

HARDSHIP MOTIONS

1. Review SC LBR 3015-5(b) (eff. 01/01/09) – in addition to the motion, you must also complete the local forms required by SC LBR 3015-5(b). These must be completed and filed with the motion along with an affidavit of service on all creditors and parties in interest.
2. The motion –
 - a. You must describe the hardship that is preventing the debtor(s) from completing the plan.
 - i. Include this description (usually a medical condition) in combination with the legal requirement of §1328(b) that the “failure to complete payments is due to circumstances for which the debtor should not justly be held accountable.” (*“The debtor is suffering from a heart condition that has worsened in recent months and he is no longer able to maintain his employment. His cessation of work is pursuant to the recommendation of his cardiologist. For this reason, he is not justly accountable for his inability to complete payments on his plan.”*) Please note that under caselaw in this district, the loss of a job alone is insufficient to warrant a hardship discharge.
 - b. Provide an accounting of what has and has not been paid by the debtor thus far in the bankruptcy. Specifically, whether he has paid all secured and priority debt and how much he has paid to his unsecured creditors. State whether the debtor has paid more or less than the Chapter 7 liquidation value.
 - c. State whether modification of the plan is practicable and why. (*“Because the debtor is not able to work and earn income, his monthly household expenses outweigh his household income and modification of his plan is not practicable.”*)
3. Things to file with the Motion
 - a. In addition to the forms required by SC LBR 3015-5(b), you should file amended Schedules I & J and new paystubs, if applicable.
4. Motions for Hardship Discharge are set for hearing and the debtor(s) must attend.