

Memorandum

Office of the United States Trustee
501 I Street, Suite 7-500
Sacramento, CA 95814
(916) 930-2100 / fax (916) 930-2099

TO: All Members of the Bar and Pro Per Debtors
FROM: Antonia G. Darling, AUST, Sacramento
DATE: March 14, 2003
SUBJECT: Meeting of Creditors: Attendance of Active Duty Service Members

In light of recent events, a large number of our Nation's Military men and women have been deployed overseas. In addition to regular Active Duty service members, at least 188,000 National Guard and Reserve service members have been called to Active Military Duty. We suspect that a number of debtors in pending bankruptcy cases are a part of this mobilization and deployment.

Section 521 of the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), 50 U.S.C. App. §§ 521, applies to bankruptcy cases and proceedings. E.g., In re Ladner, 156 B.R. 664 (Bankr. D. Colo. 1993). This section requires a court to stay "any action or proceeding" unless the ability of the service member to prosecute an action or conduct a defense "is not materially affected by reason of his military service." While the SSCRA raises a host of issues for bankruptcy administration, the issue that comes up most frequently is the debtor's inability to appear at the Section 341(a) meeting.

Therefore, as a matter of Program policy, United States Trustees should excuse unavailable Active Duty service members from attendance at the 341 meeting in appropriate circumstances. At this juncture, these procedures should only apply to joint cases, where one of the spouses can attend the Section 341 meeting.

Attendance of the Active Duty service member should be excused in the following circumstances:

- * the Active Duty service member is a joint debtor and is unable to appear in person or telephonically because of mobilization or deployment (either in a combat zone or other restricted area which does not allow the serviceman to use the telephone)
- * the joint debtor spouse attends the meeting of creditors and is able to testify competently regarding the household's financial affairs;
- * no party in interest objects; and
- * no indicia of fraud, bad faith, or lack of consent are present.

The Assisnt United States Trustee will need to be able to verify the absent debtor's identity, mobilization or deployment, and consent to the filing. For example, to verify identity and deployment, the joint debtor spouse attending the meeting may produce copies of the other spouse's photo ID, proof of Social Security number, and deployment orders. To verify consent to the filing, the spouse appearing at the meeting can provide a statement signed under penalty of perjury that affirms the non-attending spouse is aware of and agrees to the bankruptcy filing. Verification of the non-attending spouse's identity, mobilization or deployment, and consent to filing has not been delegated to the case trustees, and approval can only be obtained from the AUST, prior to the meeting.