# CHAPTER 13 QUARTERLY NEWSLETTER
# MARCH 2026

## 1. ANNUAL TAX RETURN REQUEST

Please note the Chapter 13 office has sent tax return requests to all debtors in all cases. The Trustee annually reviews tax returns for large tax refunds and/or changes in income.

The order confirming the plan authorizes the Trustee to review annual tax returns.

The Chapter 13 office thanks all counsel for working with their clients in providing this necessary information.

## 2. NOTICE OF WAGE BONUS IN PLANS

As most counsel are aware, the Chapter 13 office offers agreed entries with the debtors to turn over one-half of the net amount of future wage bonuses. The other half of the net wage bonus is retained by the debtors.

The Chapter 13 office will continue the practice of entering agreed entries with the debtors to turn over one-half of future wage bonuses.

Some parties have suggested having this language in section 8.1 of the plan would be useful as the agreed entries are often only served on a limited number of parties. Putting all creditors on notice of the turnover of future wage bonuses would be helpful when creditors review the case.

Therefore, the Trustee suggests that counsel include the following language in 8.1 if their client has gotten wage bonuses in the past:

> **Should the debtor receive a future wage bonus, the debtor will turn over one-half of the net amount to their chapter 13 plan to increase the return to non-priority, unsecured creditors.**

## 3. SPECIAL LANGUAGE IN PLAN – BELOW MEDIAN DEBTORS

Some parties have questioned why a below median debtor should extend their plan to the full 60 month duration.

Therefore, the Trustee suggests the following language, when appropriate, for below median debtors:

**The debtor is eligible for a 36 month Chapter 13 plan. However, the debtor's finances do not allow a Chapter 13 plan payment to accomplish the provisions of the**

**plan in 36 months. It is the debtor's intention to extend their plan up to a maximum, if necessary, 60 months in order to pay all administrative claims, secured claims, and priority claims in full. Further, the debtor states that all non-priority, unsecured creditors shall receive at a minimum the equity listed in section 5.1 of the plan. The debtor stipulates that the debtor will not receive a discharge in this case until the provisions of this plan are completed.**

4. **ADDITIONAL NOTICE TO REAL PROPERTY CREDITORS – OFFICIAL FORM 410C13-N**

Pursuant to Rule 3002.1(g)(1), effective December 1, 2025, real property creditors will receive notice of funds paid through the Chapter 13 plan on conduit mortgages. The official name of the form is titled "Trustee's Notice of Disbursements Made".

A copy of the official form, Trustee's Notice of Disbursements Made, is attached to this newsletter for counsel to review.

This form will be filed when the debtor completes payments under the plan and a Request for Discharge has been filed by the Trustee.

5. **NEW REQUEST FOR DISCHARGE**

To be consistent with the Notice of Disbursements Made, the Request for Discharge form used in Akron has been updated.

Generally, the information in the Request for Discharge is the same as the previous version, but the revised form puts real property creditors on notice that the Notice of Disbursements Made form that is also required to be filed.

The Request for Discharge and Notice of Disbursements Made will be filed by the Chapter 13 office at the same time.

It is the responsibility of the real property creditors to review their records and to file an appropriate response whether or not they are in agreement with the information provided by the Trustee.

6. **MULTIPLE 341 MEETINGS**

As some counsel are now aware, the Chapter 13 office has been requiring more than one 341 meeting in some cases. Although there are no parties that like multiple 341 meetings for the same case, including the Chapter 13 Trustee, it has become necessary to have said meetings when proper documentation has not been provided prior to the meeting. Please remember that the following information (ALL PAGES) must be provided for the following:

Bank Statements-prior three months of statements for all accounts

Tax Returns-prior two year of tax returns
Car Insurance-for all vehicles in plan
House Insurance
Picture Identification and Proof of Social Security Number

Please note that said items must be uploaded to the Chapter 13 portal a minimum of 5 days prior to the 341 meeting. As a refresher, information on how to load items to the portal can be found attached to this newsletter

## 7. PERSONAL FINANCIAL MANAGEMENT COURSE

The Chapter 13 office will continue to sponsor an on-line Personal Financial Management Course through the Trustee Education Network. Information regarding the online program is available on the Chapter 13 website at www.chapter13info.com. There is no charge to take the course online for Chapter 13 debtors who have filed in Akron, Ohio.

Please note: in a joint case, each debtor must take the on-line course separately and use two different e-mails. The software program generates the required certificates of completion partly based on e-mails to keep track of who has taken the required course.

Please find attached to this newsletter a flyer for the on-line course that counsel may share with their clients in Chapter 13 cases.

## 8. ALL PARTIES MUST USE PORTAL TO DELIVER DOCUMENTS

Nationally, various forms of computer viruses and other cyber security issues have been affecting many parties.

To continue best practice, the Chapter 13 office in Akron will no longer accept, open, or respond to attachments sent by email.

All parties must use the Trustee's portal system which provides extra cyber protection and additionally, greater privacy for all parties.

**Please remember email is not a secure form of communication.**

Please find attached to this newsletter instructions on using the portal.

There are new forms added to Bankruptcy Documents for Order uploads. One for creditor orders and one for debtor attorney orders when submitting orders which need attention by the Chapter 13 office.

For law firms with more than one counsel, a portal account can be set up and used for the law firm, and it would not be necessary to set up multiple accounts for parties within the same firm.

Although this is an extra step, please remember that viruses continue to evolve and can be encrypted into everyday documents. This extra step is meant to help all parties mitigate a cyber-attack.

## 9. WHITE WILLIAMS SEMINAR

This year's White Williams Seminar will be held at Hartville Kitchen on Friday April 24, 2026. Please find attached to this newsletter a copy of the flyer for the White Williams Seminar and registration.

## 10. CASE LAW

O'Hara v. Vara (In re O'Hara), 25-1203 (6th Cir. Feb. 11, 2026), 2026 U.S. App. LEXIS 4210.

O'Hara filed for Chapter 13 bankruptcy in January 2024 in the Western District of Michigan at Grand Rapids. On March 15, the appointed United States Trustee moved to dismiss O'Hara's case under 11 U.S.C. § 1307(c). As is standard, the motion advised O'Hara that his Chapter 13 case could be converted to a Chapter 7 proceeding. A hearing on the motion was set for May 8. O'Hara responded on May 7 stating that he opposed dismissal. O'Hara also made a passing reference in the response filed to converting the case to chapter 7 proceeding.

The bankruptcy court held a hearing on the U.S. Trustee's dismissal motion on May 8. After hearing from the parties, the court concluded that there was cause to dismiss or convert the case and that conversion would be the better option, finding that conversion was in the best interests of creditors. Debtor's counsel again brought up the possibility of voluntarily dismissing the case at the hearing. Bankruptcy Judge Scott W. Dales responded by acknowledging the debtor's absolute right to voluntarily dismiss the case but stated that if the Court's order converting the case to a chapter 7 proceeding was entered, the debtor's absolute right to dismiss the case would end. Debtor's counsel asked how long it would take for the Court to produce an order of conversion of the case after the hearing. Judge Dales stated that it could be a day or two and that if the debtor wished to have the case dismissed instead of converted, the debtor should act quickly to file to dismiss the case. The hearing adjourned at 12:05 p.m. and the Court entered the order of conversion at 5:48 p.m. At 7:12 p.m. the debtor filed a motion to voluntarily dismiss the case pursuant to 11 U.S.C. §1307(b) stating that the case "had not been converted." The bankruptcy court denied the motion to voluntarily dismiss the case the next day, stating that the entry of the conversion order ended the debtor's nearly unconditional right to dismiss the case.

Two months later, the debtor filed a motion requesting the dismissal of the case and/or vacating the Court's order of conversion pursuant to Federal Rule of Procedure 60(b). Counsel for the debtor argued that the 84 minutes separating the conversion order and the motion dismiss should be considered excusable neglect and so the bankruptcy court

should allow the debtor's right to voluntarily dismiss the case. Both the Chapter 7 Trustee and the U.S. Trustee opposed the Rule 60(b) Motion. The bankruptcy court denied the debtor's Rule 60(b) Motion, holding that the bankruptcy court was not in error by entering the conversion order.

The debtor first appealed to the U.S. District Court, which affirmed the decisions of the bankruptcy court, holding that the case was converted before the motion to dismiss was filed. The district court also noted that this was not a case where excusable neglect should be applied.

The debtor then appealed to the Sixth Circuit Court of Appeals. The majority opinion affirmed the decision of the lower courts and found no abuse of discretion in denying the motion for reconsideration. The Court found that there was appellate jurisdiction and allowed the consideration of both the conversion order and the order denying the debtor's motion to dismiss case. The Court held that the debtor did not show that the failure to move for dismissal before the case was converted was the result of excusable neglect. Regarding the debtor's substantive argument based on the right to dismiss under Section 1307(a), Judge Moore quoted Harris v. Viegelahn, 575 U.S. 510, 520 (2015) and Skandis v. Moyer (In re Skandis), 648 B.R. 918, 923 (B.A.P. 6th Cir. 2023) to emphasize that the debtor's absolute right to dismiss a chapter 13 case changes after the case has been converted.

The dissenting opinion stated that there was a lack of jurisdiction over the appeal.

# Trustee’s Notice of Disbursements Made

| Fill in this information to identify the case: | |
|---|---|
| Debtor 1 | |
| Debtor 2 (Spouse, if filing) | |
| Unites States Bankruptcy Court for the: | (State) |
| Case Number | |

Official Form 410C13-N

# Trustee's Notice of Disbursements Made

12/25

**The trustee must file this notice in a chapter 13 case within 45 days after the debtor completes all payments due to the trustee. Rule 3002.1(g)(1).**

## Part 1: Mortgage Information

**Name of claim holder:** _____ **Court claim no.** (if known): _____

**Last 4 digits** of any number you use to identify the debtor's account: ___ ___ ___ ___

**Property Address:**

_____
Number Street

_____

_____
City State ZIP Code

## Part 2: Statement of Completion

The debtor has completed all payments due the trustee under the chapter 13 plan. A copy of the trustee's disbursement ledger for all payments to the claim holder .

## Part 3: Arrearages

| | Amount |
|---|---|
| a. Allowed amount of prepetition arrearage: | $ _____ |
| b. Total amount of prepetition arrearage disbursed by the trustee: | $ _____ |
| c. Total amount of postpetition arrearage disbursed by the trustee: | $ _____ |
| d. Total amount of arrearages disbursed by the trustee: | $ _____ |

## Part 4: Postpetition Payment

*Check one:*

Postpetition payments are made by the debtor.

Postpetition payments are paid through the trustee.

Other:

**If the trustee has disbursed postpetition payments, complete a and b below; otherwise leave blank.**

a. Total amount of postpetition payments disbursed by the trustee as of date of notice: $_____

b. The last ongoing mortgage payment disbursed by the trustee was the payment due on _____. All subsequent ongoing mortgage payments must be made directly by the debtor to the mortgage claimant.

## Part 5: Postpetition Fees, Expenses, and Charges

Amount of postpetition fees, expenses, and charges disbursed by the trustee: $_____

## Part 6: A Response Is Required By Bankruptcy Rule 3002.1(g)(3)

**Within 28 days after service of this notice, the holder of the claim must file a response using Official Form 410C13-NR.**

✘ /s/ _____ Date 12/16/2025
Signature

Trustee _____
First Name Middle Name Last Name

Address _____
Number Street

_____
City State ZIP Code

Contact phone _____ Email _____

# Updated Request for Discharge

**THE UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF OHIO**

| | | |
|---|---|---|
| IN RE:<br><br>«debtor»<br>«joint» | Debtor(s) | CHAPTER 13<br>CASE NO: «print_casenum»<br><br>ALAN M. KOSCHIK<br>BANKRUPTCY JUDGE<br><br>NOTICE OF COMPLETION OF PAYMENTS UNDER THE PLAN<br><br>TRUSTEE'S REQUEST FOR THE COURT TO ISSUE A DISCHARGE IN CHAPTER 13 CASE<br><br>28 DAY NOTICE AND OBJECTION PERIOD FOR ALL PARTIES IN INTEREST |

**CHAPTER 13**
Keith L. Rucinski
Trustee
1 Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072

Now comes Keith L. Rucinski, the Chapter 13 Trustee, and hereby gives notice that the debtor(s) in the above Chapter 13 case has submitted funds to complete payment to all creditors who have filed a claim in the above Chapter 13 plan confirmed on **confirmation date.**

**Notice to all Creditors**

The Trustee's records indicate that all amounts to be paid to all creditors on their respective claims have been paid.

Debtors and creditors may access the Trustee's records through the National Data Center. There **is no** charge for debtors and their counsel to use the National Data Center to access case information. There **is** a charge for creditors to use the National Data Center to access case information. The National Data Center is not part of the Chapter 13 office.

Creditors may access case information free of charge through the Trustee's 13Network Program (application required). The application and links to both the National Data Center and 13Network Program are available on the Chapter 13 webpage at www.chapter13info.com.

Any creditor who does not agree that the creditor has been paid in full must file an objection with the U.S. Bankruptcy Court in Akron, Ohio within 28 days from the date in the below certificate of service.

**Notice to Real Property Creditors**

The Trustee's records indicate that all real property creditors who have received conduit mortgage payments and/or payment on mortgage arrearages through the Chapter 13 plan have been paid in full (See Official Form 410C13-N for disbursement breakdown).

**CHAPTER 13**
Keith L. Rucinski
Trustee
1 Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072

**Additional Notice to Real Property Creditors-Official Form 410C13-N**

Pursuant to Rule 3002.1(g)(1), real property creditors should review **Trustee's Notice of Disbursements Made** (Official Form 410C13-N). This notice provides real property creditors with more detailed information on the amounts paid (or not paid) through the plan by the Trustee.

Within 28 days of the service of these notices, all real property creditors, regardless if the monthly mortgage payment was paid through the plan as a conduit or directly by the debtor(s), must file and serve same on the debtor(s), debtor(s) counsel, and the Trustee pursuant to Fed. Bankr. Rule 3002.1(g)(1), a statement indicating whether it agrees that the debtor(s) has paid in full the amount required to cure any default and whether, consistent with § 1322(b)(5), the debtor is otherwise current on all payments as of the date of these notices.

If any real property creditor does not agree that the debtor(s) mortgage payments are current as of the date of these notices, the real property creditor shall file an objection with the U.S. Bankruptcy Court in Akron, Ohio in response to these notices.

**Effective for cases filed on or after March 1, 2016, pursuant to Administrative Order No. 19-04, if any real property creditor, who has received conduit mortgage payments though the Chapter 13 plan, fails to respond to these notices, the debtor(s) mortgages on real property shall be deemed current as of the date of these notices. The Court's order granting the debtor(s) a discharge in this case shall have the effect of deeming the mortgage(s) current as of the date of these notices and will bar the real property creditor from asserting any action in any court that there is a payment default predating these notices.**

**CHAPTER 13**
Keith L. Rucinski
Trustee
1 Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072

**For any real property creditor which did not receive conduit mortgage payments through the Chapter 13 plan, the debtor(s) is encouraged to file their own motion to deem the mortgage current. The discharge order in the case shall not deem the mortgage current if the real property creditor did not receive conduit mortgage payments through the Chapter 13 plan.**

**Request for Discharge**

Additionally, the Trustee hereby requests that if no objection is timely filed, the Clerk of Court be authorized and directed to enter a discharge of debtor(s) in this case.

**In accordance with 11 USC Section 102, unless a party in interest objects to this Request for the Court to Issue a Discharge in Chapter 13 Case and files a written response within 28 days from the date in the below certificate of service, the Trustee's**

**request shall be granted and the Court will issue an order of discharge. Objections must be served on all parties in the below certificate of service. Objections must be filed with the United States Bankruptcy Court at:**

**United States Bankruptcy Court**
**2 South Main Street**
**455 John F. Seiberling Federal Building**
**Akron, OH 44308**

Respectfully submitted,

**/s/ Keith L. Rucinski**
Keith L. Rucinski, Chapter 13 Trustee
Ohio Reg. No. 0063137
One Cascade Plaza, Suite 2020
Akron, OH 44308
Phone: 330.762.6335
Fax: 330.762.7072
Email: krucinski@ch13akron.com

**CHAPTER 13**
Keith L. Rucinski
Trustee
1 Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
Fax
(330) 762-7072

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent to:

**«debtor»**
**«dbtr_addr1»**
**«dbtr_addr2»**
**«dbtr_addr3»**
**(Via Regular Mail)**

**«joint»**
**«jdbr_addr1»**
**«jdbr_addr2»**
**«jdbr_addr3»**

«attorney» , at «atty_email_address» (via ECF)

Keith L. Rucinski, Chapter 13 Trustee, at efilings@ch13akron.com(via ECF)

Office of the US Trustee (via ECF)

All creditors per attached list (via Regular Mail)

Date of Service: **12/16/2025**

By: **«user_name»**
Office of the Chapter 13 Trustee

# Personal Financial Management Course

**COMPLETION OF A PERSONAL FINANCIAL MANAGEMENT COURSE IS REQUIRED TO EARN YOUR DISCHARGE!**

Online Chapter 13 Bankruptcy Course

Finally Financial Freedom!

The Trustees' Educations Network (TEN) – an affiliate of the National Association of Chapter 13 Trustees – has created an online financial management course for the benefit and financial education of Chapter 13 debtors. This course is approved by the United States Trustee Program.

# THIS COURSE IS FREE!

IT IS BEST IF THIS COURSE IS COMPLETED **PRIOR** TO YOUR

341 HEARING WITH THE TRUSTEE

## SIGN UP ONLINE AT 13CLASS.COM

**WHAT YOU WILL NEED:**

- Your 7-digit Chapter 13 Bankruptcy Case Number with one dash, no letters (YY-XXXXX)
- The last 4-digits of your Social Security Number
- Your valid email address (If filing jointly with spouse, each debtor must create an account with a different email address and take the course individually. You can use the same computer but not at the same time.)
- Your phone number

Once all coursework is completed, a *Certificate of Debtor Education* will be emailed within three business days to your email address and will be filed with your Bankruptcy Court.

***Other course providers may charge you a fee for this course, however this course is provided FREE by your Chapter 13 Trustee through the Trustees' Education Network (TEN)***

# Portal Instructions

# Bankruptcy Documents – Trustee Portal System

## Overview

Bankruptcy Documents is a secure document upload portal designed for sending debtor documents directly to your Trustee. With Bankruptcy Documents, you can effortlessly send files to your Chapter 13 Trustee, all while benefiting from advanced encryption for security. Attorneys enjoy a range of valuable features, including:

Send documents to multiple Trustees from a single platform.
Access detailed history records with date and time stamps.
Seamless API integration with your case management software.
And much more...

## Register for an account

-To begin using Bankruptcy Documents portal you will first need to create a "Filer Account" by navigating to the following link https://www.bkdocs.us/. From here you will need to click the register link in the top right of the page and enter your email address to receive follow up information in an email which will contain a link to "Activate" your account and to finish registration.

-Once you receive the email please click the "Activate Now" link. This will take you to a page to finish setting up your account, at which you will need to simply fill out the rest of the information being asked and submit. At the end of the registration process you will see 2 options. The first option is highly recommended as you will need to request access to the Akron Trusteeship for document submitting authorization. You should click this option. Please find Keith Rucinski's name in the list of Trustees and click on "Request." This will alert the Akron Trustee's Office of your request and the appropriate actions will take place to authorize your account to be able to submit documents to Akron's Office. Once accepted by The Akron Trusteeship you can begin submitting documents the Trustee.

## Submitting Documents

-After logging in with an account that is authorized, you will see the hyperlinks on the left side on the home page. Next, click on "Document Upload." Make sure "Rucinski, Keith" is selected and follow the steps outlined on this page. You will need to enter the case number manually and select what type of document this is from the drop down that correlates to the document. You may also enter a description for the document if you wish to do so. You will need to agree to the stated redacted rules before submitting. When the file is ready to send, click "Send File(s)."

## More Information

-Please see https://www.bkdocs.us/about-for-attorneys.html for more information or send an email to Eric Hoffert at EHoffert@ch13akron.com

White Williams Seminar

# THE 30TH ANNUAL
# WHITE-WILLIAMS BANKRUPTCY INSTITUTE

akron bar association

STARK COUNTY BAR ASSOCIATION

April 24, 2026
The Hartville Kitchen
1015 Edison Street NW, Hartville, OH 44632

6.75 CLEs applied for (5.75 General Hrs. & 1 Professional Conduct Hr.)

**7:45 A.M.** **REGISTRATION WITH CONTINENTAL BREAKFAST**

**8:10 A.M.** **WELCOME**
Anthony J. DeGirolamo, Esq. *Chair, Bankruptcy Committee, Stark County Bar Association*
Michael Steel, Esq., *Chair, Bankruptcy & Commercial Law Section, Akron Bar Association*

**8:15 A.M.** **NEW CHAPTER 13 FORMS**
James Galehouse, Esq. , *Office of the Chapter 13 Trustee*
Joe Ferrise, Esq., *Office of the Chapter 13 Trustee*

**8:45 A.M.** **REBUILDING CLIENT CREDIT**
Beth Ann Schenz Esq., *Senior VP, Huntington National Bank*

**9:15 A.M.** **CASE LAW UPDATE**
The Hon. John P. Gustafson, *U.S. Bankruptcy Court, Northern District of Ohio*
Thomas D. DeCarlo, Esq., *Osipov Bigel, P.C.*

**10:30 A.M.** **BREAK**

**10:45 A.M.** **ECONOMIC AND FILING TRENDS UPDATE**
Dr. William T. Rule II, Ph.D., *Senior Economist, Administrative Office of the United States Courts, Washington, D.C.*

**11:45 A.M.** **BEST PRACTICES - POTENTIAL AI PROBLEMS**
Marc Dann, Esq., *The Dann Law Firm*

**12:15 P.M.** **LUNCH - Gary Rosen/Peter Tsarnas tribute to Marc Gertz**

**1:15 P.M.** **DIGITAL CURRENCY AND NON-TRADITIONAL BANKING**
Matt Bodnar, Esq., *Roderick Linton Belfance LLP*

**2:15 P.M.** **OHIO TAX PANEL**
Alison Archer, Esq., *Ohio Attorney General's Office*
Cory Steinmetz, Esq., *Ohio Attorney General's Office*
Katherine Zucca, Esq., *Ohio Attorney General's Office*

**3:15 P.M.** **PIE BREAK-** Sponsored by Vance P. Trueman, Esq. & Nicole Metzger

**3:30 P.M.** **LIES, DECEIT AND THE ETHICAL RULES, CAN ATTORNEYS PRACTICE DECEPTION?**
Philip Bogdanoff, Esq.

**4:30 P.M.** **CLOSING REMARKS**
Drawing for the Dean Wyman Scholarship

## FRIDAY, APRIL 24, 2026 - THE 30TH ANNUAL WHITE-WILLIAMS BANKRUPTCY INSTITUTE

Register online at **www.akronbar.org/events.** Register by phone Akron Bar Association **330-436-0112,** OR Register online and choose "Payment at Later Time," then mail this form with your check to: Akron Bar Association, 57 S. Broadway St., Akron, OH 44308.

**NAME:**_____

**FIRM:**_____

**ADDRESS:** _____

**CITY/STATE/ZIP:** _____

**PHONE: (_____) _____-_____ E-MAIL:** _____
**(must provide in order to receive registration confirmation/receipt/link to materials)**

**OHIO REG. #** _____

**LUNCH CHOICE:**
**Baked Boneless Chicken____ OR Baked Fish____ OR Vegetarian Pasta____ No Lunch____**

**SEMINAR FEE**
**(includes continental breakfast, lunch and electronic materials)**

| | |
|---|---|
| **Stark County Bar Members, Advance Registration (Early Bird)** | **$249.00** |
| **Stark County Bar Members, At the Door Registration** | **$274.00** |
| **Associate Members/Associate Guests Advance Registration (Early bird)** | **$149.00** |
| **Associate Members/ Associate Guests At the Door Registration** | **$174.00** |
| **A+kron Members** | **$70.00** |
| **Akron Classic Members, Advance Registration (Early Bird)** | **$249.00** |
| **Akron Classic Members, At the Door Registration** | **$274.00** |
| **Attorney Guests (Early Bird)** | **$399.00** |
| **Attorney Guests, At Door Registration** | **$414.00** |
| **Judiciary & Law Clerk will attend for free** | |
| **TOTAL FEE** | **$_____** |

**Registration Options:**

**Online: www.akronbar.org with credit card payment**
**Phone: Akron Bar Association 330-436-0112**

**Register online, choose "Payment at a later Time", and mail this form with your check to:**
**Akron Bar Association**
**57 S. Broadway Street**
**Akron, Ohio 44308**

**Registration Info: Registration fee includes CLE electronic materials, continental breakfast & lunch. Registration received after 4/16/2026 will ensure an additional $25 fee.**

**GENERAL SEMINAR INFORMATION:**

**MATERIALS:** Handouts for this program will be provided to all attendees in electronic, rather than hard copy format. When you register, be sure to include your email address so that we can notify you when the electronic materials are available. **WI-FI access may be interrupted at the Hartville Kitchen; Attendees are encouraged to download the handouts to their devices and ensure that the device is fully charged before arriving at the seminar or print materials prior to the seminar.** The materials will be available at www.akronbar.org (under CLE heading, click on "Seminar Materials").

**CANCELLATION POLICY:** Cancellations must be submitted in writing via email: cle@akronbar.org. Refunds will be made with the following charge: a $45.00 cancellation fee. If no cancellation is received PRIOR to 12:00 p.m. the day before the seminar, no refund will be issued. The Akron Bar Association reserves the right to change or cancel the program if circumstances warrant.

**ACCREDITATION:** The Akron Bar Association is an approved sponsor of Continuing Legal Education seminars. Under Rule X (Ohio CLE) we will request credit for this program.

**SERVICES FOR PERSONS WITH DISABILITIES:** If special arrangements are required for individuals to attend this seminar, please contact the CLE Department at 330-436-0112 at least one week prior to the seminar.

**DIRECTIONS TO HARTVILLE KITCHEN:**
**FROM AKRON:** Take I-77 S to OH-241 Exit (Exit #118) toward OH 619/Massillon. Turn LEFT on Massillon Rd/OH-241. Turn RIGHT on E. Turkeyfoot Lake Rd./OH-619. Follow OH-619 past Cleveland Ave. The Hartville Kitchen is on the left side of the street.
**FROM CANTON:** Take I-77 N to OH-241 Exit (Exit #118). Turn RIGHT on Massillon Rd/OH-241. Turn RIGHT on E. Turkeyfoot Lake Rd./OH-619. Follow OH-619 past Cleveland Ave. The Hartville Kitchen is on the left side of the street.

O’Hara v. Vara (In re O’Hara), 25-1203 (6th Cir. Feb. 11, 2026), 2026 U.S. App. LEXIS 4210.

# *O'Hara v. Vara (In re O'Hara)*

United States Court of Appeals for the Sixth Circuit

December 9, 2025, Argued; February 11, 2026, Decided; February 11, 2026, Filed

File Name: 26a0035p.06

No. 25-1203

**Reporter**

2026 U.S. App. LEXIS 4210 *; 2026 FED App. 0035P (6th Cir.) **; 2026 LX 95644; __ F.4th __; 2026 WL 381122

IN RE: THOMAS WILLIAM O'HARA, Debtor.THOMAS WILLIAM O'HARA, Appellant, v. ANDREW R. VARA, United States Trustee for Region 9, Appellee.

**Prior History: [*1]** Appeal from the United States District Court for the Western District of Michigan at Grand Rapids. No. 1:24-cv-00916—Robert J. Jonker, District Judge. United States Bankruptcy Court for the Western District of Michigan at Grand Rapids. Nos. 1:24-bk-00151—Scott W. Dales, Bankruptcy Judge.

**Counsel:** ARGUED: Scott F. Smith, SMITH LAW GROUP, PLLC, Farmington Hills, Michigan, for Appellant.

Beth A. Levene, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

ON BRIEF: Scott F. Smith, SMITH LAW GROUP, PLLC, Farmington Hills, Michigan, for Appellant.

Beth A. Levene, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., Amy L. Good, UNITED STATES DEPARTMENT OF JUSTICE, Cleveland, Ohio, for Appellee.

**Judges:** Before: MOORE, BUSH, and DAVIS, Circuit Judges. MOORE, J., delivered the opinion of the court in which DAVIS, J., concurred. BUSH, J., delivered a separate dissenting opinion.

**Opinion by:** KAREN NELSON MOORE

## Opinion

**[**2]** KAREN NELSON MOORE, Circuit Judge. Thomas O'Hara filed for Chapter 13 bankruptcy. At a hearing on the United States Trustee's motion to dismiss, the bankruptcy court made clear its intent to convert the case to Chapter 7. But O'Hara did not move to dismiss his Chapter 13 case until *after* the **[*2]** bankruptcy court had entered its conversion order. The bankruptcy court denied both that motion to dismiss and O'Hara's subsequent Rule 60(b) motion. The district court affirmed in its appellate capacity. For the reasons explained below, we hold that we have jurisdiction and **AFFIRM** the decision of the district court.

### I. BACKGROUND

Thomas O'Hara filed for Chapter 13 bankruptcy in January 2024. Bankr. Ct. R. 1 (Voluntary Pet.). On March 15, the appointed United States Trustee moved to dismiss O'Hara's case under *11 U.S.C. § 1307(c)*. Bankr. Ct. R. 48 (Trustee Mot. to Dismiss). As is standard, the motion advised O'Hara that his Chapter 13 case could be converted to a Chapter 7 proceeding. *Id.* at 1 ("As a result of the above Motion being made, your case could be converted to a Chapter 7 case."). A hearing on the motion was set for May 8. *Id.* at 2. O'Hara responded on May 7 stating that he opposed dismissal. Bankr. Ct. R. 66 (O'Hara Resp. in Opp'n to Trustee Mot. to Dismiss at 3). He also made a passing reference to conversion. *Id.* ("Conversely a dismissal *or conversion to a chapter 7* will result in no unsecured creditors being paid . . . ." (emphasis added)).

The bankruptcy court held a hearing on the U.S. Trustee's motion on May 8. After hearing from the parties, **[*3]** the court concluded that there was cause to dismiss or convert the case and that conversion would be the better option. Bankr. Ct. R. 145 (May 8 Tr. at 7-9). Because much of the present controversy centers on the bankruptcy court's precise language, we quote from the transcript at some length.

> **[**3]** THE COURT: So that is cause to dismiss, and, therefore, I'm converting because of what I said about the role of the independent Trustee to evaluate these things.
>
> I will say, too, that—and I probably shouldn't, but the Court speaks to its orders. And the Debtor has an absolute right to dismiss the case. And so the case will not be converted until I enter the order converting the case. And that's all I'm going to say on that.
>
> So my ruling, the Court's ruling, is that the motion to dismiss is granted as expressed on the record, and the case will be converted by a separate order.

> All right. That is the ruling of the Court.
> [COUNSEL FOR O'HARA]: Your Honor, it may be that I don't hear as well as I used to. But could you clarify? You're going to dismiss the case today, but you're not going to convert it? I didn't quite get that.
>
> THE COURT: The motion to dismiss contemplates a finding of cause for dismissal. And the Statute **[*4]** says when the Court finds cause, it should consider whether to dismiss or convert.
> And I'm finding that conversion is in the best interests of creditors.
> I did say that the Court speaks to its orders, and so if I don't enter an order converting the case and you dismiss the case before then, then that's what will happen. A dismissal rather than the conversion.
> That's up to you. But my order is that the case will be converted. The Debtor has an absolute right to dismiss a Chapter 13 case. Period.
> [COUNSEL FOR O'HARA]: How long do we have before you produce an order?
> THE COURT: I can't say. I don't know how long it will take me to prepare the order. It could be a day, could be two days.
> But I would say you should act with quickness if your intention is to have the matter dismissed rather than converted.

*Id.* at 9-11. The hearing adjourned at 12:05 PM. *Id.* at 11. The bankruptcy court entered an order converting the case to Chapter 7 at 5:48 PM. Bankr. Ct. R. 68 [hereinafter May 8 Conversion Order]; *see id.* at 1 ("The Debtor has not availed himself of the dismissal right as of the signing of this Order."); *see also* Bankr. Ct. R. 70 (Mem. Decision & Order at 2) (noting the **[**4]** time of filing). At 7:12 PM, *see* Bankr. Ct. R. 70 (Mem. Decision & Order **[*5]** at 2), O'Hara filed a motion [1] to dismiss his Chapter 13 case under § 1307(b), noting that the case "has not been converted." Bankr. Ct. R. 69 (Notice of Voluntary Dismissal). [2] The bankruptcy court denied the motion the following day. Bankr. Ct. R. 70 (Mem. Decision & Order) [hereinafter May 9 MTD Order]. The court reasoned that the conversion order "took effect upon its entry" and that "after the conversion of a case from chapter 13 to chapter 7 . . . the provisions of chapter 13 no longer 'hold[] sway.'" *Id.* at 2 (second alteration in original) (quoting *Harris v. Viegelahn, 575 U.S. 510, 519 (2015)*). The conversion order was entered before O'Hara's motion was filed, "and it does not matter whether the case is under the provisions of chapter 7 for an hour, a day, or a year. Entry of the Conversion Order ended the Debtor's nearly unconditional right to dismiss the case." *Id.*

Nearly two months later, on July 2, O'Hara filed a motion styled as a "Motion to Dismiss Case and or for Relief from Order Pursuant to Federal Rule of Procedure 60(b)(1)&(6)." Bankr. Ct. R. 89 [hereinafter Rule 60(b) Motion]. The Rule 60(b) Motion explained that after the hearing on May 8, "Debtor's Counsel had lunch with his Debtor client to discuss if he wanted to convert or dismiss the case." *Id.* at 2. Counsel then drove about three hours back to his office "arriving **[*6]** shortly before 5:00 p.m." *Id.* He "addressed other matters having been out of the office all day" before preparing and filing the motion to dismiss. *Id.* He had "assumed that he had at least to the next morning" to file the motion, but he "soon observed that the Court earlier had converted the case to a Chapter 7." *Id.* The Rule 60(b) Motion asserted that "[i]n not allowing Debtor to dismiss pursuant to § 1307(b) the Court has circumvented his right not to be forced into a chapter 7 where the case has not been previously converted" and sought "dismiss[al] in order not to deprive the Debtor of the absolute right of a chapter 13 Debtor to dismiss pursuant to § 1307(b)." *Id.* at 3. In an attached brief, O'Hara argued that the "84 minute differential" between the entry of the conversion order and the filing of the motion to dismiss ought to be considered something akin to excusable neglect, and that the bankruptcy court was **[**5]** obligated to give effect to O'Hara's § 1307 absolute right to dismiss. *Id.* (Brief at 3-9). Both the Chapter 7 Trustee and the U.S. Trustee opposed the Rule 60(b) Motion. Bankr. Ct. R. 100 (Chapter 7 Trustee Resp.); Bankr. Ct. R. 102 (U.S. Trustee Resp.).

The bankruptcy court denied the Rule 60(b) Motion on August 7. Bankr. Ct. R. 110 [hereinafter August 7 Order]. The court **[*7]** rejected O'Hara's argument that his Chapter 13 rights were abridged because O'Hara "was no longer a chapter 13 debtor" when he sought dismissal. *Id.* at 2. The court was also unconvinced by O'Hara's "harmless error" argument. The court's entry of the May 8 Conversion Order "was not error—the court signed the Conversion Order as soon as it was ready, as forecasted on the record." *Id.* at 3. Finally, the court concluded that O'Hara's counsel's timing mistake should not be forgiven as excusable neglect. *Id.* at 4. O'Hara "was aware of the possibility of conversion, but rather than asking for dismissal in the alternative, he instead sought adjournment of the confirmation hearing, clearly indicating a desire to reorganize." *Id.* O'Hara's counsel's opposition to dismissal "reflect[ed] his litigation strategy decisions, not an excusable mistake." *Id.* at 5.

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[1] O'Hara improperly filed a "Notice of Voluntary Dismissal," Bankr. Ct. R. 69, but the bankruptcy court construed it as a motion. Bankr. Ct. R. 70 (Mem. Decision and Order at 1-2).

[2] Notably, O'Hara stated that the case "has not been converted under *11 U.S.C. §§ 706*, 1112, or 1208." Bankr. Ct. R. 69. The case had been converted, of course, under § 1307(c).

O'Hara filed an appeal on August 21, 2024. Bankr. Ct. R. 124 (Notice of Appeal). The district court affirmed the decisions of the bankruptcy court. R. 18 (Op. & Order at 2) (Page ID #835) [hereinafter D. Ct. Order]. The district court concluded that O'Hara's appeal of the May 9 MTD Order was untimely, and would fail on the merits, anyway, because the case was **[*8]** converted before the motion. *Id.* at 7-9 (Page ID #840-42). As for the August 7 Order, the district court reasoned that although the appeal was timely, it was meritless for the same reason as the May 9-MTD-Order challenge. *Id.* at 11-12 (Page ID #844-45). Finally, the district court agreed with the bankruptcy court that this was not a case of excusable neglect, nor did extraordinary circumstances justify relief. *Id.* at 12-13 (Page ID #845-46). O'Hara timely appealed to this court.

## II. JURISDICTION

In bankruptcy, as in all, cases, "[w]e have an independent obligation to ensure our jurisdiction." *Stevenson v. J.C. Bradford & Co. (In re Cannon), 277 F.3d 838, 852 (6th Cir. 2002)*. Pursuant to *28 U.S.C. § 158(a)(1)*, district courts "have jurisdiction to hear appeals . . . **[**6]** from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title." Thus, "a bankruptcy court's decision can be appealed if it is (1) a 'final judgment[], order[], [or] decree[],' or a qualifying interlocutory order; and (2) entered in either a 'case[]' or a 'proceeding[].'" *Ritzen Grp., Inc. v. Jackson Masonry, LLC (In re Jackson Masonry, LLC), 906 F.3d 494, 499 (6th Cir. 2018)* (quoting *28 U.S.C. § 158(a)*), *aff'd*, *589 U.S. 35 (2020)*. Courts of appeals "have jurisdiction of appeals from all final decisions, judgments, orders, and decrees" of the district court under § 158(a). *28 U.S.C. § 158(d)(1)*. [3]

### [*9] A. Scope of Notice of Appeal

Our first order of business is to determine which order(s) of the bankruptcy court O'Hara in fact appealed to the district court. O'Hara explicitly listed the May 9 MTD Order and the August 7 Order in his notice of appeal. Bankr. Ct. R. 124 (Notice of Appeal & Statement of Elections at 2). But he also attached the May 8 Conversion Order to his notice, and the parties' briefing and the courts' orders throughout the relevant litigation have heavily concerned the May 8 Conversion Order. In light of the evidence demonstrating O'Hara's intent to include the May 8 Conversion Order in his appeal, we conclude that he appealed all three orders to the district court.

We have repeatedly emphasized that notices of appeal are to be construed liberally. *See, e.g.*, *United States v. Willis, 804 F.2d 961, 963 (6th Cir. 1986)* ("The [federal] courts [of appeals] have consistently stated that failure to mention or misidentification of the ruling being appealed from does not destroy appellate jurisdiction as long as the intent to appeal is apparent and the appellee suffers no prejudice."). We addressed this issue at some length in *Caudill v. Hollan, 431 F.3d 900 (6th Cir. 2005)*. There, the appellants took appeal from a district-court order and opinion dated August 11, 2004. *Id. at 904*. In their briefing, however, **[*10]** they also included **[**7]** arguments regarding the district court's August 28, 2003 opinion and order. *Id.* We concluded that we had jurisdiction and could "reach all relevant aspects of" the appeal. *Id.* We reasoned that the appealed August 11 order directed entry of judgment, which was "a sufficient equivalent to appealing the judgment itself." *Id. at 905*. We also held "[i]n the alternative" that "if the notice of appeal was technically deficient, . . . such a technical deficiency should not prevent us from reaching the merits of the appeal, nor does such a technical deficiency divest us of jurisdiction to hear the appeal." *Id.* Because the appellee "understood" the appellant's "inten[t] to appeal the August 23, 2003 [sic] order" she was not prejudiced, and both sides briefed their arguments. *Id. at 907*. *See also Herring v. City of Ecorse, No. 24-1916, 2025 WL 2105263, at *6-7 (6th Cir. July 28, 2025)* (holding that the court had appellate jurisdiction over the issues in the district court's ruling on a motion to dismiss despite that the appellants did not include that order in their appeal because the appellants appealed the district court's grant of summary judgment and may contest partial dismissals along the way). Our caselaw makes clear that notices of appeal should be broadly construed to encompass **[*11]** decisions that the appellant, by reasonable inference, intended to appeal. *Willis, 804 F.2d at 963*; *see Kline v. Mortg. Elec. Registration Sys., Inc., 704 F. App'x 451, 456 (6th Cir. 2017)*. Such intent "may be inferred from briefs and other filings." *Kline, 704 F. App'x at 456*. The appellee also must not have been prejudiced. *Willis, 804 F.2d at 963*.

Both requirements are met as to the May 8 Conversion Order

[3] The U.S. Trustee argues that we have jurisdiction over the district court's dismissal of the appeal regardless of whether the bankruptcy court's order was final and appealable. D. 29 (Appellee Suppl. Br. at 10). He is mistaken. The district court did not merely dismiss the appeal—it affirmed the decisions of the bankruptcy court. R. 18 (D. Ct. Order at 14) (Page ID #847). And we "only have jurisdiction to hear bankruptcy appeals when both the bankruptcy and district courts' orders are final." *K&B Cap., LLC v. Off. Unsecured Creditors' Comm. (In re LWD, Inc.), 335 F. App'x 523, 526 (6th Cir. 2009)* (quoting *Taunt v. Vining (In re MTG, Inc.), 403 F.3d 410, 413 (6th Cir. 2005)*).

in the instant case. First, O'Hara's notice of appeal, briefing, and other filings clearly evince an intent to appeal the May 8 Conversion Order. Although O'Hara listed only the May 9 MTD Order and August 7 Order in his notice of appeal, *see* Bankr. Ct. R. 124 (Notice of Appeal & Statement of Elections at 2), in so doing he referred to the May 9 MTD Order as "Memorandum of Decision and Order Re: Conversion of Case." *Id.* Additionally, he attached the conversion order, Bankr. Ct. R. 68, to his notice of appeal, along with the May 9 and August 7 orders. *See* Bankr. Ct. R. 124-3; *FED. R. BANKR. P. 8003(a)(3)(B)*. And, in his brief before the district court, he indicated in his "Jurisdictional Statement" that his appeal was one "from the bankruptcy court's order converting a chapter 13 case to a Chapter 7 case without prejudice and the subsequent denial of the Debtor-Appellant's Motion to Dismiss." R. 15 (Corrected Appellant Br. at 5) (Page ID #700).

**[**8]** Second, there is no prejudice to the appellee. The U.S. Trustee in fact **[*12]** *agrees* that we have jurisdiction here and that O'Hara intended to seek review of the conversion order. *See* D. 29 (Appellee Suppl. Br. at 4-6). As further evidence, the district court, too, recognized that O'Hara "clearly intended to appeal the conversion order[.]" R. 18 (D. Ct. Order at 12 n.3) (Page ID #845); *see also id.* at 9 (Page ID #842) (noting that some of O'Hara's briefing appeared to be addressed to the conversion order). We therefore conclude that O'Hara appealed the May 8 Conversion Order, the May 9 MTD Order, and the August 7 Order to the district court.

**B. Timeliness**

O'Hara's appeals of two out of three orders falter, however, on timeliness. Under Federal Rule of Bankruptcy Procedure 8002(a)(1), a notice of appeal must be filed within 14 days of entry of the order to be appealed. O'Hara appealed the May 8 Conversion Order and May 9 MTD Order three months late, on August 21. The appeal is therefore untimely as to those two orders. Although the 14-day limit in Bankruptcy Rule 8002(a)(1) is not jurisdictional, it is nonetheless mandatory, and the U.S. Trustee raised the timeliness issue before both the district court and this court. *Tennial v. REI Nation, LLC (In re Tennial), 978 F.3d 1022, 1028 (6th Cir. 2022)*; *see* R. 16 (U.S. Trustee Br. at 19-20) (Page ID #742-43); D. 23 (Appellee Br. at 22). We proceed to consider only **[*13]** the appeal of the August 7 Order.

**C. Jurisdiction Over the August 7 Order**

Having determined that O'Hara timely appealed the August 7 Order to the district court, we now address whether that order was "(1) a 'final judgment[], order[], [or] decree[],' or a qualifying interlocutory order; and (2) entered in either a 'case[]' or a 'proceeding[].'" *In re Jackson Masonry, 906 F.3d at 499* (quoting *28 U.S.C. § 158(a)*). The August 7 Order denied O'Hara's Rule 60(b) Motion. Whether the August 7 Order is final and appealable depends on whether the underlying order, or orders, from which O'Hara sought relief are final and appealable. *See K&B Cap., LLC v. Off. Unsecured Creditors' Comm. (In re LWD, Inc.), 335 F. App'x 523, 527 (6th Cir. 2009)*. We therefore must answer the preliminary question of which order or orders underlie the August 7 Order.

**[**9]** The Rule 60(b) Motion is brief and far from a model of clarity. The motion describes the circumstances surrounding the filing of the motion to dismiss: the bankruptcy court's signaling of its intent to convert, O'Hara's attorney's later drafting of the motion to dismiss, and the entry of the conversion order before that motion was filed. Bankr. Ct. R. 89 (Rule 60(b) Mot. at 1-2). The motion ends by asserting that "[i]n not allowing Debtor to dismiss pursuant to § 1307(b) the Court has circumvented his right not to be forced into a chapter 7 where the case has not been **[*14]** previously converted" and, therefore, "[t]he case should be dismissed in order not to deprive the Debtor of the absolute right of a chapter 13 Debtor to dismiss pursuant to § 1307(b)." *Id.* at 3. The attached brief expands upon these arguments, *see, e.g., id.* (Brief at 8) (asserting that "the Court prematurely converted the case"), and "requests the Court Provide Relief from its Order converting this case to a chapter 7 and dismiss the case," *id.* (Brief at 9).

The August 7 Order itself starts by recounting the relevant history—the initial entry of the conversion order, followed by the denial of the motion to dismiss and subsequent developments in the Chapter 7 proceeding. Bankr. Ct. R. 110 (August 7 Order at 1). The bankruptcy court described O'Hara's motion as arguing that the court ran afoul of his Chapter 13 right to dismiss "by too-promptly entering the Conversion Order," and that O'Hara's error in not seeking dismissal before entry of the conversion order was due to excusable neglect. *Id.* at 2. Rejecting both arguments, the court explained that because the case had already been converted to Chapter 7 at the time O'Hara moved to dismiss, he no longer had the absolute right to dismiss his case under Chapter **[*15]** 13. *Id.* at 2-3. As to whether the entry of the conversion order was error, the court reasoned that "conversion of a case from chapter 13 to chapter 7 affects *substantial* rights." *Id.* at 4. The court concluded that it "d[id] not regard its entry of the Conversion Order as an error, much less a harmless one without impact on 'substantial rights.'" *Id.* Finally, the court explained that O'Hara's counsel's mistake in timing should not be regarded as excusable neglect, but rather

was the product of strategic decisions. *Id.* at 5-6. The bankruptcy court thus denied the motion.

Based on the text of the Rule 60(b) Motion and the August 7 Order and on the context of the case, we conclude that the August 7 Order encompasses both the May 8 Conversion Order and the May 9 MTD Order. Although the Rule 60(b) motion ultimately requests dismissal of the **[**10]** case, the attached brief requests relief from the conversion order *and* requests dismissal. The conversion order is inextricably bound up with the motion to dismiss: the entire, and only, asserted basis for reversing course on the motion to dismiss is that the conversion order was entered improperly. Relief from the denial of the dismissal here would necessarily require relief **[*16]** from the conversion order—dismissal under Chapter 13 is possible only if the conversion to Chapter 7 is undone. Indeed, it is conversion that O'Hara ultimately seeks to avoid. The district court in this case recognized as much, noting, "[i]t is apparent from his briefing that O'Hara's Rule 60(b) request is in fact seeking relief from the Bankruptcy Court's May 8, 2024 conversion order." R. 18 (D. Ct. Order at 12 n.3) (Page ID #845). O'Hara's briefing before this court also makes clear that his intent was, and continues to be, to seek relief from the conversion order. [4] In his statement of issues, he identifies the first issue as "[w]hether the bankruptcy court erred in converting the chapter 13 case to chapter 7 . . . ." D. 22 (Appellant Br. at 2). Moreover, O'Hara did not desire dismissal until it was utterly clear that conversion was imminent, resisting it up to that point.

Understood as covering both the May 8 Conversion Order and the May 9 MTD Order, the August 7 Order on O'Hara's Rule 60(b) Motion is reviewable. We have held that orders converting a bankruptcy case to Chapter 7 are final, appealable orders. *Cal. Palms Addiction Recovery Campus, Inc. v. Vara (In re Cal. Palms Addiction Recovery Campus, Inc.), 87 F.4th 734, 739-40 (6th Cir. 2023)*. [5] Here, the May 8 Conversion **[*17]** Order underlies the August 7 Order. Because the former is a final, appealable order, so too is the latter.

**[**11]** Given the unusual posture of this case, we need not (and should not) address whether the May 9 MTD Order standing alone would be a final, appealable order. First, doing so would be a purely intellectual endeavor—as discussed above, the May 8 Conversion Order and the May 9 MTD Order are inextricably intertwined. [6] The August 7 Order is not readily divisible such that we could review only the May 8 Conversion Order portion of the order and not the May 9 MTD Order portion. Second, and relatedly, this case presents unique circumstances. Because a Chapter 13 debtor does in fact have an absolute right to voluntary dismissal, [7] one struggles to imagine any circumstance in which a Chapter 13 motion to dismiss would be properly denied except for the very situation presented here, where the denial is directly tied to conversion. No wonder, then, that we have not had occasion before to address the denial of a Chapter 13 motion to dismiss.

Our sibling circuits appear to have taken a similar tact: The Second, Fifth, **[*18]** Eighth, and Ninth Circuits have reviewed cases in which the debtor appealed from both a denial of a motion to dismiss and a conversion order. *See*

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[4] Relying on counsel's statement at oral argument that the bankruptcy judge was "in his right to convert" the case, the dissent suggests that O'Hara "never asked for (and does not want) substantive relief from the May 8th order" and so we cannot view his Rule 60(b) motion as asking for that relief. Dissent at 18; *see also id.* at 20. We see things differently. In our view, counsel was simply acknowledging that O'Hara's circumstances gave the bankruptcy court the ability to convert the case. But that does not mean counsel thought it *should* have been converted, much less that he was not challenging the conversion. Indeed, how else would O'Hara's Chapter 13 right to dismiss be reinstated but by undoing the May 8 Conversion Order? The dissent's insistence that O'Hara "does not want" relief from the May 8 Conversion Order, Dissent at 18, is willfully myopic. O'Hara does not desire that his motion to dismiss be treated as timely for the sake of it; he wants it to be treated as timely *so that the conversion order will have been improper*.

[5] Although *California Palms* involved conversion from Chapter 11 to Chapter 7, conversion orders from Chapter 13 to Chapter 7 should be no different. Indeed, the *California Palms* court cited Chapter 13-to-Chapter 7 cases in noting that "[o]ur sister circuits who have considered the issue agree." *87 F.4th at 740 & n.3* (citing *Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764, 770 (9th Cir. 2008)*, *In re USA Baby, Inc., 674 F.3d 882, 883 (7th Cir. 2012)*, and *In re Fleurantin, 420 F. App'x 194, 196 (3d Cir. 2011)* (per curiam)).

[6] The dissent suggests that the bankruptcy court could have retroactively granted the motion to dismiss pursuant to the court's equitable powers. Dissent at 18-19. It is true that bankruptcy courts may under the right circumstances grant orders *nunc pro tunc*. *See Mitan v. Duval (In re Mitan), 573 F.3d 237, 246 (6th Cir. 2009)*. It is not clear, however, that such circumstances are present here. *Nunc pro tunc* orders may not be appropriate "when they are sought to validate an action arrived at by a process not in accordance with the [Bankruptcy] Code." 2 Collier on Bankruptcy ¶ 105.02 (16th ed. 2026). Here, the effect of granting the motion to dismiss *nunc pro tunc* would be to ratify O'Hara's improper post-conversion filing, contrary to § 1307.

[7] There is a circuit split on this issue. We have held, however, that the right is absolute and does not admit of any bad-faith exception. ***Smith v. U.S. Bank Nat'l Ass'n (In re Smith), 999 F.3d 452, 455-56 (6th Cir. 2021)***.

*Barbieri v. RAJ Acquisition Corp. (In re Barbieri), 199 F.3d 616 (2d Cir. 1999)*; *Jacobsen v. Moser (In re Jacobsen), 609 F.3d 647 (5th Cir. 2010)*; *Molitor v. Eidson (In re Molitor), 76 F.3d 218 (8th Cir. 1996)*; *Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols), 10 F.4th 956 (9th Cir. 2021)*. To be sure, these cases do not address head-on whether denials of motions to dismiss are final and appealable. But they demonstrate a tacit understanding that these are circumstances in which conversion and dismissal are firmly woven together.

**[**12]** In *In re Jacobsen*, for example, the Chapter 13 trustee moved to convert the case to Chapter 7, and the debtor "responded by filing a motion to dismiss the Chapter 13 case under § 1307(b)." *609 F.3d at 650-51*. The bankruptcy court held a hearing on both motions and then issued an order denying the debtor's motion to dismiss on the grounds of bad faith and granting the trustee's motion to convert. *Id. at 651-52*. The district court affirmed. *Id. at 652*. On appeal, the Fifth Circuit stated that it had jurisdiction "over the appeal of an order converting a bankruptcy case from Chapter 13 to Chapter 7[.]" *Id.* The court described the debtor as arguing on appeal "that the bankruptcy court lacked the authority to convert to Chapter 7 . . . in light of his motion to dismiss under § 1307(b)" and "in the alternative that the bankruptcy court's finding of bad faith **[*19]** was clearly erroneous and cannot support conversion[.]" *Id.* The court discussed dismissal and conversion as closely interrelated, and concluded (contrary to our own circuit) that "a bankruptcy court has the discretion to grant a pending motion to convert for cause under § 1307(c) where the debtor has acted in bad faith or abused the bankruptcy process and requested dismissal under § 1307(b) in response to the motion to convert." *Id. at 660*.

And in *In re Nichols*, a creditor moved to convert the case to Chapter 7. *10 F.4th at 958*. The bankruptcy court indicated its intent to do so, but agreed to delay entry of a conversion order for thirty days during which the debtors were to file delinquent tax returns and submit a new repayment plan. *Id. at 959*. The debtors did not do so and instead moved to dismiss. *Id.* The bankruptcy court denied the motion and converted the case, and the Ninth Circuit BAP affirmed. *Id.* On appeal, the Ninth Circuit addressed the issue of the bankruptcy court's denial of the debtor's motion to dismiss. *Id. at 960-64*. Although the *In re Nichols* court did not explicitly address jurisdiction, it extensively discussed its earlier opinion on the same issue, *In re Rosson*, in which the court stated, "[w]e review for abuse of discretion **[*20]** the bankruptcy court's ultimate decisions to deny a request for dismissal of a Chapter 13 case under § 1307(b) and to convert a case from Chapter 13 to Chapter 7." *Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764, 771 (9th Cir. 2008)*. [8]

**[**13]** The dissent invokes pendent appellate jurisdiction. Dissent at 19. That doctrine is an imperfect fit here given the procedural posture of an appeal of a Rule 60(b) order—the would-be pendent-jurisdiction question is essentially nested a layer below the question of our appellate jurisdiction over the August 7 Order. But the principles of pendent appellate jurisdiction, too, support our exercise of jurisdiction in this case. Under pendent appellate jurisdiction, "we may review otherwise non-appealable interlocutory issues that are 'inextricably intertwined' with matters over which we have jurisdiction." *Schnatter v. 247 Grp., LLC, 155 F.4th 543, 554 (6th Cir. 2025)*. In our dissenting colleague's view, the May 8 Conversion Order and the May 9 MTD Order are not inextricably intertwined. Dissent at 19. We disagree, because the May 8 Conversion Order subsumes the May 9 MTD Order, and resolution of the former necessarily resolves the latter. *See Chaney-Snell v. Young, 98 F.4th 699, 709 (6th Cir. 2024)*. As we explained, the only way O'Hara can obtain dismissal under Chapter 13 is if the Chapter 7 conversion is undone. So an O'Hara-favorable resolution **[*21]** of the May 8 Conversion Order would necessarily resolve the May 9 MTD Order. In other words, if O'Hara were granted relief from the May 8 Conversion Order, his case would return to Chapter 13, and he could invoke his right to dismiss. Thus, because the issues "rise [and] fall together, they are . . . adequately intertwined." *Id.*

* * *

In sum, we find it sufficient in the context of this case that the August 7 Order addressed both the May 8 Conversion Order and the May 9 MTD Order, and the May 8 Conversion Order is indisputably a final, appealable order. The district court therefore had jurisdiction over O'Hara's timely appeal of the August 7 Order, and we have jurisdiction over the district court's affirmance of that order.

We emphasize, however, that our jurisdiction is limited to the August 7 Order itself. "[A]n appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review." *Amernational Indus., Inc. v. Action-Tungsram, Inc., 925 F.2d 970, 975 (6th Cir. 1991)* (quoting *Peake v. First Nat'l Bank & Tr. Co., 717 F.2d 1016, 1020 (6th Cir. 1983)*). The bankruptcy rules do not save review of the other orders in this case. Under Federal Rule of Bankruptcy Procedure 8002(b)(1)(D), the filing of a motion for relief under Rule

[8] The Ninth Circuit in *In re Rosson* had held that there was an implied bad-faith or abuse-of-process exception to a Chapter 13 debtor's absolute right to dismiss; that decision was overruled in *In re Nichols. In re Nichols, 10 F.4th at 961-64*.

9024 (the **[**14]** bankruptcy rules equivalent to Rule 60(b)) will toll the appeal clock for the underlying motion if the motion for relief *is filed within fourteen days of the underlying **[*22]** order*. O'Hara's Rule 60(b) motion was filed more than fourteen days after the May 8 Conversion Order and the May 9 MTD Order were entered. Accordingly, only the August 7 Order itself, which was timely appealed to the district court, is reviewable. *See* Rivera v. ASUME (In re Rivera), 486 B.R. 574, 577 (B.A.P. 1st Cir. 2013); Rota v. Howell Mgmt. Servs., LLC (In re Rota), No. SC-24-1140-CFB, 2025 WL 1235261, at *3 (B.A.P. 9th Cir. Apr. 29, 2025); *Utzman v. SunTrust Mortg., Inc. (In re Utzman)*, No. NC-15-1331-TaJuKi, 2016 WL 4254683, at *4 (B.A.P. 9th Cir. Aug. 9, 2016).

## III. MERITS

On appeal from a district court, "[w]e 'review the decision of the bankruptcy court directly, reviewing its factual findings for clear error and its legal conclusions de novo.'" *Andrews v. Mich. Unemployment Ins. Agency, 891 F.3d 245, 248 (6th Cir. 2018)* (quoting Suhar v. Burns (In re Burns), 322 F.3d 421, 425 (6th Cir. 2003)); *see* Onkyo Eur. Elecs. GMBH v. Global Technovations Inc. (In re Global Technovations Inc.), 694 F.3d 705, 714-15 (6th Cir. 2012). We review the denial of a Rule 60(b) motion for abuse of discretion. Holley v. Corcoran (In re Holley), 661 F. App'x 391, 397 (6th Cir. 2016). O'Hara's Rule 60(b) Motion invoked 60(b)(1) and 60(b)(6). He abandons any argument as to Rule 60(b)(6) on appeal, however, failing to mention the rule in his brief before this court. *See generally* D. 22 (Appellant Br.).

Rule 60(b)(1) provides for relief on the grounds of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). "[A] Rule 60(b)(1) motion is intended to provide relief in only two situations: (1) when a party has made an excusable mistake or an attorney has acted without authority, or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." United States v. Reyes, 307 F.3d 451, 455 (6th Cir. 2002) (citing Cacevic v. City of Hazel Park, 226 F.3d 483, 490 (6th Cir. 2000)). We consider three factors in determining whether relief under Rule 60(b)(1) is appropriate: "(1) culpability—that is, whether the neglect was excusable; **[*23]** (2) any prejudice to the opposing party; and (3) whether the party holds a meritorious underlying claim or defense. A party seeking relief must first demonstrate a lack of culpability before the court examines the remaining two factors." Yeschick v. Mineta, 675 F.3d 622, 628-29 (6th Cir. 2012) (citation modified). Determining whether neglect is **[**15]** excusable, in turn, "involves an equitable determination that takes into account" five factors. Jinks v. AlliedSignal, Inc., 250 F.3d 381, 386 (6th Cir. 2001). Courts consider "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993).

O'Hara has not shown that his failure to move for dismissal before the case was converted was the result of excusable neglect. O'Hara was on notice for months ahead of the May 8 hearing that the U.S. Trustee's motion to dismiss could result in conversion, and O'Hara could have moved to dismiss voluntarily at any time. *See* Bankr. Ct. R. 48 (Trustee Mot. to Dismiss at 1) (advising that "[a]s a result of the above Motion being made, your case could be converted to a Chapter 7 case"); *see also* Bankr. Ct. R. 66 (O'Hara Resp. in Opp'n to Trustee's Mot. to Dismiss at 3) **[*24]** (O'Hara arguing that "a dismissal *or conversion to a chapter 7* will result in no unsecured creditors being paid . . . ." (emphasis added)). O'Hara also could have moved to dismiss voluntarily at the May 8 hearing, but chose not to. Indeed, O'Hara's counsel almost did so, but then retracted that statement. Bankr. Ct. R. 145 (May 8 Tr. at 3). O'Hara's "strategic miscalculation" in not seeking dismissal sooner does not warrant relief. McCurry ex rel. Turner v. Adventist Health Sys./Sunbelt, Inc., 298 F.3d 586, 593 (6th Cir. 2002); *see* id. at 594 ("[A] Rule 60(b) motion may not be used 'as a technique to avoid the consequences of decisions deliberately made yet later revealed to be unwise.'" (quoting Hopper v. Euclid Manor Nursing Home, Inc., 867 F.2d 291, 294 (6th Cir. 1989))).

The bankruptcy court's statements during the May 8 hearing do not alter this conclusion. By warning O'Hara that the bankruptcy court intended to convert the case, but that conversion would not be effective until the order was actually entered, the court threw O'Hara a lifeline. O'Hara chose not to grab it. Despite the bankruptcy court's admonishment that O'Hara ought to act quickly if he wanted to dismiss voluntarily, O'Hara's counsel "had lunch" with O'Hara for apparently about two hours, drove back to his office, and then "addressed other matters" once he returned. *See* Bankr. Ct. R. 89 (Rule 60(b) Mot. at 2). Again, this does not amount to **[*25]** "excusable neglect" warranting relief under Rule 60(b)(1).

**[**16]** To the extent that O'Hara argues that relief is appropriate to correct the bankruptcy judge's "substantive mistake of law," Reyes, 307 F.3d at 455, that argument also fails. The case was converted to Chapter 7 upon entry of the May 8 Conversion Order. Once a case is converted, "no Chapter 13 provision holds sway." Harris, 575 U.S. at 520. Thus, § 1307 was no longer applicable and O'Hara no longer had the right to dismiss voluntarily under that provision. *See*

*Skandis v. Moyer (In re Skandis), 648 B.R. 918, 923 (B.A.P. 6th Cir. 2023)* ("[Section] 1307 does not grant a debtor an absolute right to dismiss a case after the case has been converted."). Accordingly, the bankruptcy court did not abuse its discretion in denying O'Hara's Rule 60(b) Motion.

**IV. CONCLUSION**

For the foregoing reasons, we **AFFIRM** the decision of the district court and **REMAND** for further proceedings.

**Dissent by:** JOHN K. BUSH (In Part)

## Dissent

**[**17]** JOHN K. BUSH, Circuit Judge, dissenting. This appeal requires us to disentangle the May 8th and May 9th orders and separately review their appealability. When we do that, it appears to me that the latter is not a final order, and the former is outside the scope of the notice of appeal, depriving us of appellate jurisdiction over both orders. I respectfully dissent.

A bankruptcy court's order can be appealed **[*26]** only if it is final under *28 U.S.C. § 158*. *See, e.g., In re Jackson Masonry, LLC, 906 F.3d 494, 498-99 (6th Cir. 2018), aff'd sub nom. Ritzen Grp., Inc. v. Jackson Masonry, LLC, 589 U.S. 35 (2020)*; *see also In re Cottrell, 876 F.2d 540, 541 (6th Cir. 1989)* (holding that we have jurisdiction only if the district court had appellate jurisdiction under § 158). A bankruptcy court's order is final and appealable if it (1) is "entered in a proceeding" and (2) "terminat[es] that proceeding." *Jackson Masonry, 906 F.3d at 499* (cleaned up). A "proceeding" can be "a discrete dispute within the overall bankruptcy case, resolved through a series of procedural steps," and "akin to a case within a case." *Id. at 500*. And a proceeding is "terminated when the status quo is altered and the rights and obligations of the parties are fixed." *In re Cal. Palms Addiction Recovery Campus, Inc., 87 F.4th 734, 740 (6th Cir. 2023)* (quoting *Bullard v. Blue Hills Bank, 575 U.S. 496, 502 (2015)*) (cleaned up).

Based on these principles, I conclude we lack jurisdiction to review the May 9th order and, by extension, the August 7th order. *See In re LWD, Inc., 335 F. App'x 523, 527 (6th Cir. 2009)*. My reasoning is as follows.

We cannot review the May 9th order, which denied the motion to dismiss, because that order did not terminate any proceeding in the bankruptcy court. The case remains pending, and nothing about the parties' statuses has changed. In this respect, the denial of a motion to dismiss is just like the denial of a motion to confirm a Chapter 13 plan. "The automatic stay persists. The parties' rights and obligations remain **[*27]** unsettled . . . . The possibility of discharge lives on. 'Final' does not describe this state of affairs." *Bullard, 575 U.S. at 503*.

**[**18]** Moreover, the motion itself cannot be characterized as a "proceeding" akin to an adversary proceeding, which can give rise to an appealable order when resolved. An adversary proceeding is a case within the overall bankruptcy case because it is a lawsuit that proceeds in parallel to other matters within the bankruptcy case. *See Jackson Masonry, 906 F.3d at 500 & n.2*. By contrast, a motion to dismiss a bankruptcy case pertains to the entire case itself. Put differently, it is not conceptually distinct from the other aspects of the bankruptcy case. If the motion to dismiss is granted, everything in the bankruptcy case ends. As a result, there is no way to separate the merits of the motion to dismiss from anything else—all other proceedings within the bankruptcy case live and die off the validity of the motion to dismiss.

The majority is mistaken to construe O'Hara's Rule 60(b) motion as seeking relief from the May 8th order. *See* Majority at 9-11. In the Rule 60(b) motion, O'Hara explains that he "assumed that he had at least to the next morning" to dismiss the case. Bankr. Ct. R. 89, Rule 60(b) Motion, p. 2. He complains that the bankruptcy court "treated the Debtor's **[*28]** attempt to dismiss as an untimely motion to dismiss under *[11 U.S.C.] § 1307(b)*." *Id.* And he argues that denying the motion to dismiss would deprive him of his absolute right to dismiss the case. *Id.* at p. 3. In short, O'Hara wanted the bankruptcy court to treat the motion to dismiss as having been filed before the May 8th order was entered. *See id.* at p. 2 (noting that the bankruptcy court "treated the Debtor's attempt to dismiss as an untimely motion to dismiss").

O'Hara never argues that conversion was improper on the merits or that the May 8th order was defective. Indeed, O'Hara waived any substantive challenge to the May 8th order at oral argument before us. *See* Oral Arg. Rec. at 8:40-9:35 ("The judge was in his right to convert [the case] because [O'Hara] was behind on his child support."). His only complaint is that the order was entered too early. That is not a challenge to the merits of the conversion order itself. Because O'Hara never asked for (and does not want) substantive relief from the May 8th order, we cannot interpret the Rule 60(b) motion as having sought that relief.

Additionally, the bankruptcy court could have granted the motion to dismiss without touching the May 8th order

because the bankruptcy **[*29]** courts have the "equity power to" issue orders retroactively. *In re Pioneer Inv. Servs. Co., 943 F.2d 673, 675 (6th Cir. 1991)*, *aff'd sub nom. Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993)*. Under **[**19]** O'Hara's theory, then, we need not address (and O'Hara need not challenge) the validity of the May 8th order. It is really the failure to retroactively grant the motion to dismiss that is at issue, not the entry of the May 8th order. And so O'Hara's Rule 60(b) motion should not be read as attacking the May 8th order.

The majority also mistakenly decides that the May 9th order is "inextricably intertwined" with the May 8th order, and is therefore final and appealable as well. Majority at 11. But we must have jurisdiction to grant "each form of relief" independently of all others. *Murthy v. Missouri, 603 U.S. 43, 61 (2024)* (quoting *TransUnion LLC v. Ramirez, 594 U.S. 413, 431 (2021)*); *see also Kellogg v. Nichols, 149 F.4th 155, 161 (2d Cir. 2025)* (applying this rule to all forms of subject matter jurisdiction). We therefore must separately determine whether we have jurisdiction over the May 9th order, even if we did have jurisdiction over the May 8th order.

The majority apparently relies on (but does not cite) the pendent appellate jurisdiction doctrine, which lets us review an interlocutory order when the final and interlocutory orders "are inextricably intertwined." *O'Bryan v. Holy See, 556 F.3d 361, 377 n.7 (6th Cir. 2009)* (quoting *Chambers v. Ohio Dep't of Hum. Servs., 145 F.3d 793, 797 (6th Cir. 1998)*) (quotation marks omitted). But orders are inextricably intertwined only when **[*30]** "the appealable issue at hand cannot be resolved without addressing the nonappealable collateral issue." *Chambers, 145 F.3d at 797*.

The May 8th and May 9th orders do not fit that bill. *11 U.S.C. § 1307(c)*—the provision governing the May 8th order—focuses on whether the debtor has violated the Bankruptcy Code and how to maximize the creditors' recovery. *See In re Alt, 305 F.3d 413, 419-20 (6th Cir. 2002)*; *In re Brown, 671 B.R. 461, 473-74 (Bankr. D. Md. 2025)*; 7 *Collier on Bankruptcy* ¶ 1112.04[7]. Meanwhile, § 1307(b)—the provision governing the May 9th order—focuses on whether the motion was properly filed and whether the case had previously been converted. *See In re Smith, 999 F.3d 452, 455 (6th Cir. 2021)*; 8 *Collier on Bankruptcy* ¶ 1307.03[1]. The latter has no bearing on the former.

The majority overreads the out-of-circuit case law it cites. The Fifth Circuit in *In re Jacobsen* determined only that "[w]e have jurisdiction under *28 U.S.C. § 158(d)* over the appeal of an order converting a bankruptcy case from Chapter 13 to Chapter 7," citing Eighth and Ninth **[**20]** Circuit cases that held the same thing. *609 F.3d 647, 652 (5th Cir. 2010)* (citing *In re Rosson, 545 F.3d 764, 770 (9th Cir. 2008)*; *In re Molitor, 76 F.3d 218, 219 (8th Cir. 1996)*). Neither *Jacobsen*, nor *Rosson*, nor *Molitor* addresses whether an order denying a motion to dismiss is appealable. And neither *In re Nichols, 10 F.4th 956 (9th Cir. 2021)*, nor *In re Barbieri, 199 F.3d 616 (2d Cir. 1999)*, addresses jurisdiction *at all*. The majority treats our sister circuits' "drive-by jurisdictional ruling[s]"—or even *non*-rulings—as holdings when they are not. *Wilkins v. United States, 598 U.S. 152, 160 (2023)* (quoting *Arbaugh v. Y&H Corp., 546 U.S. 500, 511 (2006)*) (cleaned up); *see also Arbaugh, 546 U.S. at 511*; *Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 91 (1998)* (collecting cases). The majority's **[*31]** reliance on such rulings runs against the repeated, explicit contrary teachings of the Supreme Court. *See, e.g.*, *Steel Co., 523 U.S. at 91*.

The majority's assertion that the "unique circumstances" of the case support our jurisdiction also appears mistaken. Majority at 11. [1] We may not "create equitable exceptions to jurisdictional requirements," so the circumstances of the case cannot support our jurisdiction. *Bowles v. Russell, 551 U.S. 205, 214 (2007)* (quotation marks omitted).

Finally, the majority wrongly concludes that the May 8th order is within the scope of the notice of appeal. *See* Majority at 6-8. [2] O'Hara never challenged the merits of the May 8th order in his briefing before the district court or in our court. He even *waived* any challenge to the merits of the May 8th conversion order at oral argument before us. *See* Oral Arg. Rec. at 8:40-9:35 ("The judge was in his right to convert [the case] because [O'Hara] was behind on his child support."). Liberally construing a notice of appeal does not require ignoring what the appellant says. His counsel's assertion that "[t]he judge was in his right to convert" the case, Oral Arg. Rec. at 8:40-9:35, is about as close to "I am not appealing the

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[1] This case is not particularly unique, either. The Bankruptcy Appellate Panels for the First, Sixth, and Tenth Circuits have all addressed the appealability of a denial of a motion to dismiss under § 1307(b). *See In re Pino, 657 B.R. 264, 268 (B.A.P. 10th Cir. 2024)*; *In re Amir, 436 B.R. 1, 8 (B.A.P. 6th Cir. 2010)*; *In re Sasso, 409 B.R. 251, 254 (B.A.P. 1st Cir. 2009)*. And *Pino* even addressed the exact fact pattern in this case—the denial of a § 1307(b) motion filed after the case was converted from a Chapter 13 case to a Chapter 7 case. *657 B.R. at 268-69*.

[2] The majority (at 8) makes much of the U.S. Trustee's assertion that O'Hara was trying to appeal the May 8th order. The parties, however, "cannot confer subject matter jurisdiction upon a court by their conduct or consent." *In re Erie Lackawanna Ry. Co., 563 F.2d 784, 792 (6th Cir. 1977)*. We therefore must "independent[ly] . . . ensure that" the May 8th order is within the scope of the notice of appeal. *Burt v. Playtika, Ltd., 132 F.4th 398, 403 (6th Cir. 2025)*.

May 8th order" as one can get. **[**21]** That means the May 8th **[*32]** order is outside the scope of the notice of appeal. We thus lack jurisdiction to review it. *See* *Isert v. Ford Motor Co., 461 F.3d 756, 760 (6th Cir. 2006)*.

The majority therefore errs in addressing the timeliness of any appeal from the May 8th order. Federal Rule of Bankruptcy Procedure 8002(a)(1) is a mandatory claims-processing rule, *In re Tennial, 978 F.3d 1022, 1028 (6th Cir. 2020)*, enforcement of which is a merits question, *see* *Copen v. United States, 3 F.4th 875, 880 (6th Cir. 2021)*. So we may not consider whether the appeal from the May 8th order is timely. *See* *United States v. Lucido, 612 F.3d 871, 873 (6th Cir. 2010)* (holding that a court may not consider the merits without jurisdiction). [3]

The May 9th order is not final and appealable, and the May 8th order is outside the scope of the notice of appeal. I respectfully dissent because we lack jurisdiction over the appeal.

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[3] The majority's discussion of finality and timeliness is backwards for the same reason.