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CONSUMER BANKRUPTCY

Everything That Can Go Wrong With the Meeting of Creditors

Part Three: More Problems and Dilemmas

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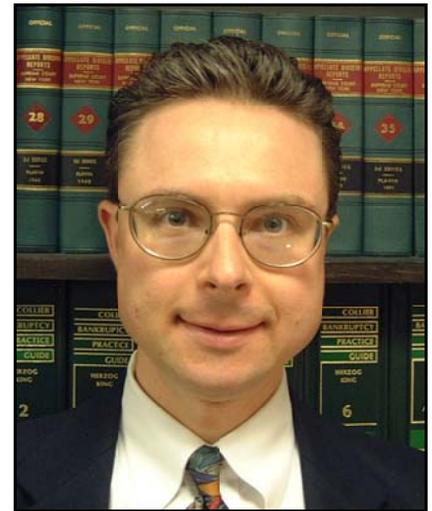
In my previous two columns, I addressed many common problems that come up at the Meeting of Creditors. In this last part of the three-part series I will cover some additional issues and dilemmas.

Problem No. 16: The U.S. Trustee Decides to Participate Also. As mentioned in a previous article, the Office of the United States Trustee has placed greatly increased priority in its Civil Enforcement Initiative Program. This means that there is a chance that the U.S. Trustee's Office may red-flag a case for "substantial abuse" and then send one of its attorneys or paralegals to participate in the Meeting of Creditors and ask questions. If this happens, plan for your case to be called out of order, expect a much longer meeting, and fully cooperate. Try to use this opportunity to point out anything which will establish the debtor's good faith. This usually means demonstrating that the debtor's budget is reasonable or that a relatively large

amount of debt was reasonably incurred.

Problem No. 17: A Creditor Shows Up. It is relatively rare these days for any creditor to appear at the Meeting of Creditors. However the following types of creditors are much more likely to appear: a local individual creditor who may have given a personal loan to the debtor, a separated or divorced spouse who is owed maintenance and support, or a business creditor whose account the debtor personally guaranteed. Such creditors may show up on their own, or with counsel who is not familiar with bankruptcy procedure, or with very experienced bankruptcy counsel. Most creditors who show up are unsophisticated and under the mistaken notion that they are required to appear.

If a creditor appears at the meeting, they are entitled to ask the debtor questions about the debtor's assets and liabilities. They are not permitted to cross-examine the debtor as if the trustee was a judge. If the creditor (or their inexperienced counsel)



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asks improper questions or becomes argumentative, you should direct your client not to respond and admonish the creditor or counsel as to the proper scope of questioning. The trustee will probably do so as well. Also, a creditor cannot use the meeting as a fishing expedition to ask the debtor very general questions. Although a creditor has the exact right to do that, it is done pursuant to a Bankruptcy Rule 2004 exam, and not at the meeting of creditors, where time is very limited.

Problem No. 18: The Chapter 13 Trustee Wants to Adjourn the Meeting Because the Trustee Never Received Certain Documents. The Local Rules require all Chapter 13 debtors to provide the trustee, at least ten days prior to the Meeting of Creditors, with certain documents including the last two years of tax returns, one months

worth of pay stubs, a real estate valuation if the plan pays unsecured creditors less than 100%, copies of real estate leases, tenants affidavits, affidavits of contribution, and affidavits of changed circumstances. (See Local Rule LR-2003-1). If you neglect to do this, the trustee will refuse to examine the debtor, you will look foolish in front of your client, and you will be told to return. Always make sure you provide the Chapter 13 trustee with the documents in advance. The Chapter 13 trustees are not too sympathetic with attorneys who neglect this rule.

Problem No. 19: There are Pages Missing From the Photocopies of the Petition. All photocopy machines will skip a page or two from time to time. If you sit down for your hearing and realize that all photocopies of the petition are missing an important schedule, you can apologize to the trustee, request a ten minute break, and then run down to the clerk's office to print out the missing pages, assuming that you filed a full electronic copy.

Problem No. 20: The Debtor has Trouble Understanding English. If the trustee becomes frustrated trying to understand the debtor's responses in broken English, the trustee will adjourn the hearing and make you re-appear with an interpreter. Therefore, you should anticipate in advance whether the debtor will have difficulty being examined in English. If so, you should arrange for a disinterested interpreter to accompany the debtor to the Meeting of Creditors.

The interpreter can usually be a friend, relative or spouse. However, the trustee has the right to object to the interpreter if the trustee believes the interpreter may be biased or interested. Consider calling the trustee in advance to advise him that an interpreter will be used and to make sure the particular interpreter will not be a problem. At the meeting, the trustee will swear in the interpreter and have them pledge that they will fully and truthfully translate the questions and answers.

If, in your office, the debtor previously seemed to be able to fully communicate without an interpreter, it is possible that the debtor is nervous or that the trustee may be talking too fast. If you sense this, ask the trustee's indulgence to be patient because the debtor is nervous, and ask the trustee to talk more slowly. I have had some trustees talk so

fast that I, myself, needed an interpreter!

Problem No. 21: The Debtor Appears to Be Wearing a Million Dollars Worth of Jewelry. Common sense dictates that out of respect for the proceeding, the debtor should not wear any flashy jewelry, even if it may be worthless rhinestone costume jewelry. If the debtor is wearing expensive-looking jewelry, expect the trustee to ask about it, which is like opening a can of worms. Advise your clients to avoid dressing in an overly flashy manner. It is best to leave all jewelry at home except for the wedding band.

Problem No. 22: You Observe the Debtor Lying Under Oath or Answering Incorrectly. If you observe the debtor answer a question, and you know the answer is incorrect, you have an affirmative duty to speak up. Sometimes the debtor innocently didn't understand the question, or the trustee asked a series of yes-no questions too quickly. Worse, it may appear that the debtor is fabricating an answer. In any event, counsel should immediately interject, "the debtor might not have understood the last question," and ask the trustee to ask that question again. You certainly do not want to get into a situation where the debtor can be labeled a perjurer because you didn't speak up quickly. Even though a trustee's questions can seem repetitive, you must always pay keen attention.

Debtors must pay close attention also and counsel must be sufficiently prepare them for the examination. For example, a frequent problem is that a trustee will ask a debtor about bank accounts and the debtor will answer in the negative because the debtor does not view a checking account as a "bank account." All seasoned bankruptcy practitioners should know verbatim just about every possible question a trustee may ask. It is your responsibility to adequately prepare your client for the meeting by reviewing the potential questions with the debtor in advance.

Problem No. 23: The Debtor Has Difficulty Explaining a Complex Situation. Sometimes a trustee may ask the debtor to explain a complicated

pre-petition transaction and the debtor has difficulty giving a sufficient answer. When that happens with my clients, I will often interject and offer to provide the trustee with the facts. Most trustees will appreciate this. However, you need to approach this carefully as some trustees will downright resent such efforts and will view it as counsel testifying for the debtor. Try to get a feeling as to how your particular trustee will respond and then consider asking the trustee if he would like you to "clarify" the matter.

Problem No. 24: There is a Snow Storm: Will the Hearing Go On? Is Court Open? On severe weather days the Court will close and is supposed to indicate this on a recording when you call the Court or log onto the Court's web site. However, many attorneys have been frustrated because this information was not made available until mid-morning or early-afternoon, when it is already too late.

Consider calling the trustee's office. If the weather looks ominous the day before the meeting, make special arrangements with your client to communicate the next morning. Then, if the weather is relatively bad the morning of the meeting, and you cannot confirm whether the meeting will go forward or not, you may decide to tell your client not to go, in which case, you should be able to call the trustee's office a day later and get an adjourned date. If there are several inches of snow on the roads, and you cannot confirm whether the meeting will go on, counsel can hardly be faulted for not appearing, but you should avoid an embarrassing situation where your client shows up and you do not.

Editor's Note (revised 2008):
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