

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: MICHAEL P. MONTANO and  
LESLIE A. MONTANO,

No. 7-14-12950 JA

Debtors.

**ORDER RESULTING FROM HEARING ON CHAPTER 13 TRUSTEE'S MOTION  
FOR INSTRUCTIONS, SETTING BRIEFING SCHEDULE,  
AND AUTHORIZING AMICUS BRIEFS**

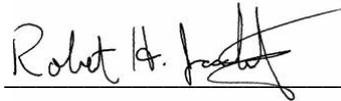
THIS MATTER is before the Court on the Chapter 13 Trustee's Motion for Instructions ("Motion") filed May 22, 2015. *See* Docket No. 53. The Chapter 13 Trustee filed the Motion seeking guidance from the Court regarding disposition of funds in the Chapter 13 Trustee's possession upon conversion of the Debtors' Chapter 13 case to Chapter 7 in light of the Supreme Court's decision in *Harris v. Viegelahn*, 2015 WL 2340847 (May 18, 2015). In *Harris*, the Supreme Court addressed whether a debtor who converts to Chapter 7 is entitled to the return of postpetition wages in possession of the Chapter 13 Trustee. In this case, counsel for the Debtors filed a fee application after the Debtors voluntarily converted their Chapter 13 case to Chapter 7. The Court then entered an order approving the fee application. The Debtors did not confirm a Chapter 13 plan.

The Motion raises the issue of whether the Chapter 13 Trustee may pay 503(b) administrative expenses, including Court-approved attorneys' fees, following conversion of the case to Chapter 7. The Court heard argument on the Motion on May 26, 2015. The United States Trustee also appeared at the hearing. Due to the substantial effect the *Harris* decision could have on Chapter 13 practice in this district and nationwide, the Court finds that it is appropriate to invite the filing of amicus briefs.

IT IS ORDERED:

1. The deadline for the United States Trustee, the Chapter 13 Trustee, and Debtors' counsel to file a brief is **Thursday, June 25, 2015**.
2. The deadline for filing an amicus brief, other than the United States Trustee, is **Thursday, June 18, 2015**. The Court will post a copy of this order on the Court's webpage and will send a notice to practitioners alerting bankruptcy practitioners of the opportunity to file an amicus brief in this case.
3. In addition to the issue identified above, the briefs may address the following issues:
  - a) Does it make a difference whether the fee application was filed before or after conversion from Chapter 13 to Chapter 7?

- b) Does it make a difference whether an order approving a § 503(b) administrative expense is entered before or after conversion from Chapter 13 to Chapter 7?
- c) Does it make a difference whether the plan or other order of the Court entered before conversion requires the Chapter 13 Trustee to pay § 503(b) administrative expenses following the conversion of a Chapter 13 case to Chapter 7?
- d) Does it make a difference whether the Debtors confirmed a Chapter 13 plan?
- e) Assuming the Chapter 13 Trustee may pay § 503(b) administrative expenses following conversion of a Chapter 13 case to Chapter, 7, is there any limitation on when an attorney must file a fee application?



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ROBERT H. JACOBVITZ  
United States Bankruptcy Judge

Date entered on docket: May 26, 2015

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