

New Official Form 23: Getting your client back on the road

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On August 11, 2005, the Executive Committee of the Judicial Conference of the United States approved official forms to be used with the **Bankruptcy Abuse Prevention and Consumer Protection Act of 2005**. Included is Form 23, the Debtor's Certification of Completion of the Instructional Course Concerning Personal Financial Management.

Debtors' ed, not drivers' ed

Many attorneys think the mandatory financial management instructional course is nothing more than the "drivers' ed" of their youth (i.e., take the class so mom's auto insurance won't be so expensive). Not quite. Sections 727(a)(11) and 1328(g)(1) specifically tie the education requirement to receiving a discharge, in the belief that an educated debtor will be less likely to repeat the financial errors of the past.

Mandatory financial education was first introduced during the **National Bankruptcy Review Commission**. In a report filed with the Commission in July 1997, professor **Karen Gross** of **New York Law School** wrote, "A nationwide debtor education program should help all individual debtors and their families deal with financial failure both over the short and long-term."

Rule of the road: Rule 1007(b)(7)

The Committee note attached to Form 23 states, "the form is new. Sections 727(a)(11) and 1328(g)(1), which were added to the Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ..., require the debtor to complete an instructional course concerning personal financial management as a condition for receiving a discharge. The completed form, when filed by the debtor, will signal the clerk that this condition has been satisfied." The form also directs that any documentation furnished by the education provider must be attached.

To enforce Form 23, the Advisory Committee on Bankruptcy Rules and the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States have enacted Interim Federal Rule of Bankruptcy Procedure 1007(b)(7), which states: "An individual debtor in a chapter 7 or chapter 13 case shall file a statement regarding completion of a course in personal financial management, prepared by the appropriate Official Form."

Clearly this new form and the attendant rules place responsibilities on consumer bankruptcy attorneys that did not exist prior to BAPCPA. Attorneys must ensure that clients both complete the mandatory debtor education classes and file Form 23. The consequences of clients not completing these mandated educational programs are set forth by interim Rule 4004.

Speed trap: Rule 4004 grant or denial of discharge

Interim Federal Rule of Bankruptcy Procedure 4004(c)(1)(H) states, "the court shall forthwith grant the discharge unless: the debtor has not filed with the court a statement regarding completion of a course in personal financial management as required by Rule 1007(b)(7)."

A client's failure to complete debtor education will result in the case being closed without discharge. Attorneys may then be forced to file motions to reopen, exposing themselves to potential claims by clients seeking refunds of legal fees not "earned." They may also be exposing their clients to creditor claims on assets which may have otherwise been protected via the clients receiving a discharge.

Defensive driving: What's counsel to do?

Many consumer bankruptcy attorneys will need to adjust their thinking when it comes to case management. Attorneys who have traditionally parted ways with their clients after 341 hearings and placed the case files on autopilot may find that this practice is no longer practical. It will be important to plan for the new debtor education requirements and actively manage clients, at least through completion of Form 23.

Under Rule 1007(c), time limits are set for the filing of Form 23, "the statement required by subdivision (b)(7) shall be filed by the debtor within 45 days after the first date set for the meeting of creditors under Section 341 of the Code in chapter 7 case, and no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of discharge under Section 1328(b) in a chapter 13 case." Counsel should strongly encourage clients to complete their education courses as quickly as possible. The benefit is twofold; one completing the mandatory requirement, and secondly clients can begin to apply the financial management skills they have acquired.

Finally, attorneys and clients should work with an education provider that views debtor education as a team effort. The goals should be quality debtor education as well as teamwork in ensuring that the client completes the mandatory requirement. This philosophy will help counsel get their clients back on the road at the same time they learn how to manage their money. Safe driving! ■

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