ORDER DISCHARGING DEBTOR BEFORE COMPLETION
OF CHAPTER 13 PLAN

Applicable Law and Rules

1.   Section 1328(b) of the Bankruptcy Code (11 U.S.C. § 1328(b)) states:

> At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if--

> > (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

> > (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of [the Bankruptcy Code] on such date; and

> > (3) modification of the plan under section 1329 of [the Bankruptcy Code] is not practicable.

2.   Section 1328(c) states:

> A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of [the Bankruptcy Code], except any debt--

> (1) provided for under section 1322(b)(5) of [the Bankruptcy Code]; or

> (2) of a kind specified in section 523(a) of [the Bankruptcy Code].

3.   A number of the exceptions to a hardship discharge in a chapter 13 case are set out in detail in section 523(a) of the Code.

4.   Section 523(c) states that the debtor shall be discharged from certain kinds of debts specified in section 523(a)

> unless, on request of the creditor to whom such debt is owed,, and after notice and a hearing, the court determines such debt to be excepted from discharge under [section 523(a)(2), (4), (6), or (15)], as the case may be.

5.   Fed. R. Bankr. P. 4007(d) states, in part:

> On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002.

6.   The procedure for seeking a hardship discharge pursuant to section 1328(b) is a matter of local practice. A copy of the local rules of court is available from the clerk of court.

7.   Section 524 of the Code sets out the effect of a discharge in a chapter 13 case.

8.   Fed. R. Bankr. P. 4004(f) provides for the registration of a certified copy of the discharge in another district.

General Information for the Clerk

This form is for use in a chapter 13 case in which the debtor receives a so-called "hardship discharge" pursuant to section 1328(b) of the Bankruptcy Code despite not completing the plan payments. Form B 18W may be used if the debtor has completed payments under the confirmed plan.

Pursuant to section 1328(b), notice and a hearing are required before the court grants a chapter 13 hardship discharge. When the debtor files a motion for a chapter 13 hardship discharge, Fed. R. Bankr. P. 4007(d) provides that the court is to fix the time for filing section 523(c) complaints and give creditors at least 30 days notice of the date so fixed.

It is contemplated that the discharge will be prepared by the clerk, rather than by a party in interest. The caption of a discharge for joint debtors should include all names used by each of the joint debtors within the last six years and the Social Security number of each debtor.

While Fed. R. Bankr. P. 2002 permits the court to order a person other the clerk to give a number of types of notices, Fed. R. Bankr. P. 4004(g) requires the <u>clerk</u> to promptly mail to the debtor, all creditors, and parties in interest a copy of the final order granting discharge. The 1983 Advisory Committee Note to Rule 4004 states that the notice should be mailed promptly after the order becomes final "so that creditors may be informed of the entry of the order and of its injunctive provisions."

Form B 18WH was formerly designated as Form B 242B. Form B 18WH has been revised to conform to the 1997 revision of Official Form 18.