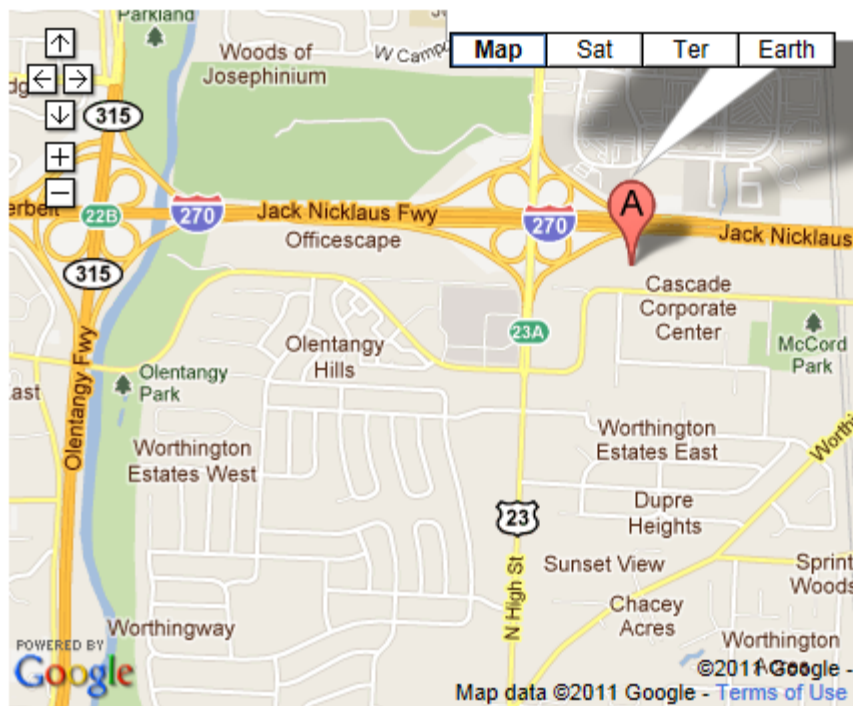
[Trustee September 2011 Columbus Bar Presentation Paper](#)

j. Debtor Education Schedules

Debtor Education

The Orientation Program is a joint venture of the two Columbus Chapter 13 Trustees, Frank M. Pees and Jeffrey P. Norman. Its purpose is to educate debtors about the Chapter 13 process and the protections afforded them under the Bankruptcy Code.

The Orientation Program is held every Monday night at 130 E. Wilson Bridge Rd, Suite 100, Worthington, Ohio from 6:00 PM to 8:00 PM.



k. Financial Management Class Schedule.

2011 Financial Management Class

- Email registration to debtored@ch13.org or call 614-436-6700 ext. 112 and provide name, case number and date of seminar you will attend.
- You are required to complete this course only one time during your entire bankruptcy case.
- Choose only one date. Dates and times are subject to change.
- Seminar is free and light refreshments are provided.
- **Must bring picture ID and case number.**

DATES & LOCATIONS

1. Voluntary Seminars

2011 Macer Seminars

- Seminars are free and refreshments are provided.
- Additional voluntary seminars offered to individuals in this district.
- Classes are held at Chapter 13 Trustee's Office, 130 E. Wilson Bridge Road, Suite 100, Worthington, OH 43085.
- Choose only one date per seminar. Dates and times are subject to change.
- Email registration to debtored@ch13.org or call 614-436-6700 ext. 112 and provide name, case number and date of seminar you will attend.

SEMINARS

Building A Spending Plan

Learn the basics of cash flow and tracking your spending. We provide pencils, calculators and quiet time; bring a list of your monthly expenses and pay stubs or income statements.

Dates and Times

- Thursday, August 25 : 7:00-9:00PM
 - Saturday, August 27 : 9:00-11:00AM
-

Buyer Beware: Your Rights Under Ohio Consumer Laws

Learn about your rights under Ohio consumer laws, current scams to avoid, how to research companies before hiring them, work-at-home opportunities and much more.

Dates and Times

- Thursday, October 6 : 7:00-9:00PM
 - Saturday, October 8 : 9:00-11:00AM
-

Credit Reports & Re-Establishing Credit

Learn how to obtain, read, and dispute credit reports. Guest speakers from credit lending community will share information about lending practices and what to expect now and after bankruptcy.

Dates and Times

- Wednesday, December 14 : 7:00-9:00PM
- Saturday, December 17 : 9:00-11:00AM

➤ WHAT'S REALLY IMPORTANT?

- a. Who to contact?

To reset a 341 meeting or to arrange for a telephonic 341 meeting.

Brenda Chapman brenda.chapman@ch13columbus.com

Trustee policy requires that debtor(s) be current in their Chapter 13 plan payments for a 341 meeting to be reset.

To forward tax returns:

Email as a PDF attachment to taxreturns@ch13columbus.com with the case number only in the subject line. You may not email tax returns for 2 business days after the case is filed.

To forward pay stubs.

Email as a PDF attachment to paystubs@ch13columbus.com with the case number only in the subject line. You may not email tax returns for 2 business days after the case is filed.

To discuss a case or forward other documents pre-confirmation.

Contact the case administrator on the case via email. This information is available on the 13Network.

CASE PROFILE - 11-59063	
Case Administrator	Anita Melick
Balance On Hand	\$450.00
Last Receipt Date	Friday, October 14, 2011
Last Receipt Amount	\$225.00
Last Disburse Date	
First Meeting Date	Wednesday, October 12, 2011 2:00 PM
Petition Filed Date	Wednesday, August 31, 2011

To determine what issues are outstanding on a case.

This information is available on the 13Network under the “Forum” tab.



Clicking on the “Forum” tab reveals the Trustee workup on the case both pre-341 and preconfirmation.

Pre-341 Workup or Pre-Confirmation Workup

INITIAL REVIEW

on Tuesday October 4, 2011 09:45 AM

- Plan payment not enough to pay trustee fee, attorney fees and adequate protection payments .
- Surrendered property at 1677 Tecumseh Drive is silent in Schedule D.
- Plan is silent to property located at 10585 Lancaster Circleville Road.
- Plan projects to complete in 60 months based on scheduled claims.

OBJECTION TO CONFIRMATION

on Friday October 21, 2011 08:45 AM

Amend schedules A and D to disclose surrendered property at Lancaster Road. Amend B22C to disclose the correct income information. Amend Plan to disclose above median income filing.

To discuss a payment or disbursement issue on a case -

Timothy Adams timothy.adams@ch13columbus.com

To inquire on a post-confirmation issue on a case (including post-confirmation claim issues, modifications and seeking permission to borrow.

Tina Williamson tina.williamson@ch13columbus.com

To inquire on a Motion to Dismiss for plan payments or plan length.

Shannon Shaver Shannon.shaver@ch13columbus.com

To inquire about a web problem or web access.

shaun.kemp@ch13columbus.com

To contact the staff attorney.


John Kennedy john.kennedy@ch13columbus.com

To contact the Chapter 13 Trustee.

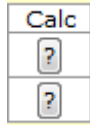
jeff.norman@ch13columbus.com

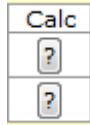
b. How can I do a plan calculation?

Access the 13Network under Plan Calc1.

 Jeff Norman	13Network	
	Case Query	Calendar
PROFILE PARTIES PAY SCHEDULES PAYEEES FINANCIALS PLAN CALC 1 FORUM MATTERS		

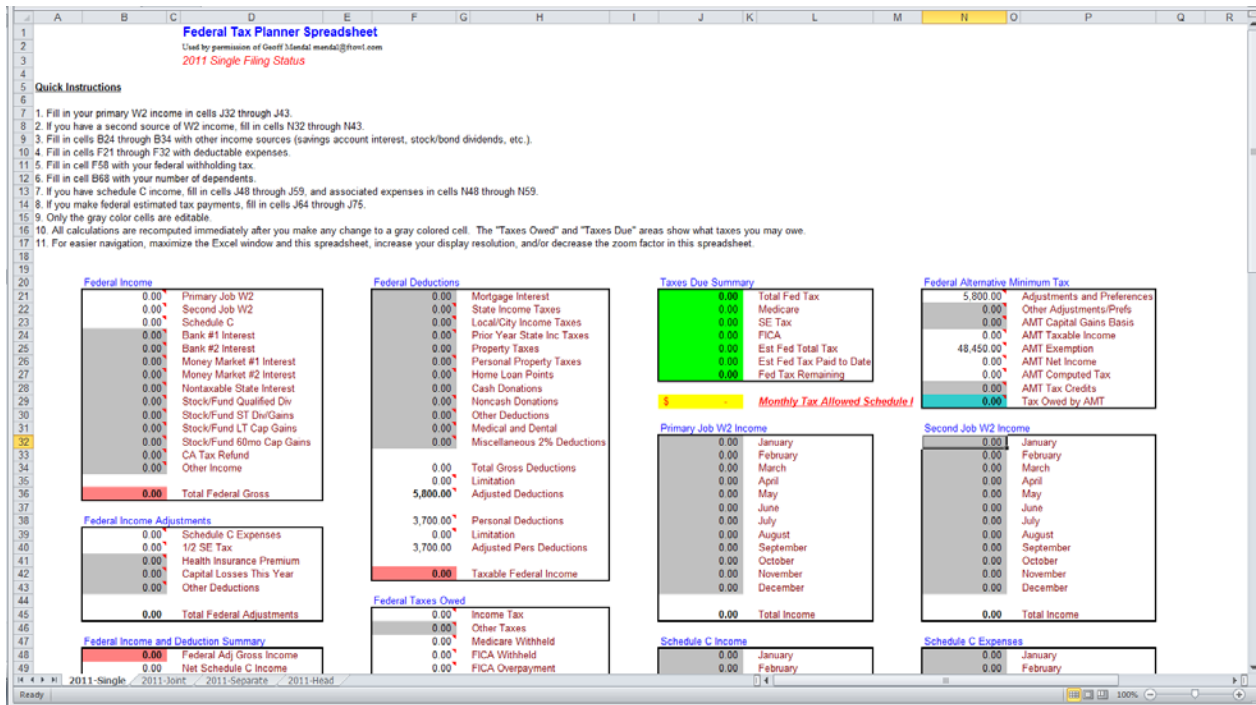
Clicking on Plan Calc 1 pulls up the following screen:



Manipulate fields and hit  to calculate plan payments.

c. How can I do an accurate tax withholding calculation.

Use the Excel tax calculator from our web site .



d. Where can I view the Chapter 13 Trustee Calendar?

The Trustee's calendar is available on the 13Network web site under the Calendar tab.



Clicking on the tab will lead you to the current month.

Calendar information may change without notice. Do not rely on the Trustee's calendar for your court appearances.

September		October 2011					November
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
25	26	27	28	29	30	1 Closing Order Date-40130 Items Date Case Added-1 Items	
2	3 Closing Order Date-1 Items Confirmation Hearing Date-41 Items	4 Closing Order Date-1 Items Confirmation Date-3 Items Date Case Added-13 Items	5 Date Case Added-14 Items First Meeting Date-58 Items	6 Closing Order Date-1 Items Confirmation Date-5 Items Confirmation Hearing Date-84 Items Date Case Added-10 Items	7 Closing Order Date-1 Items Confirmation Date-7 Items	8	
9	10 Closing Order Date-2 Items	11 Closing Order Date-3 Items Confirmation Date-3 Items Date Case Added-6 Items	12 Closing Order Date-2 Items Date Case Added-16 Items First Meeting Date-52 Items	13 Closing Order Date-1 Items Confirmation Date-3 Items Date Case Added-4 Items	14 Closing Order Date-3 Items Confirmation Date-4 Items Date Case Added-2 Items	15	
16	17 Closing Order Date-2 Items Date Case Added-7 Items	18 Closing Order Date-1 Items Confirmation Date-29 Items Confirmation Hearing Date-99 Items Date Case Added-7 Items	19 Closing Order Date-3 Items Confirmation Date-1 Items Date Case Added-5 Items First Meeting Date-64 Items	20 Closing Order Date-2 Items Confirmation Date-13 Items Date Case Added-13 Items First Meeting Date-28 Items	21 Closing Order Date-1 Items Confirmation Date-1 Items Confirmation Hearing Date-12 Items Date Case Added-6 Items First Meeting Date-13 Items	22	

Clicking on a hyperlink will take you to the cases set.

Calendar Date: Wed Oct 12, 2011

Time	Case Number	Debtor Name	Judge	Case Code	Attorney	District	Total Paid In
9:30 AM							

➤ OLDER INFORMATION

- a. Case Split – Judge Hoffman all cases styled 09-xxxxx forward.
Judge Caldwell odd cases styled 11-xxxxx forward.
- b. 341 meetings will be the 2nd and 4th Wednesdays of each month beginning at 9:00 a.m. ending at 4:00 p.m. scheduling 3 cases per half hour, beginning 11/1/2011 in three meeting rooms.
- c. Court hearings/schedules will remain unchanged short term for Judge Hoffman. Cased in Judge Hoffman's Court will be mixed by Trustee. Judge Caldwell, however will split his dockets by Trustee. By the time you read this the 2012 docket dates will be on our website.
- d. Contacting the office – direct email and direct line phone and fax numbers are available on my website. All staff members can be reached at firstname.lastname@ch13columbus.com (warning some staff like myself have shortened first names); a full directly is available on the web site.
- e. I will be banking with SunTrust Bank and have a Memphis, TN lockbox address. I will maintain, at least until the end of the year the same disbursement schedule as Trustee Pees. Misdirected payments made to the Memphis, TN lockbox after 1/1/2012 will be rejected.

We are currently averaging about 30 misdirected payments per day and we actively noticing debtors and employers of every misdirected payment.

- f. My office will be paperless. We don't want your paper and ask that you send every document to us electronically.



HOW DO I VIEW MY POSITION IN A CHAPTER 13 CASE AND WHAT AM I GOING TO DO? (11 USC § 1302)

The Chapter 13 Trustee is charged by the Court to do basically three things:

Examine the statements, schedules, and documents filed by the debtor to determine if the rules have been followed.

The Chapter 13 Trustee determines, primarily from the debtor's testimony and information received from any interested creditors, that the statements and schedules have been properly prepared and that the debtor's duty has been discharged. If there are any additions, corrections, or deletions that are deemed necessary, the Trustee should request such amendments be made.

Review the Chapter 13 plan to determine that it complies with all applicable code sections and can be recommended for confirmation or conversely dismissed or converted to a Chapter 7, if it does not.

Such action usually falls into three categories:

- a. Review and recalculate the Chapter 13 disposable income test (means test?).

In a Chapter 13, the Chapter 13 Trustee is the main gatekeeper of the disposable income test (means test?). He can only recommend to the Court confirmation of the Chapter 13, if among other requirements, if it meets the disposable income test. That is, it pays to unsecured creditors the monthly amount specified in the 11 USC § 1325 over the commitment period of the Chapter 13 plan.

- b. Determining that the Chapter 13 plan meets the liquidation test.

The liquidation test requires that unsecured creditors in a Chapter 13 receive more than what they would have received had the debtor filed a Chapter 7. As exempt assets are not subject to liquidation in a Chapter 7, the client's claim of and allowance of exemptions determines the liquidation test and a calculation of payments to unsecured creditors. For example, if a debtor has \$12,000.00 in non-exempt assets in a Chapter 7 and proposes a 60 month plan in a Chapter 13, then a monthly payment to unsecured creditors of \$200.00 per month will pay these creditors \$12,000.00 over time. However, to meet the liquidation test, the debtor would need to pay more than \$12,000.00, so a payment of \$200.01 per month or \$12,000.60 over 60 months technically passes the liquidation test.

- c. Determining that the Chapter 13 plan is proposed in good faith.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief of the absence of malice and the absence of design to defraud or seek an unconscionable advantage.

- d. Making a recommendation to the Court to confirm or not confirm a Chapter 13 plan.

Assuming that the client with attorney's assistance has complied with the applicable provisions of 11 USC § 1325, which includes the liquidation test and good faith requirements, the Trustee will recommend the case for confirmation.

e. Administration of the case post confirmation

After confirmation, the Trustee will continue to receive Chapter 13 plan payments as well as disburse funds. Should the client become delinquent, the Trustee will file a Motion to Dismiss. Should claims be filed post confirmation that renders the plan deficient, he will bring the same to the Court's attention. Should a post confirmation modification be required, he will review the modification and recommend or not recommend its approval to the Court. The Trustee will also certify that the payments under the Chapter 13 plan are complete and that the debtor (subject to his responsibilities) can be discharged.



WHAT ISSUES ARE CURRENTLY COMING BEFORE THE CHAPTER 13 TRUSTEE?

a. Not allowing a photocopy of documents for purposes of verification of identification ?

I will require an original document at 341 meetings or alternatively I will conduct the 341 meeting and allow a debtor to appear in person at my office for verification of identification.

b. Cases with more than one car payment per debtor.

I am currently objecting to plans with more than one car payment per debtor that do not have substantial distributions to unsecured creditors.

c. Direct payment of student loans as long term debts.

The Trustee has a position paper on the web site regarding this issue.

d. Excessive home payments with very low or zero percent plans.

I am currently objecting to these plans.

e. Complaints about seeking conversion rather than dismissal of cases based on "bad faith".

This is very limited and as far as the Trustee is concerned probably not an issue on most cases.

f. Payment of post confirmation attorney's fees.

This is an issue that will require some interaction with the Court.

g. Payment of college tuition and low or zero percent plans.

This is an issue that will also require some interaction with the Court.

h. Is filing an extension the same as filing a tax return.

The Trustee's position is that you must file a tax returns timely and that an extension is not sufficient for compliance with 11 USC § 1322. An extension to file a federal tax return is an extension of time to file the return but not an extension of time to pay any tax due. A debtor cannot comply with 11 USC § 1322 until such time as a tax return is filed. The Trustee will

seek dismissal of cases that have not filed a tax return and will not accept an extension as a substitute for a tax return.

- i. Cases are completing before the end of the applicable commitment period. The Trustee requires all cases to pay to the temporal requirement of 11 USC § 1325.
- j. The requesting of a debtor refund. The Chapter 13 Trustee will only refund to the debtor by Court order or at the completion of a case.
- k. Required documents in a business case include two years of tax returns, a means test profit and loss statement, monthly operating reports from filing date to confirmation as well as a budget that includes both business income and expenses (not just a net amount).
- l. We don't want copies of filed documents. If you correspond with the Trustee regarding a filed document don't send a copy just refer to it by docket number.
- m. Motions to Incur Debt – We need an updated budget and 60 days of pay stubs. Don't forward us the original I and J unless there has been no changed circumstances.

➤ IS MEANS TESTING COMING TO A CHAPTER 13 NEAR YOU IN 2012 AND HOW DOES IT EFFECT A CHAPTER 13 PLAN? (11 USC §1322)

In a Chapter 13 Bankruptcy, the debtor must pay his unsecured creditors the higher of his net disposable income or the amount determined by the liquidation test. The Bankruptcy Code has incorporated the means test into the definition of disposable income, so should the results of the means test determine the minimum payout to unsecured creditors in a Chapter 13. Remember, that payout is a minimum, and the client could be forced to pay a higher amount, if the liquidation test calls for a higher payment.

The Supreme Court has ruled on one aspect of how to compute a Chapter 13 debtor's projected disposable income under 1325(b). In *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010) the court held that the word projected gave the bankruptcy court the flexibility to adjust the debtor's income that are known or virtually certain at the time of confirmation. The court found that the ordinary meaning of the term projected encompassed more than simply multiplying the debtor's current monthly income by the number of months in the applicable commitment period and had a meaning that could take into account known or certain changes in income.

The court in *Lanning* made clear that such adjustments to the statutory formula for computing disposable income should be made only in unusual cases where there is known or virtually certain information about changes in the components in the formula that are based on actual income. There is no suggestion in the decision that a bankruptcy court can rely on the term projected to otherwise deviate from the formula by, for example, including income that the definition of currently monthly income excludes, such as social security benefits, or altering expense allowances permitted by statute.

Courts after *Lanning* will no doubt adopt a variety of approaches to the issue of how much discretion they may have with the means test. It is clear however that when a debtor has projected income which is lower than current monthly income as defined by Code section 101 then one would expect a reduced plan payment from the plan payment required under a strict means test calculation. Conversely

one could expect this Trustee to argue that the plan payment should be higher if the reverse is true that is that projected monthly income is higher than current monthly income under Code section 101.

EFFECTIVE 1/1/2012 YOU SHOULD EXPECT THAT THE CHAPTER 13 TRUSTEE WILL LOOK TO LANNING FOR GUIDANCE IN COMPUTING DISPOSABLE INCOME UNDER 1325(b).

➤ WHAT DOES IT TAKE TO CONFIRM A CHAPTER 13 PLAN? (OR WHEN IN DOUBT READ THE CODE.)

Confirmation of a Chapter 13 plan is governed by 11 USC § 1325. Subject to limited exceptions, bankruptcy courts must confirm Chapter 13 plans that meet the nine criteria listed in 11 USC § 1325. Comments of the Chapter 13 Trustee are **(within parenthesis in italic, underlined and bold)** and are not part of the Code section.

11 USC § 1325. Confirmation of Plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title; **(the catch all provision)**

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid; **(basically the filing fee)**

(3) the plan has been proposed in good faith and not by any means forbidden by law; **(grounds for general objection by creditors- good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief of the absence of malice and the absence of design to defraud or seek an unconscionable advantage.)**

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date; **(This section is the best interest of creditors/liquidation test)**

(5) with respect to each allowed secured claim provided for by the plan — **(This section is what you can do with secured debts)**

(A) the holder of such claim has accepted the plan; **(Not objecting to the plan is not acceptance see In re Montoya, 341 BR 41 (Bankr. Utah 2006)**

(B)

(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of— **(Creditors in cram down retain liens until the case is discharged or debt is fully paid under state law – no right to receive title if all secured payments are paid under the plan and plan dismisses or converts to a Chapter 7. In re Fleming, 339 B. R. 716)**

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and *(See in re DeSardi, 340 B. R. 790 (Bankr. S.D. Tex. 2006) for an opinion that equal doesn't always mean the same amount)*

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder; *(This allows collateral surrender to a secured creditor)*

(6) the debtor will be able to make all payments under the plan and to comply with the plan; *(This requires that the plan be feasible, that is the debtor(s) can afford to make the plan payments)*

(7) the action of the debtor in filing the petition was in good faith; *(Still more good faith)*

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and *(Debtor must pay all of their support obligations, in addition you do not get discharged if you don't pay DSO obligations over the life of the plan)*

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308. *(You don't confirm a plan if you have not filed all of your tax returns and you don't get discharged if you don't continue to file returns and pay the applicable liability during the duration of the plan)*

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing. *(This is the famous hanging paragraph - but bottom line is that a 910 claim cannot be bifurcated into a secured and unsecured portion, nor can you bifurcate debts incurred within the 1 year period prior to filing)*

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. **(The disposable income test)**

(2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended— **(This section incorporates the means test into Chapter 13)**

(A)

(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the “applicable commitment period”— **(How long your plan must be most Courts agree that this is a temporal requirement see In re: Tennyson, 611 F.3d 873 (11th Cir. 2010))**

(A) subject to subparagraph (B), shall be—

(i) 3 years; or **(36 month plan if you are less than median income but as long as 60 months)**

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is not less than— **(60 month plan if you are above median income)**

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee. **(This allows for wage orders and possibly other types of orders directing a third party to make plan payments to a Chapter 13 Trustee on behalf of the debtor)**

9. WHAT DOES GOOD FAITH MEAN?

The good faith requirement is one of the central, perhaps the most important confirmation finding to be made by the court in any Chapter 13 case. *In re: Rimgale*, 669 F.2d at 431 n. 14 (quoting *In re Kull*, 12 B.R. 654, 658 (S.D.Ga.1981), aff'd sub nom. *In re Kitchens*, 702 F.2d 885 (11th Cir.1983)). Yet the term, "good faith," is not defined in the Code or in its legislative history, and courts have said that no precise or comprehensive definition is possible." *In re Hawes*, 73 B.R. 584, 587 (Bankr.E.D.Wis.1987). See *In re Chaffin*, 816 F.2d 1070, 1073 (5th Cir.1987), modified on reconsideration on other grounds, 836 F.2d 215 (5th Cir.1988).

The Bankruptcy Code does not define "good faith." There is no illuminating legislative history. More than 300 reported "good faith" decisions form a maze of rules and exceptions swallowing rules. Nearly identical fact patterns have produced inconsistent results within judicial districts and across the circuits. The reported decisions demonstrate that "good faith" is an illusive statutory description of the limits of Chapter 13 relief. *In re Easley*, 72 B.R. 948, 950 (Bankr.M.D.Tenn.1987) (collecting cases).

The majority of circuits in holding that good faith must be defined on a case-by-case basis because a comprehensive definition of good faith is not practical. Most Courts set forth a non-exhaustive list of relevant factors as follows:

- (1) Does the proposed plan state [debtor's] secured and unsecured debts accurately?
- (2) Does it state [debtor's] expenses accurately?
- (3) Is the percentage of repayment of unsecured claims correct?
- (4) If there are or have been deficiencies in the plan, do the inaccuracies amount to an attempt to mislead the bankruptcy court?
- (5) Do the proposed payments indicate "a fundamental fairness in dealing with one's creditors."

In addition bankruptcy courts examine the timing of the bankruptcy filings, the total amount of unsecured debt, the types of debts incurred and the conduct that caused the debts to be incurred.

Generally it has been my opinion that bankruptcy judges know good faith or the lack thereof when they see it and that the applicable case law gives a Court wide discretion to find good faith or a lack thereof for almost any fact pattern.