

Tips for Filing Reaffirmation Agreements in Cases Before Judge Karlin

April 16, 2012

- 1. Make sure that all blanks are filled in and the forms are complete.**

I routinely receive forms with missing or incomplete information. Without all of the information required by the reaffirmation agreement form (Form 240-A) and the required cover sheet (Form B27), the Court cannot process the Reaffirmation Agreement and will issue an order to correct.

- 2. Attach a copy of the note, mortgage, security agreement, or other relevant documentation to the reaffirmation agreement.**

When copies of the relevant documentation are attached, I can review the documentation if questions arise about the agreement, including whether there is perfection.

- 3. Check your calculations.**

If the numbers on the reaffirmation agreement, particularly Part D or the Cover Sheet, do not add up, you may be required to appear at a hearing and explain the inconsistencies or errors.

- 4. Do not ignore orders to correct from the Court.**

Although 99% of lawyers would never ignore a court order, reaffirmation agreements are routinely stricken because the parties failed to comply with a Court order to correct the reaffirmation agreement or provide additional information. Orders to correct provide you an opportunity to fix these errors by supplementing or amending the reaffirmation agreement rather than appearing at a hearing to explain the errors.

- 5. Disclose the debtor's current income and expenses, and explain any values that differ from those in Schedules I and J.**

The reaffirmation agreement and accompanying cover sheet require you

to disclose the income and expenses listed on Schedules I and J (i.e., at time of filing the petition) as well as the debtor's current income and expenses as of the date of the filing of the reaffirmation agreement. If those values differ, you must explain the difference. Significant swings, without explanation, do nothing but raise my concerns about the wisdom of the reaffirmation agreement.

6. Make sure your explanations are complete, accurate and make sense.

I often see reaffirmation agreements where the parties claim that income has increased or expenses have decreased since the filing of the case. These changes must be explained by giving specific information, such as "Debtors have surrendered their second car and no longer have that payment," or "Debtors have reduced their food costs by \$50 by not eating out as often and have reduced their transportation costs by \$75 by carpooling to work." If your explanation is simply "income has increased" or "Debtors have cut back on expenses," or, worse yet, "my client needs the car," you will receive an order to correct to provide more information or an order setting the matter for hearing. You can save everyone time and effort by providing the explanation on the form when it is originally filed.

Also, make sure that your explanation is accurate. For example, I recently reviewed a reaffirmation agreement where the debtors explained a \$400 reduction in monthly expenses by stating "Debtors have reduced their spending on groceries and charitable giving." That explanation was not sufficient when Schedule J showed \$350 per month total for those two expenses; the matter was set for hearing.

7. File your reaffirmation agreement within 60 days of the original date set for the 341 meeting.

Rule 4008 requires that a reaffirmation agreement be filed within 60 days of the first date set for the 341 meeting. This will ensure that the reaffirmation agreement is on file prior to the entry of discharge. I routinely grant motions for extension of time to file reaffirmation agreements, which will also delay the entry of discharge until the new deadline has expired. If the reaffirmation agreement is filed after the

entry of discharge, I will strike the reaffirmation agreement. In addition, I have found that the discharge order should not be set aside for the purpose of allowing the filing of a (late) reaffirmation agreement, as explained in *In re Kellison*, Order Denying Motion to Vacate, Case No. 08-40480, Doc. 30 (Jan. 5, 2009).

8. **If you are an attorney, your representation of the debtor does not end even if you do not sign Part C of the reaffirmation agreement—you must attend any hearing.**

The Court considers reaffirmation agreements to be an integral part of the Chapter 7 bankruptcy process, and will not allow attorneys to limit the scope of their representation to exclude any involvement in the reaffirmation agreement process. The Court recognizes that attorneys may have a variety of reasons why they elect not to sign Part C of the agreement. However, you will be required to appear in Court to provide legal counsel to your client at any hearing on any reaffirmation agreement, whether you signed the agreement or not.

9. **Reaffirmation Hearings by telephone.**

If you or your client live or work a distance from the courthouse that makes it unduly burdensome to appear for a reaffirmation hearing, ask for a telephone hearing. I do not think these hearings are as effective in conveying Congressional intent about reaffirmation agreements as hearings where the debtors are in the courtroom, but I am granting requests when appropriate.