



THE SUFFOLK LAWYER

PUBLICATION OF THE SUFFOLK COUNTY BAR ASSOCIATION

DEDICATED TO LEGAL EXCELLENCE SINCE 1908

Vol. 20 No. 8

April 2004

CONSUMER BANKRUPTCY

Everything That Can Go Wrong With the Meeting of Creditors

Part One: Common Problems

by Craig D. Robins, Esq.

What the Meeting of Creditors Is All About. With most bankruptcies, the Meeting of Creditors is the only real “event” of any importance during the entire case, and it is generally the first and only time that you and your client will have to appear in Court. As creditors rarely show up, it is primarily an opportunity for the trustee to examine the debtor.

Ideally, the actual hearing goes smoothly and routinely, lasting just a few minutes, and then you and your client are happily on your way. However, there are a myriad of things that can go wrong at the meeting much to everyone’s consternation and dismay. Fortunately, most problems can be avoided with proper planning and preparation.

Since every bankruptcy case involves a Meeting of Creditors, and since I regularly witness so many

problems that other attorneys are having while waiting for my cases to be called, I will devote the year’s three remaining columns to such problems and how to prevent or handle them.

Problem No. 1: Debtor Brings Insufficient Identification. The Office of the United States Trustee has a policy that requires all debtors to identify themselves with picture identification (typically a driver’s license) and proof of correct Social Security number (typically a Social Security card). What happens if your client fails to have these forms of identification at the hearing?

Trustees should also accept the following items as acceptable photographic identification: passport, legal resident alien card, military identification, or state-issued photo



CRAIG D. ROBINS, ESQ.

identification card. Trustees should accept the following as satisfactory proof of Social Security number: pay stub, health care card, any correspondence from the Social Security Administration, or a current W-2.

If the debtor fails to have proof of Social Security number, most trustees will examine the debtor but will require counsel to immediately fax a copy of acceptable proof. If the debtor does not have picture identification, most trustees will examine the debtor, but will require the debtor to personally appear later at the trustee’s office with photo identification in hand. However, some trustees may simply refuse to examine the debtor without the satisfactory identification

documents and adjourn the meeting.

In my practice, I require all clients to provide me with their driver's license and Social Security card at the initial intake. I then make a legible photocopy and place it in the file. On numerous occasions these copies have saved the day. Also, by reviewing the debtor's identification early on, you have time to have debtor obtain satisfactory identification if the debtor does not immediately have it available.

Problem No. 2: The Trustee Sends the Debtor Away For Failing To Read the Trustee Information Sheet. The Bankruptcy Amendment Act of 1994 imposed an obligation on all trustees to make sure that debtors know certain bankruptcy fundamentals, now codified in Code section 341(d). Trustees now meet this obligation by asking each debtor at the beginning of their examination if they read the U.S. Trustee's Information Sheet which is posted on the wall outside the hearing room. If the debtor states that he has not yet read it, the trustee will refuse to examine the debtor. I give each client a copy of this information sheet when they retain me and I also make it a part of their petition, which I have them sign. Thus all my clients have read this in advance. Nevertheless, I prepare them for this question so that they answer it properly.

Problem No. 3: You Learn that Creditors Were Inadvertently Omitted From the Petition. A debtor will frequently approach his attorney in the minutes before the hearing to advise the attorney that there is a creditor or other information missing from the petition. Sometimes this will come out while the debtor is being examined. You can easily amend the schedules of the petition prior to the closing of the case to add any inadvertently omitted creditors. At the meeting, however, you should immediately respond to one of the trustee's first questions to

the debtor, which is, "Are there any changes or additions that you would like to make to the petition?" Advise the trustee that a creditor was inadvertently omitted and that you will be amending the petition.

Problem No. 4: There Is a Discrepancy with the Social Security Number. If there is any problem with the correctness of the Social Security number as it appears in Court documents, it will probably surface at the Meeting of Creditors. If it turns out that the number on the petition is incorrect, then counsel must prepare and file an application and order correcting the caption to reflect the correct Social Security number. Remember that now, only the last four digits of the Social Security Number can appear in any document that will become part of the Court file. In your application, indicate that you will be sending a hard copy Amended Form 21 (Proof of Social Security Number) directly to the Clerk's office.

Problem No. 5: You Are Running Late and Will Not Make it to the Hearing on Time (Or At All). The trustee may tell the debtor to call their attorney from the pay phone at the end of the hall. A few trustees may even ask the debtor if they mind being examined without their attorney present. If the case seems rather simple. Otherwise, the trustee will adjourn the case for about two weeks. In any event, you should communicate with the trustee as soon as possible.

Problem No. 6: The Debtor Has Young Children Who Are Getting Very Impatient. Most trustees (not all) are understanding and will call certain cases out of order if the situation calls for it. Consider approaching the trustee in between cases and

quickly discuss the special courtesy requested.

Problem No. 7: Your Client Fails to Show Up. I observe that this is a constant problem with many attorneys. To ensure that your client appears, always remind them a few days beforehand. I also send them directions and a photograph of the building so that they do not confuse it with the other court buildings nearby. I remind them not to bring cell phones into the building which may cause the U.S. Marshal to send them back to their car. I tell them to be there at least 30 minutes before their hearing, and to sit in the hearing room. If you still don't see your client, they may be sitting in the wrong room as there are two meeting rooms next to each other. Consider using the pay phone at the end of the hall to call your client or have your office track them down. If all else fails, ask the trustee for an adjournment and then charge your client for having to make a second appearance if the client forgot to go.

*Editor's Note (revised 2008):
Craig D. Robins, Esq., a regular columnist, is a bankruptcy attorney who has represented thousands of consumer and business clients during the past twenty years. He has offices in Medford, Commack, Woodbury and Valley Stream. (516) 496-0800. He can be reached at CraigR@CraigRobinsLaw.com. Please visit his Bankruptcy Website: CraigRobinsLaw.com.*