

**Proposed Amendments to Bankruptcy Rules  
Aid in Case Administration, Enhance Quality of Information**

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Best Practices for Improved Bankruptcy Administration

In my years practicing bankruptcy law, I have noted a variety of “best practices” that could improve bankruptcy administration by fostering the provision of more accurate information and making bankruptcy proceedings more transparent. On behalf of the bankruptcy community, I have worked with U.S. Trustee Program personnel, private trustees, bankruptcy judges, and practitioners to identify those practices that are most effective in improving bankruptcy administration and curbing fraud and abuse.

Some of these practices can be instituted through amendments to the Federal Rules of Bankruptcy Procedure and the Official Forms. For example, bankruptcy trustees often—but not always—ask debtors to provide supporting documents regarding their reported assets, liabilities, income, and expenses. In a small number of districts, debtors are already required to produce these documents by local rule. Making this a nationwide requirement would foster good bankruptcy practice and improve case administration in all districts.

Similarly, Schedule I currently requires disclosure of the non-filing spouse’s income only in Chapters 12 and 13, but not in Chapter 7. There is no justification for ignoring the impact of a non-filing spouse’s income on a Chapter 7 debtor’s financial situation, and the better practice would be to require that disclosure as well.

Last summer, the Program asked the Advisory Committee on Bankruptcy Rules of the United States Judicial Conference (the “Rules Committee”) to consider proposed amendments to the Bankruptcy Rules and Official Forms that would improve bankruptcy administration and enhance the Program’s efforts to curb fraud and abuse in the bankruptcy system. We offered four proposals: to require additional supporting documentation from debtors at the meeting of creditors under 11 U.S.C. § 341(a); to require disclosure of the non-filing spouse’s income in a Chapter 7 case; to require a statement, signed by the debtor and debtor’s counsel, enumerating the services to be provided by counsel; and to permit certain actions under 11 U.S.C. § 727 to be brought by motion.

These proposals were presented and discussed at the Rules Committee meeting in September 2003. At that time, our proposal to amend Schedule I to include the income of the non-filing spouse in Chapter 7 was tentatively approved. The proposals were referred for further study to the Consumer Subcommittee of the Rules Committee, which held an informal focus group meeting on January 30, 2004, to review the proposals and discuss them with Program representatives.

The subcommittee made a recommendation to the Rules Committee, which met on March 25-

26, 2004, and agreed to publish for comment a modified version of our proposal to require debtors to provide documentation at the Section 341 meeting. At press time, the exact language of this modified version is being determined. The committee did not agree to publish the Program's other two proposals.

The committee's decision is subject to further approval by the Standing Committee, which next meets in June. We anticipate it will be approved and published for comment in August, followed by a six-month comment period and further Rules Committee deliberations. If everything proceeds on course, the rule change could be effective in December 2006.

#### Additional Documentation from Debtors

With this procedural background in mind, let me summarize the purpose and impact of the two proposals approved by the Rules Committee.

In our most significant proposal, we seek to facilitate the performance of duties by debtors and trustees by requiring production of certain documents at the Section 341 meeting. Under all chapters of the Bankruptcy Code, the trustee has a statutory duty to investigate the financial affairs of the debtor. Every debtor has a corresponding statutory duty, under 11 U.S.C. § 521(4), 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[.]"

Currently, there is no national rule to implement 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 seek out the information. If the trustee requests no information, the debtor arguably has no obligation to be forthcoming, and the trustee's "investigation" consists only of a review of the debtor's petition, schedules, statements, and testimony at the Section 341 meeting.

The better practice, and the one used by most experienced trustees to find assets, confirm valuations, or unravel financial dealings, is to require debtors to produce certain documents to confirm what they have claimed in the petition, schedules, and statements. Correspondingly, the better practice for bankruptcy attorneys and their clients is to assemble documents before filing to ensure, among other things, that accurate information is provided to the bankruptcy court.

Our proposal would amend the Bankruptcy Rules to require every debtor to produce certain documents that have been reported as most useful to trustees and that are required under many local rules, standing orders, or local practice. The proposal requires only core documents that are necessary to determine if assets exist or if the debtor is entitled to a discharge. The proposal grants discretion to the U.S. Trustee or case trustee to waive the requirement. Finally, the proposal does not require the debtor to go to any third party to obtain documents. The debtor need only produce those documents in

the debtor's possession.

### Information on Spouse's Income

The other proposal accepted by the Rules Committee would require disclosure of the non-filing spouse's income on Schedule I in Chapter 7 cases. 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). Nonetheless, Schedule I currently requires its disclosure only in Chapters 12 and 13. This places the burden upon the U.S. Trustee to elicit information on the non-filing spouse's income either before or at the Section 341 meeting.

The simple change made by the proposal will eliminate the need for the U.S. Trustee to make an inquiry at every Section 341 meeting involving a debtor with a non-filing spouse. It will also complement Schedule J, which requires the debtor to state the expenses of the household.

### Conclusion

We are optimistic that these Bankruptcy Rule amendments will be approved and will enhance the provision of accurate information, facilitate processing, and help prevent abuse of the bankruptcy system. Too often, people accept the way things are as the way they have to be. Every one of us has the obligation to take an interest in advocating for changes that will improve the bankruptcy system nationwide. We can all contemplate further "best practices" that may improve bankruptcy administration, whether by future Bankruptcy Rule amendments or by other means.