



U.S. Department of Justice

Executive Office for United States Trustees

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Office of the Director

Washington, D.C. 20530

August 1, 2003

Honorable A. Thomas Small  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Century Station, Room 220  
300 Lafayette Street Mall  
Raleigh, NC 27602

Professor Jeffrey W. Morris  
University of Dayton  
School of Law  
300 College Park  
Dayton, OH 45469-2772

Re: **Proposed Amendments to the Federal Rules of Bankruptcy Procedure**

Dear Judge Small and Professor Morris:

On behalf of the United States Trustee Program, I am pleased to submit the following proposals to amend the Federal Rules of Bankruptcy Procedure and ask that they be considered by the Advisory Committee on Bankruptcy Rules. The proposals fall into four general areas.

1. **Proposed Amendments to Facilitate Performance of Duties by Debtors and Trustees**

Bankruptcy trustees often ask debtors to provide supporting documentation for the assets, liabilities, income and expenses they report on their bankruptcy petitions schedules and statements. In several districts, debtors are already required to produce these documents by local rule. Based on our experience, we have found that such a rule fosters good bankruptcy practice and improves administration, and we would urge the Committee to adopt a similar requirement into the national rules.

Under all chapters of the Bankruptcy Code, the trustee has a statutory duty to "investigate the financial affairs of the debtor." 11 U.S.C. § 704(4). The debtor has a corresponding statutory duty to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(4). There currently is no national rule that implements these obligations. While the absence of a rule

does not foreclose the trustee from asking for information or lessen the debtor's duty to be forthcoming, it does affect the process insofar as it places the burden on the trustee to affirmatively seek out information in the first instance. If the trustee requests no information, the debtor has no obligation to be forthcoming, and the trustee's "investigation" consists only of his or her review of the filed petition, schedules and statements, and the debtor's testimony at the § 341 meeting. The better practice, and the one most experienced trustees use to find assets, confirm valuations, or unravel financial dealings, is to require debtors to produce certain basic documents to confirm what they have claimed in the petition, schedules and statements. Correspondingly, the better practice for bankruptcy counsel and their clients is to assemble similar documents in advance of filing to ensure, among other things, that they provide accurate information to the bankruptcy court.<sup>1</sup>

Based on the documents that are reported to be most useful among trustees and incorporated in some local rules,<sup>2</sup> we propose the following changes to implement the debtor's duty. This proposal attempts to limit production to those core documents that a reasonably diligent trustee would seek. The production of these documents should not be unduly burdensome because they would have been assembled by the debtor and debtor's attorney to prepare the petition, schedules and statements. For example, many of them will be the basis for the information reported on Schedule I and the Statement of Affairs. A national rule would establish a minimum standard of what all debtors should be expected to "surrender" and ensure trustees have basic information to inspect early in a case. It would also prepare trustees to more readily identify and recover assets instead of leaving such matters to subjective, ad hoc assessments.<sup>3</sup>

Our proposal amends Rule 2003 in order to tie the production of the documents with the conduct of the first meeting of creditors. We would also propose a complementary amendment to Rule 4002 to include the debtor's obligation to cooperate with and furnish such information as the United States trustee and trustee may request. Finally, we would amplify the debtor's duties to require the debtor to take action to correct inaccurate information resulting from the intentional or inadvertent misuse of a Social Security number.

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<sup>1</sup> A bankruptcy case is commenced with the filing of a bankruptcy petition. 11 U.S.C. §§ 301-303. If the schedules and statements are not filed with the petition, they must be filed within 15 days. Fed. R. Bankr. P. 1007(c). All the documents must be verified, Fed. R. Bankr. P. 1008; they also "may be amended by the debtor as a matter of course at any time before the case is closed," Fed. R. Bankr. P. 1009.

<sup>2</sup> Attached at Attachment 1 are copies of similar local rules that have been adopted in some districts.

<sup>3</sup> In certain circumstances, the failure to keep or produce such information could lead to denial of a debtor's discharge. See, e.g., 11 U.S.C. § 727(a)(3) (concealing, destroying, falsifying or failing to preserve books and records unless justified under the circumstances) and § 727(a)(4)(D) (knowingly and fraudulently withholding possession of any recorded information relating to the debtor's property or financial affairs).

**Rule 2003. Meeting of Creditors or Equity Security Holders.**

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(b) Debtor's Duty to Provide Documentation at Meeting.

(1) Financial Information. Unless the trustee or United States trustee instructs otherwise, in each case under chapter 7, 12, and 13, and in each individual case under chapter 11, the debtor shall bring the following documentation to the § 341 meeting or furnish a written statement setting forth why such documentation is not applicable or available:

(A) Picture identification and proof of Social Security number(s) in a form prescribed by the United States trustee;

(B) Documents to support the entries on Schedule I including all pay stubs or other proof of earnings received and amounts deducted from earnings during the ninety day period immediately preceding the § 341 meeting;

(C) Copies of the debtor's federal, state, and local income tax returns for the two (2) years preceding the meeting of creditors, with W-2s and any other attachments;

(D) Documents to support the entries on Schedule J including canceled checks, check register, paid bills or other proof of expenses;

(E) Copies of bank or credit union statements for all depository accounts including checking, savings, money market or other, which show the balance on hand on the date of filing and all transactions during the ninety day period prior to filing;

(F) Copies of stock certificates, bonds, brokerage statements, or other evidence of deposits, savings or investments.

(G) Copies of original and duplicate certificates of title for titled assets including but not limited to

automobiles, boats, motorcycles, trailers, and mobile homes;

(H) Copies of security agreements, financing statements, and personal property leases, including any lease relating to a leased motor vehicle;

(I) For all real estate in which the debtor has an interest:

(1) Title documents including deeds, registered land certificates of title, land contracts, or leases;

(2) Copies of all mortgages and liens;

(3) Evidence of the value of real estate such as independent appraisal, if available, or current tax statement or assessment;

(J) Copies of closing statements for any interest in real estate sold by the debtor within the year prior to filing;

(K) Copies of any separation agreements, divorce judgments and property settlement agreements entered into or granted during the twelve (12) months prior to filing;

(L) Copies of homeowners or renters insurance policies;

(M) Copies of life insurance policies either owned by the debtor or insuring the debtor's life;

(N) In chapter 12 and chapter 13 cases, copies of casualty insurance policies; and

(O) If the petition, statements and schedules were filed by electronic means, the original signed petition, statements and schedules.

(2) *Additional Information.* Nothing in this paragraph shall limit the debtor's duty to provide such additional information as the trustee or United States Trustee may request.

**4002. Duties of Debtor.**

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and (5) cooperate with, and furnish such information as, the United States trustee or trustee may request concerning the debtor's identity, income, expenses, assets, liabilities, or other matter relevant to the administration of the case; (6) file a statement of any change of the debtor's address; and (7) if the debtor used an incorrect Social Security number in connection with the bankruptcy filing, take steps to correct the bankruptcy court record and notify credit reporting agencies.

## 2. Proposed Amendments to Provide Additional Disclosures & Protections for Debtors

Bankruptcy Rule 2016 implements 11 U.S.C. § 329(a) which requires every attorney representing a debtor to file a statement of the compensation paid or agreed to be paid "in contemplation of or in connection with" the bankruptcy case. We urge the Committee to amend Rule 2016(b) to require the disclosure of more information concerning the financial relationship between the debtor and debtor's counsel.

First, counsel should be required to enumerate the actual services that are going to be provided to the debtor and the debtor should be required to sign the statement. Too often, when the subject of attorney compensation arises in post-petition inquiries, the debtor and the attorney disagree about the terms of the engagement. This happens more frequently in legal representations where there is no written fee agreement. Having the debtor sign the detailed statement of compensation ensures that debtor is aware of counsel's representations and would help to alleviate this problem.

Second, counsel should be required to disclose all fees received from the debtor within the last year, regardless of whether they are "in contemplation of or in connection with" a bankruptcy case. This would provide a broader understanding of the total amount of professional fees paid by, or on behalf of, the debtor to debtor's counsel. If, for example, counsel was paid \$10,000.00 for an uncontested divorce occurring 8 months prior to the petition date, this fee would have to be disclosed under the revised Rule 2016(b). See, e.g., *In re Zepecki*, 258 B.R. 719 (Bankr. 8<sup>th</sup> Cir. 2001) (upholding disgorgement of excessive fees paid in contemplation of bankruptcy instead of the purported real estate sales and tax transaction). Under existing rules, this information might otherwise only be revealed in the response to question 10 of the statement of financial

affairs<sup>4</sup>, and then only if the debtor did not deem such a payment to be in the ordinary course of business. The court, the parties, and the United States trustee should be afforded a more certain opportunity to be apprized of such legal payments.

Clarification of Rule 2016(b) disclosures also appears warranted in light of the Fifth Circuit's decision in *In re Prudhomme*, 43 F.3d 1000 (5<sup>th</sup> Cir. 1995). There, the Court upheld disgorgement of an undisclosed retainer that counsel had received two year prior to bankruptcy, finding *inter alia* that it was paid in contemplation of the bankruptcy. The amendment proposed below does not extend the period for reporting beyond one year, but it does amplify and clarify the nature and extent of the information to be disclosed.

In addition to making the changes to Rule 2016(b) set forth below, we propose adoption of a new Official Form. A suggested form appears at Attachment 2.

**Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses.**

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(b) *Disclosure of Compensation Paid or Promised to Attorney for Debtor.* Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall be signed by the attorney and the debtor, and shall include the details of the legal services to be provided to the debtor for the fee disclosed, and the particulars of any sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. The statement shall also include disclosure of all fees paid by the debtor or on behalf of the debtor to the attorney within a one year period prior to the date the petition was filed, as well as the details of any transfer, assignment or pledge of property, outright, in trust, or as security, from, or on behalf of the debtor. A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

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<sup>4</sup> Question 10 is entitled "**Other transfers**"

"a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case."

### 3. **Proposed Amendment to Allow Certain § 727 Actions to be Brought by Motion**

The United States Trustee Program recommends that the Advisory Committee adopt streamlined procedures to prevent the debtor's discharge in two limited instances provided in 11 U.S.C. § 727(a)(8) and (9). Section 727(a)(8) provides that a chapter 7 discharge shall not be granted if the debtor previously received a chapter 7 or chapter 11 discharge in a case commenced within six years before the date of the filing of the petition. Section 727(a)(9) similarly provides that a chapter 7 discharge shall not be granted if the debtor received a chapter 12 or chapter 13 discharge in a case commenced within six years before the date of filing of the petition unless creditors were repaid 100% or, alternatively, 70% and the plan was filed in good faith and payments represented the debtor's best effort.

Under the existing rules, Fed. R. Bank P. 4004(d) and 7001(4), a party must file an adversary complaint to deny or revoke a debtor's discharge under § 727(a)(8) and (9). Instead of requiring a complaint to be filed, we propose that a motion should suffice to bring to the court's attention the fact that the debtor is not eligible to receive a discharge because of the prior discharge. Since adversary proceedings are far more time-consuming and expensive than motions, this amendment would save considerable resources for all parties including the courts.

Use of a motion is appropriate given the limited scope of inquiry that is necessary to rule on the issues involved. There is generally no need for discovery in these matters. The court can take judicial notice of its own records as well as those of another bankruptcy court to determine whether granting a discharge would violate § 727(a)(8) or (9). Because of the limited scope of inquiry, there is little potential for abuse of this procedure. Further, debtors would still be given notice and an opportunity to respond thereby safeguarding their interests as well.

The only area in which testimony or evidence may be necessary would involve a determination of "good faith" and "best efforts" under Section 727(a)(9)(B). In that instance limited testimony by the debtor would likely be sufficient; otherwise, evidence would generally be contained in the court files.

The following proposed amendment to Rule 7001(4) of the Federal Rules of Bankruptcy Procedure would allow these specific uncomplicated proceedings to be brought by motion. Conforming changes would also have to be made to Rule 4004, and may be advisable elsewhere in the Federal Rules to recognize the use of motions in these two limited instances.

We attach a motion for order to show cause procedure which is being successfully used in the Northern District of Texas. See Attachment 3.

**Rule 7001. Scope of Rules of Part VII.**

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceeding:

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(4) a proceeding to object to or revoke a discharge, except that a proceeding to object to or revoke a discharge under the provisions of § 727(a)(8) or § 727(a)(9) may be brought by motion.

**4. Proposed Amendment to Schedule I - Current Income of Individual Debtors.**

The instructions to Schedule I should be amended to insert "7" between "chapter" and "12." The income of a non-filing spouse is relevant to a Section 707(b) analysis and has been for some time. See Matter of Strong, 84 B.R. 541, 543 (Bankr. N.D. Ind. 1988) ("There is no justification for ignoring the impact of a non-petitioning spouse's income on a debtor's financial situation."). Given that the current language in Schedule I requires only disclosure of a non-filing spouse's income in chapter 12 or 13 cases, the burden is on the United States Trustee or chapter 7 trustee to elicit this information either prior to or at the Section 341(a) meeting. The simple addition of chapters 7 and 11 to the form will save the United States trustee a lot of work.

Thank you for giving these proposals your prompt consideration. If there is any information or assistance that we can provide please do not hesitate to call me or Martha L. Davis at (202) 307-1391.

Very truly yours,



Lawrence A. Friedman  
Director

Enclosures

# ATTACHMENT 1

## Eastern District of Michigan

### **RULE 2003-2 Documentation at the Meeting of Creditors**

In cases under chapters 7, 12, and 13, and in individual cases under chapter 11, to the extent they are in the debtor's possession and are applicable to the case, the debtor shall have available at the meeting of creditors, neatly arranged, all of the following:

- (a) documents to support all entries on Schedule I, including wage stubs, tax returns, or other proof of earnings;
- (b) documents to support all entries on Schedule J, including canceled checks, paid bills, or other proof of expenses;
- (c) certificates of title (originals if available, otherwise copies) for titled assets, including vehicles, boats and mobile homes;
- (d) originals of bank books; check registers; bonds; stock certificates; bank, brokerage and credit card statements;
- (e) copies of leases, mortgages, deeds and land contracts;
- (f) copies of life insurance policies either owned by the debtor or insuring the debtor's life;
- (g) current property tax statements;
- (h) asset appraisals;
- (i) keys to non-exempt buildings and vehicles;
- (j) divorce judgments and property settlement agreements; and
- (k) in chapter 12 and chapter 13 cases, copies of casualty insurance policies.

## Southern District of Ohio

### Rule 4002-1

- (5) the terms of any financing involved, including the interest rate;
- (6) a description of any method or proposal by which the interest held by any other entity in the collateral affected by the credit may be protected; and
- (7) copies of all documents by which the interest of all entities in the collateral affected by the credit was created or perfected, or, if any of those documents are unavailable, the reason for the unavailability. The debtor shall make its best effort to obtain and file any documents which are unavailable as soon as possible after the motion is filed.

(c) **Preliminary Hearing.** If the debtor asserts an immediate need for the obtaining of credit, the court may schedule a preliminary hearing on the motion after notice has been provided to any entity claiming an interest in the collateral affected by the credit to be obtained. Notice provided pursuant to LBR 9013-3 may be by telephone or telecopier (fax) if time does not permit written notification.

### 4002-1 DEBTOR - DUTIES

#### (a) Procedure.

- (1) **Requests by Case Trustee.** The debtor shall comply promptly with all trustee requests for information whether oral or written. Not later than twenty (20) days after service of any written request on the debtor and the debtor's counsel, debtor shall serve on the trustee the information and/or documents requested; or serve on the trustee and file a written motion for a protective order, a memorandum in support and a request for a hearing.
- (2) **Requests by United States Trustee.** Each debtor in a chapter 7 case shall bring to the §341 meeting either the following documentation, if applicable, or a statement using the designated letter for identification, setting forth why such documentation is not applicable or available.
  - (A) Title documents to all real estate in which the debtor has an interest, including deeds, land contracts, or leases, and closing statements for any interest in real estate sold by the debtor within the last year;
  - (B) All mortgages and liens upon real estate in which the debtor has an interest and details of all certificates of judgment; including the name of the judgment creditor, date of filing, judgment docket number, page and amount;
  - (C) All life insurance policies owned by the debtor;
  - (D) Certificates of title (or copies) to all motor vehicles, including boats, owned by the debtor;
  - (E) Federal income tax return for the last calendar year filed by the debtor;

## Rule 4003-1

(F) Separation agreements or decrees of dissolution or divorce entered into or granted during the last year;

(G) All documents evidencing the debtor's interest in any retirement account, including individual retirement accounts, account statements, summary plan descriptions and qualification letters from the IRS. For individual retirement accounts, an accounting of all contributions to the account since its inception is also required;

(H) Security agreements, financing statements, and personal property leases;

(I) Stock certificates, bonds, credit union and savings accounts passbooks or statements, and other evidence of investments or savings;

(J) Evidence of the value of real estate in which debtor has an interest (county auditor appraisal card or appraisal, if available);

(K) If the debtor acquires an interest in property within 180 days after the date of filing of the petition (1) by request, devise or inheritance, (2) as a result of a property settlement agreement with the debtor's spouse or of an interlocutory or final decree, or (3) as a beneficiary of a life insurance policy or of a death benefit, **the chapter 7 trustee must be notified immediately.**

(b) **Limited Filing with the Court.** The trustee shall not file a copy of a request for information unless the debtor fails to comply with this rule and the trustee or any other party in interest requests the court to compel compliance. The debtor shall not file a copy of a response to a request for information unless it is in the form of amendments to schedules, statements of affairs or other statements or lists required to be filed by Rule 1007, or unless the debtor is otherwise required to do so.

(c) **Sanctions.** Failure to comply with a trustee's request for information may result, after notice and hearing, in the imposition of sanctions.

### 4002-2 ADDRESS OF DEBTOR

The change of address required to be filed by Rule 4002 shall be served according to LBR 9013-3.

### 4003-1 EXEMPTIONS

(a) **Service of Objection.** Any objection by the trustee or other party in interest to property claimed as exempt shall be served pursuant to LBR 9013-3.

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO**

Case No. \_\_\_\_\_

**NOTICE TO INDIVIDUAL CONSUMER DEBTOR(S)  
11 U.S.C. Section 342(b)**

PLEASE TAKE NOTICE THAT as a consumer debtor, you are advised, pursuant to the provisions of 11 U.S.C. Section 342(b), prior to the commencement of your case that you may proceed under any one of the following chapters of Title 11, United States Code:

<b>Chapter 7</b>	<b>Liquidation, or</b>
<b>Chapter 11</b>	<b>Reorganization, or</b>
<b>Chapter 12</b>	<b>Family farmer, or</b>
<b>Chapter 13</b>	<b>Repayment of all or part of the debts of an individual with regular income</b>

By filing a petition in bankruptcy you have invoked the jurisdiction of a United States Court. If you do not appear as ordered you may either be arrested and conveyed to court by a United States Marshal, or your case dismissed and discharge in bankruptcy denied.

All of your property is now under the exclusive control of the United States Bankruptcy Court. It is your duty to keep and preserve that property and be accountable to the proper court officials.

The law requires that you attend and submit to an examination under oath concerning the conduct of your affairs, the cause of your bankruptcy, your transaction with creditors and other persons, the amount, kind and whereabouts of your property and possessions, and all other matters which may affect the administration and settlement of your estate of the granting of your discharge.

You are not to dispose of any property, including money, or allow any creditors to take such property without the written authority of the court. The right of your secured creditors will be determined by the court, and no creditors now have the right to possess any property upon which they claim to have a lien or interest.

If you have changed your address since you filed your petition, so inform the trustee at the meeting of creditors. Should you change your address thereafter, be sure to keep the court informed of your correct address up until the time your case is closed.

If you need information or advice as to your rights and obligations under the law, contact your attorney.  
**The court cannot give you legal advice.**

Date: \_\_\_\_\_

Michael D. Webb  
Clerk, U.S. Bankruptcy Court

**CHAPTER 7 CASES**  
**SEE REVERSE SIDE FOR ADDITIONAL INFORMATION**

**IT IS NECESSARY TO BRING THE FOLLOWING PAPERS  
TO THE MEETING OF CREDITORS WITH YOU:**

1. Title documents to all real estate in which the debtor has an interest, including deeds, land contracts, or leases, and closing statements for any interest in real estate sold by the debtor within the last year;
2. All recorded mortgages and recorded liens upon real estate in which the debtor has an interest and details of all certificates of judgement; including the name of the judgment creditor, date of filing, judgment docket number, page and amount;
3. All life insurance policies owned by the debtor;
4. Certificate of title (or copies) to all motor vehicles, boats, etc., owned by the debtor;
5. Federal income tax return for the last calendar year filed by the debtor;
6. Separation agreements or decrees of dissolution or divorce entered into or granted during the last year;
7. All documents evidencing the debtor's interest in any retirement account(s), including individual retirement account(s), account statement(s), summary plan description(s) and qualification letter(s) from the IRS. For individual retirement account(s), an accounting of all contributions to the account(s) since its inception is also required;
8. Security agreement(s), financing statement(s), and personal property lease(s);
9. Stock certificate(s), bond(s), credit union and saving(s) account(s) passbook(s) and/or saving(s) account(s) statement(s), checking account statement(s) and other evidence of investment(s) or saving(s);
10. Evidence of the value of real estate in which the debtor has an interest (county auditor appraisal card or appraisal, if available);
11. List of debtor's personal property with each item's estimated market value, if same does not appear in the schedules filed in this matter;
12. Pay vouchers or record of earnings for the forty (40) day period prior to the date your petition was filed in bankruptcy;
13. If the debtor acquires an interest in property within 180 days after the date of filing of the petition (a) by request, devise or inheritance, (b) as a result of a property settlement agreement with the debtor's spouse or of an interlocutory or final decree, or (c) as a beneficiary of a life insurance policy or of a death benefit, **the chapter 7 trustee must be notified immediately.**

14. Bring you current driver's license or other picture ID, such as the Ohio Identification card or any other ID that has your name, photograph and social security number on it.

# ATTACHMENT 2

**Proposed Form 21. Disclosure of Compensation of Attorney for Debtor**

Form 21. DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

[Caption as in Form 16B.]

A. Compensation for current case:

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follow:

For legal services, I have agreed to accept..... \$ \_\_\_\_\_  
Prior to the filing of this statement I have received.. \$ \_\_\_\_\_  
Balance Due..... \$ \_\_\_\_\_

2. Expenses for the current case: I certify that I have received the following amounts for payment of expenses:

Filing Fee..... \$ \_\_\_\_\_  
 Other (specify)..... \$ \_\_\_\_\_

3. The source of the compensation and expenses paid to me for the current case was:

Debtor's wages, earnings or services rendered by debtor.  
If debtor rendered services as compensation, please state the details of what was done by the debtor and the value of the services:  
 Other (Specify, e.g., tax refund, proceeds from sale of stock or name and address of person providing the funds):  
\_\_\_\_\_

4. The source of compensation to be paid to me is:

Debtor's Chapter 13 plan.  
 Other (Specify, e.g., tax refund, proceeds from sale of stock or name and address of person providing the funds):  
\_\_\_\_\_

5. Other than as disclosed above, I have received no transfer, assignment or pledge of property, outright or in trust, from, or on behalf of the debtor, except:  
\_\_\_\_\_

6. In regard to 11 U.S.C. § 504:

- I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
- I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. The amount paid or to be paid along with the name and address of the person or entity with whom the compensation is shared is set forth below. In addition, a copy of the compensation sharing agreement is attached.

Name:

Address:

Amount: \$

7. In return for the above-disclosed fees, I have agreed to render legal service for all aspects of this bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. Representation of the debtor in adversary proceedings and other contested bankruptcy matters;
- e. Specify other:

8. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

**B. Previous compensation:**

- 1. In the year prior to the filing of this bankruptcy case, the debtor or another on behalf of the debtor has directly or indirectly paid to me the amount of \$ \_\_\_\_\_ for other debt counseling or representation in bankruptcy cases.
- 2. In the year prior to the filing of this bankruptcy case, the debtor or another on behalf of the debtor has directly or indirectly paid to me the amount of \$ \_\_\_\_\_ for other legal representation and advice.

**CERTIFICATION**

I certify that the foregoing is a complete statement of any agreement or arrangement for payment of legal fees and expenses for representation of the debtor(s) in this bankruptcy proceeding.

Dated:

\_\_\_\_\_  
Signature of Attorney

Name of Law Firm

Dated:

\_\_\_\_\_  
Signature of Debtor

Dated:

\_\_\_\_\_  
Signature of Joint Debtor

# ATTACHMENT 3

# Memorandum

**Subject**

727(a)(8)

**Date**

July 15, 2003

**To**

Martha Davis  
Principal Deputy Director  
EOUST

**From**

William T. Neary  
United States Trustee  
Region VI

At our meeting in San Francisco last week, you inquired regarding the streamlined procedure we have adopted in Dallas to prevent the issuance of discharges in situations wherein the debtor is ineligible to receive one under 727(a)(8). Rather than drafting, filing and serving a complaint, followed by a motion for summary judgment, our court has agreed to issue an OSC on our motion in such situations. I have attached a copy of a letter from Chief Judge Felsenthal in Dallas confirming the procedure, as well as a sample motion used in one such situation. This shortcut has proven to be a timesaver for our staff without in any significant way infringing upon the procedural safeguards which an adversary proceeding provides.

WTN:jss

Attachment

United States Bankruptcy Court  
Northern District of Texas  
U.S. Courthouse  
1100 Commerce Street  
Dallas, Texas 75242-1496

Chambers of  
Steven A. Felsenthal  
Chief Judge

Telephone  
(214) 753-2040

August 19, 2002

William T. Neary, United States  
Trustee for the Northern District of Texas  
1100 Commerce St., 9th Floor  
Dallas, TX 75242

Dear Bill:

At the judges meeting on August 13, 2002, we determined:

(1) For a debtor who has received a discharge in a case under Title 11 within six years of a new case, the debtor's ineligibility for a discharge should be raised by the entry of an order to show cause, thereby giving the debtor notice and an opportunity to be heard. When your office discovers such a case, please bring it to our attention with a request for the entry of an order to show cause, with a draft order.

(2) For Chapter 13 trustee's final report and account to creditors, the trustee must provide notice to all the creditors. Please communicate this decision to the Standing Chapter 13 Trustees. I understand that previously two of the four trustees provided notice to all creditors and that recently the other two have agreed to do likewise.

Thank you for your assistance.

Sincerely,



Steven A. Felsenthal  
Chief United States Bankruptcy Judge

SAF:as

cc: Hon. Robert C. McGuire  
Hon. Barbara J. Houser  
Hon. Robert L. Jones  
Hon. D.M. Lynn  
Hon. Harold C. Abramson  
Tawana Marshall

United States Department of Justice  
Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, TX 75242 (214) 767-8967

Mary Frances Durham,  
for the United States Trustee

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**JACQUELINE YVONNE SMITH**

**Debtor**

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§

**CASE NO: 02-35882-BJH-7**

**Chapter 7**

**Hearing: No hearing required**

**Motion for an Order to Show Cause  
Regarding Eligibility for a Discharge**

Comes now the United States Trustee and files this his Motion for an Order to Show Cause Regarding Eligibility for a Discharge in the above-referenced chapter 7 case. In support of his Motion for an Order to Show Cause, the United States Trustee respectfully represents as follows:

**Jurisdiction**

The bankruptcy court has jurisdiction to determine this matter under 28 U.S.C. §§ 1334 and 157, and 11 U.S.C. §§ 105 and 727(a)(8). This is a core proceeding under 28 U.S.C. § 157(b).

**Facts**

1. The debtor filed this voluntary chapter 7 case on July 10, 2002. The first meeting of creditors was held August 16, 2002, and the debtor is scheduled to be discharged on October 15,

2002.

2. The debtor filed a previous voluntary chapter 7 petition on November 6, 1996, and received a chapter 7 discharge on March 19, 1997, Bankruptcy Case No. 96-38251-RCM-7.

3. The debtor employed the same attorney for both cases.

Argument

4. The debtor is not eligible for a discharge in this case because she was granted a discharge in a case commenced within six years of the filing of the pending case. 11 U.S.C. § 727(a)(8).

Relief Requested

5. The United States Trustee asks the court to set a Show Cause Hearing and order the debtor to appear and show cause why she should be granted a discharge in the pending case. The United States Trustee asks for any further relief to which he may be justly entitled.

August 26, 2002

William T. Neary  
United States Trustee

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Mary Frances Durham, TXB #00790144  
United States Department of Justice  
Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, TX 75242 (214) 767-8967, ext. 241

Certificate of Service

I hereby certify that I mailed a copy of the foregoing document by first class United States mail, postage prepaid, on August 27, 2002, to the following:

Jacqueline Yvonne Smith, 6444 Wanklyn Street, Dallas TX 75237  
J. Vernon Johnson, Jr., 2730 N. Stemmons Freeway, Stemmons Tower West Suite 501, Dallas TX 75207  
Cunningham, Jim, 6412 Sondra, Dallas, TX 75214

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Mary Frances Durham

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**IN RE:**

**JACQUELINE YVONNE SMITH**

**Debtor**

§  
§  
§  
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§

**CASE NO: 02-35882-BJH-7**

**Chapter 7**

**Hearing: September 19, 2002  
1:15 p.m.**

**Order for the Debtor to Appear and Show Cause  
Regarding Eligibility for a Discharge**

Came on for consideration, the United States Trustee's Motion for an Order to Show Cause Regarding Eligibility for a Discharge in the above-referenced chapter 7 case. The United States Trustee asserted that the debtor is ineligible for a discharge because she received a discharge on March 19, 1997, in Bankruptcy Case No. 96-38251-RCM-7, which she filed on November 6, 1996. It would appear that the debtor is ineligible to receive a discharge in this case, and therefore, the court hereby

ORDERS Jacqueline Yvonne Smith to appear in the United States Court House, United States Bankruptcy Court Room at 1100 Commerce Street, 14<sup>th</sup> Floor, Dallas, Texas, 75242 on **SEPTEMBER 19, 2002 AT 1:15 P.M.** and show cause why she should be granted a discharge in this case; the court further

ORDERS that should Jacqueline Yvonne Smith fail to appear or show cause why she is eligible for a discharge, the clerk shall not enter a discharge in this case.

Date: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge