



Clerk's Notes



September 2009

I. Credit Counseling and Debtor Education requirements to become effective on September 16, 2009

A. Background

The requirements for pre-petition credit counseling and the post-petition instructional course on personal financial management become effective in this district on September 16, 2009. The requirements apply to cases filed on or after that date.

Individuals filing a bankruptcy petition must receive an approved credit counseling briefing in order to be eligible to be a debtor, and must receive the briefing during the 180-day period preceding the petition filing. *See* 11 U.S.C. § 109(h)(1). However, the court will allow a petition to be filed on the same day that credit counseling is received, provided that the counseling occurs first. The Code also provides for a temporary waiver for credit counseling under certain circumstances in § 109(h)(3)(A), and an exemption for credit counseling and financial education under § 109(h)(4).

The court's website will include a link to the Credit Counseling and Debtor Education Information link on the United States Trustee's website.

B. Court procedures

The requirements for credit counseling and the financial management course will be implemented as follows:

- If a debtor has not received pre-petition credit counseling, a notice of deficiency will be issued for cases assigned to Section A and the case will be dismissed if the certificate of credit counseling is not filed within 14 days. For cases assigned to Section B, the Clerk will issue an order to show cause on short notice why the case

should not be dismissed. A non-response to an order to show cause will result in an outright dismissal.

- If a debtor has received pre-petition credit counseling but has not filed the certificate when the petition is filed, the Clerk will issue a notice of deficiency informing the debtor to file the certificate within 14 days. Cases assigned to Section A will be dismissed if the certificate of credit counseling is not filed within the 14-day deadline. For cases assigned to Section B, the Clerk will issue an order to show cause on short notice why the case should not be dismissed. A non-response to an order to show cause will result in an outright dismissal.
- A motion for a temporary waiver due to an exigent circumstance must be fixed for hearing on an expedited basis. Both debtors must sign the motion in a joint petition.
- A motion for an exemption due to incapacity, disability, or active military duty must be fixed for hearing, and will be granted without an actual hearing if no objection is filed.
- Unless a debtor is exempted from the requirement to receive a post-petition instructional course on personal financial management, each individual debtor must complete the course and file Official Form 23, “Debtor’s Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management” by the deadlines set forth in Rule 1007(c).
- Failure to file Official Form 23 will result in the case being closed without an entry of discharge. Any subsequent motion to reopen the case to allow for the filing of Official Form 23 must be accompanied by the full reopening fee.

II. Submitting Orders

A. Orders submitted following a hearing

Please be careful when submitting orders to include the date on which the hearing was held. If the matter was noticed for hearing, but not actually heard (such as because no objections were filed), this should be included in the order. For example, “This matter was noticed for hearing on September 1, 2009. No objections were filed. Accordingly, . . .”

Including the hearing date in the order will assist chambers staff to process the order faster.

B. Amended Orders

When submitting amended orders to make technical or minor changes, or make changes requested by the court, please state in the body of the e-mail what is being amended. If an amendment is required to make substantive changes, a motion to amend is required.

III. Section 341 meetings

A. Interpreter services available for Section 341 meetings

The U.S. Trustee's Office is now able to provide interpreting services for debtors at Section 341 meetings. Interpreter services are available in 196 languages. The telephone interpreter service is free for debtors with limited English proficiency, but the services must be requested in advance of the Section 341 meeting by contacting the trustee assigned to the case.

B. Section 341 notices

Recently, a debtors' attorney incorrectly filed a joint petition as an individual petition. As a result, the 341 notice did not include the spouse's name; the spouse did not attend the 341 meeting; and the 341 meeting had to be rescheduled pursuant to the debtor's request to reschedule.

To avoid the inconvenience of these types of occurrences, debtors' attorneys should consider reviewing the 341 notice for accuracy immediately upon receiving it, and should contact the Clerk's office as soon as possible if there is an error so that a corrected notice can be generated. Otherwise, the trustee will instruct the debtor to file a Request to Reschedule the 341 Meeting and serve the correct information on parties in interest.

IV. New event code

A new event code has been created in ECF - "Motion to Continue Trial". The event code is listed under "Bankruptcy", "Motions/Applications".

V. Finally . . .

Check our website for updates on a regular basis – <http://www.laeb.uscourts.gov>. If you have suggestions on issues that you would like to see addressed in future newsletters, please call Marla Hamilton, Clerk of Court, 589-7820.