

The Standing Trustee's Critical Role in Section 341 Meetings of Creditors

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Important Milestone

The section 341 meeting of creditors is an important milestone in a chapter 13 case. The purpose of this article is to offer a brush-up on the basics of conducting the section 341 meeting and to provide positive reinforcement to the overwhelming number of trustees who already conduct the meetings in an exemplary fashion.

The section 341 meeting provides the United States Trustee, the bankruptcy trustee, creditors and other parties in interest the opportunity to ask questions of the debtor. These questions can more fully detail the debtor's financial affairs and conduct, and provide the opportunity to assess the debtor's credibility and ability to perform under a plan. The section 341 meeting may also be the only time the debtor meets the standing trustee. The United States Trustee is by statute the presiding officer at the meeting, but has delegated this duty to the standing trustee in chapter 13 cases. The debtor's view of the bankruptcy system may in large part be formed by this meeting, and it is important that all parties act professionally to foster the integrity of the process.

The United States Trustee monitors the standing trustee's performance at section 341 meetings in accordance with the U.S. Trustee Program's statutory duty to oversee the administration of cases and trustees. The *Handbook for Chapter 13 Standing Trustees* ("*Handbook*") provides guidance to the standing trustees on requirements and expectations.¹ This article will discuss certain key responsibilities of the presiding officer in conducting section 341 meetings.

Timely Scheduling

In some jurisdictions the bankruptcy court is responsible for scheduling the section 341 meeting, but often it is the standing trustee's responsibility. Generally, first meetings of creditors must be scheduled between 21 days and 50 days after the order for relief. If the meeting is held in a remote location, it can be scheduled as long as 60 days afterward. The standing trustee should endeavor to conclude meetings promptly and to ensure that any adjournment of the meeting to a later date and time is properly noticed in accordance with the rules. Fulfillment of this responsibility is one of the criteria monitored by United States Trustees in an effort to ensure expeditious handling of bankruptcy cases.

Presiding Officer's Role and Importance of Professional Environment

As noted above, the United States Trustee has delegated to the standing trustee the responsibility for presiding at the section 341 meeting. The United States Trustee may also designate additional persons to serve as presiding officers. Standing trustees with very large

¹ *Handbook for Chapter 13 Standing Trustees, Effective October 1, 2012*, at pages 3-7 to 3-20, available at http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm.

caseloads are often not able to preside at all meetings and still conduct their other duties. In addition, a substitute may be necessary if the standing trustee is not available to conduct meetings on a particular day.

The standing trustee is responsible for ensuring that the designated substitute is appropriately trained. The standing trustee must make sure the substitute is sufficiently familiar with the required questions; has reviewed the schedules, statement of financial affairs and plan prior to commencing the meeting; and acts professionally toward all parties. The standing trustee periodically should attend meetings conducted by the substitute to ensure he or she is performing these responsibilities appropriately. The United States Trustee listens to electronic recordings of meetings or attends meetings to verify the standing trustee or substitute is conducting them in accordance with statutes, rules and policies. If not, the United States Trustee may rescind the delegation of the standing trustee or substitute or take other action such as requiring additional training.

It is critical that the presiding officer maintain a professional demeanor at the meeting and ensure that all parties do so. While in other situations a more familiar jocular style may put parties at ease, it is not appropriate here. Neither are comments that could be perceived as judgmental. Questioning should never become harassment. The purpose of the meeting is to determine the facts and provide an opportunity for questions, not to comment on the debtor's lifestyle or choices.

Security in the Meeting Room

Some standing trustees conduct meetings in a federal building or other secure facility, but not all meeting spaces have security on site. In these circumstances the standing trustee should coordinate with the United States Trustee to determine what additional actions might be taken to further enhance security.

Recording the Meeting

All section 341 meetings must be electronically recorded. The presiding officer should start each meeting by stating the case number. The presiding officer must ensure that the quality of the recording is adequate such that all comments can be clearly understood and the identity of all speakers can be determined. Because the United States Trustee usually maintains the record, the standing trustee must have a procedure in place to deliver the recording to the United States Trustee. For up to two years after conclusion of the meeting, the United States Trustee is required to provide a copy or a transcript of the recording to any member of the public, at the requester's expense.

Oath, Identity and Required Questions

Administering the Oath

Bankruptcy Rule 2003(b) requires debtors to be examined under oath. The presiding officer is authorized to administer that oath. If there is more than one debtor in a case, the presiding officer must administer the oath to each debtor. The presiding officer cannot swear in all debtors in all cases at the beginning of the docket; each debtor must be individually sworn in.

Verifying Debtor Identity

The debtor must furnish an original government-issued photo identification as well as confirmation of his or her Social Security number. The section 341 meeting provides an opportunity for the presiding officer to verify this information. The presiding officer may not verify identity independent of the meeting, even if he or she believes that is more convenient or provides a more secure environment. The trustee should complete and send to the United States Trustee the form “Notice to United States Trustee of Debtor Identity Problem” if the Social Security number provided in the petition does not match the documentation provided by the debtor. To prevent the inadvertent release of personally identifiable information, the presiding officer should have the debtor verify his or her address and Social Security number on the record but not recite them.

Required Questions

The section 341 meeting provides the presiding officer the opportunity to examine the financial condition of the debtor. The presiding officer should not allow the debtor’s attorney to take over the questioning or answer on behalf of the debtor.

To assist the presiding officer in consistently covering all necessary avenues of inquiry, the United States Trustee Program has developed a set of mandatory questions.² The questions are not meant to limit areas of inquiry for the presiding officer, but instead serve as a starting point and a means to ensure critical areas are explored. The presiding officer’s failure to ask all required questions is the single most frequent deficiency observed by United States Trustees when reviewing standing trustee performance at section 341 meetings. This failure can result in an inadequate record, undiscovered assets or other defects in the examination.

Debtor Concerns

Language Interpreters

Some debtors lack sufficient proficiency in English to reasonably comprehend the inquiries of the presiding officer and creditors. The presiding officer must advise the debtor that the United States Trustee has arranged for free telephone interpreter services. The presiding officer will access the interpreter and place the interpreter under oath. Standing trustees and their employees may not serve as interpreters. The debtor who requires assistance with English must not be treated differently than other debtors. For example, presiding officers cannot reschedule meetings of creditors for those debtors requiring interpreters to the end of the day.

Tax Returns

No later than the day before the section 341 meeting, the debtor must have filed all due tax returns for the prior four years as required under 11 U.S.C. § 1308. The presiding officer

² See *Section 341(a) Meeting of Creditors Required Statements/Questions* available at http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm.

must have procedures in place to verify that the debtor has complied. If the debtor has not done so, the presiding officer may hold the meeting open for up to 120 days to allow the debtor time to file the tax returns. If the presiding officer receives tax returns at the meeting, those returns are generally reviewed immediately and then returned to the debtor. If returns are retained, the standing trustee must comply with U.S. Trustee Program guidance on access and control of tax returns.³

Non-Attendance by Debtors, Attorneys

All debtors are required to appear at the meeting of creditors. If there are extenuating circumstances such as illness, military service or incarceration that render a debtor unable to attend the meeting in person, the standing trustee and United States Trustee can coordinate to provide an alternative means to conduct the meeting, such as a telephonic appearance. If a debtor fails to appear, the standing trustee must either adjourn the meeting to another date or file a motion to dismiss or convert as appropriate. If an attorney fails to appear, the standing trustee should adjourn the meeting. If an attorney routinely fails to appear or otherwise fails to adequately represent clients, the standing trustee should notify the United States Trustee to discuss possible enforcement activity.

Conclusion

The section 341 meeting is a critical step in the successful administration of a chapter 13 case. It is an opportunity to educate the debtor on the bankruptcy process, and to allow parties in interest to question the debtor about his or her assets, liabilities and financial condition. It is also an opportunity to identify potentially fraudulent activities by those who seek to prey upon debtors. The standing trustee, as the presiding officer at the meeting of creditors, performs a critical function in protecting the integrity of the bankruptcy system.

³ See *Guidelines for Trustee Access and Control of Debtor Tax Returns* available at http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm.