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signed 4-1-03

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In re:**

**KATHY LOUISE CALLAHAN,  
  
DEBTOR.**

**CASE NO. 03-40210-7  
CHAPTER 7**

**ORDER STRIKING ATTEMPT TO AMEND PETITION TO ADD JOINT DEBTOR**

This matter is before the Court following receipt of pleadings identified as an amended voluntary petition and schedules, amended assignment of income tax refund, and amended certification of mailing matrix. Debtor Kathy Louise Callahan and purported joint debtor Robert Alvin Callahan appear by counsel Lloyd R. Graham. The Court has reviewed the pleadings and finds it necessary to enter this order.

Kathy Louise Callahan filed a voluntary Chapter 7 bankruptcy petition on January 29, 2003. Her spouse, Robert Alvin Callahan, did not join in that petition. Pursuant to 11 U.S.C.A. §301, the petition constituted an order for relief under Chapter 7. Notice of Ms. Callahan's filing was sent to her creditors, notifying them that the meeting of creditors would be held on March 3, that they had until May 2 to file a complaint objecting to her discharge or seeking a determination of the dischargeability of certain debts, and that they would have until thirty days after the conclusion of the meeting of creditors to object to her exemptions. Ms. Callahan did not appear at the meeting of creditors, and it was continued to April 1.

On March 24, Ms. Callahan's attorney submitted the pleadings referred to in the first sentence of this order. While the pleadings may attempt to make other changes, their main thrust is to attempt to add Mr. Callahan to this case now as a joint debtor. The Court is convinced that this is not a permissible way to commence a case for Mr. Callahan. Section 302 of the Bankruptcy Code authorizes the filing of joint petitions. It provides:

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

This statute makes clear that a joint case is really two separate cases, or else there would be no need for the Court to determine whether the debtors' estates should be consolidated. Furthermore, if a joint case could be commenced as attempted here, there would be two commencement dates and two dates of the orders for relief, the first when Ms. Callahan filed her individual petition and the second when the Callahans filed the amended petition. The interaction of a variety of Federal Rules of Bankruptcy Procedure demonstrates that this situation is not permissible. Rule 2003(a) requires the meeting of creditors to be scheduled within a specific time period measured from the order for relief. Rule 4004(a) then sets the time for filing a §727 complaint objecting to the debtor's discharge as 60 days after the first date set for the meeting of creditors. Rule 4007(c) fixes that same date as the deadline for filing dischargeability complaints under §523(c). These deadlines are already running for Ms. Callahan's case, and there is no provision in the Bankruptcy Code or Rules for recommencing them. A number of other courts have similarly concluded that an individual's voluntary petition cannot be

amended to add a spouse to make the petition a joint one.<sup>1</sup> If the Callahans wish to have a jointly administered case, Mr. Callahan can file his own voluntary petition and ask to have it consolidated with Ms. Callahan's under Rule 1015(b).

Due to the difficulties that would result from trying to distinguish the permissible amendments to Ms. Callahan's petition and schedules from the impermissible addition of Mr. Callahan as a debtor, the Court concludes that all the pleadings mentioned in the first sentence of this order must be deemed to be ineffective and stricken from the record. Any amendments of Ms. Callahan's individual schedules that may be necessary must be prepared and resubmitted without the confusing and improper inclusion of Mr. Callahan as a debtor in this case.

The amended pleadings are hereby declared to be void, and are ordered stricken from the record.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of April, 2003.

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JAMES A. PUSATERI  
BANKRUPTCY JUDGE

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<sup>1</sup>See, e.g., *In re Olson*, 253 B.R. 73 (9th Cir. BAP 2000); *In re Walker*, 169 B.R. 391 (Bankr. W.D. Tenn. 1994); *In re Clinton*, 166 B.R. 195 (Bankr. N.D. Ga. 1994).