

A COMPARISON OF 341 PROCEDURES—DALLAS AND FORT WORTH

Trustees:

Tom Powers, Dallas

Alice Whitten, Ft. Worth

Tim Truman, Ft. Worth

TIME AND PLACE OF 341 MEETINGS

Powers-Dallas 341 meetings are held some **Mondays** and most **Thursdays** beginning at **9:00 a.m.** at the Trustee's office at 125 E. John Carpenter Freeway, Suite 1100, Irving (Las Colinas), Texas 75062.

Whitten-Ft. Worth 341 meetings are held most **Wednesdays** beginning at **2:00 p.m.** at Trustee Whitten's office at 6100 Western Place Drive, Suite 550 Ft. Worth, Texas.

Truman-Ft. Worth 341 meetings are held most **Tuesdays** beginning at **2:00 p.m.** at Trustee Truman's office at 6851 N. E. Loop 820, Suite 200, Ft. Worth, Texas.

APPROXIMATE NUMBER OF CASES SET PER DOCKET AND NUMBER OF PRESIDING OFFICERS

Whitten: 50-60 cases – 8 Presiding Officers

Truman: 50 cases—8 Presiding Officers

Powers: 65-75 cases—8-11 Presiding Officers

PRESIDING OFFICERS

Presiding officers (POs) for all 3 trustees are composed of the trustees, the staff attorneys, and trained and experienced trustee staff. All have been approved by the United States Trustee based upon their qualifications. A contract business case analyst is also used by the trustees.

POs review all cases prior to the 341 meeting. Their review includes the petition, schedules, statement of financial affairs, form 22C, the plan, pay advices, and the latest tax return. In business cases, additional documents are reviewed and analyzed, including a current P&L statement, tax returns for the prior 2 years for both the individual and the business entity (if different) and proof of insurance for the business assets\liabilities (if necessary). Most POs will begin to fill in blanks on the 341report, and note on the report any areas of concern or questions to ask at the meeting.

A worksheet calculating monthly disposable income and any unsecured creditors' pool is completed by the PO, and attached to the trustee's file. For "above" median income debtors, gross income is taken from Schedule I, and expenses and deductions are taken from line 58 of the form 22C, per Hardacre. For

"below" median income debtors, Schedules I and J are used for the income and expenses. In Ft. Worth, the plan is used for other allowed deductions. "Add-backs" may be made for improper expenses or deductions.

CONDUCTING THE 341 MEETING

All meetings are tape recorded, and the tapes are retained by the trustee at least 2 years. Copies of the tapes will be made available to parties in interest, on request. Whitten office will be using mp3 recorders to tape the meetings and copies of the individual mp3 recordings can be provided on a disk, on request.

The PO turns on the recording device, calls the meeting to order, states for the record the case number and name(s) of the debtor(s), and announces their (the PO's) name and who is present, including the debtor(s), debtor attorney, any creditors or creditor attorneys, and any other party present.

The PO will verify the debtor's(s') identity, by reference to a government issued ID such as a driver's license, passport, or military ID, and also verify the debtor's (s') social security number from an original social security card or printed statement from the social security office on their stationery, or an employer issued W-2 or 1099. If the social security number does not match the one in the court's file, a written report is filed with the U.S. Trustee (who will take appropriate action if fraud is indicated), and the meeting is adjourned until a correction has been made or other appropriate action taken. If the debtor does not present proof of their social security number, the meeting will not be held. It may be adjourned at the trustee's discretion. **Debtor attorneys should emphasize to their clients the importance of bringing to the meeting valid proof of identity and social security number.**

The PO will check to see if the debtor(s) has/have made their first plan payment. If not, a note will be made on the 341 report that an NOI is needed (if not already pending). This matter will be discussed with the debtor(s). **Debtor attorneys should emphasize to their clients the importance of timely commencing their plan payments on or before 30 days from the petition date. They should be sure their debtor clients understand how much they are to pay (per the plan) , where to make the payments (the respective trustee's payment PO BOX), the first payment due date, and to always put their case number on their cashier's check or money order. (The trustees do not accept personal checks.) Wage withholding by the debtor's employer is mandatory unless excused by the court.**

The PO will verify the following, and make a note of same on the 341 report:

- That the plan provides for an unsecured creditors' pool in at least the amount calculated by the PO (i.e., the "disposable income test" is satisfied); **Debtor attorneys should do the math and provide in the plan a good faith accurate calculated amount for any unsecured creditors' pool, per Hardacre. This will help avoid unpleasant surprises to the debtor, objections to confirmation by the trustee, and may point out feasibility issues which necessitate revisions to the budget or changes in treatment to some secured creditor(s). A debtor attorney cannot fulfill his or her duty to the Debtor or fully earn their fee without doing so.**

- Whether the debtor has claimed the federal or state exemptions; whether the exemptions claimed on Schedule C are proper; a description of any non-exempt property and its value net of liens; the Presiding Officer's calculation of debtor's total equity in non-exempt property; and whether the amount shown on the Plan as Debtor's equity in non-exempt property is at least as much as that amount as calculated by the Presiding Officer (i.e., the "Best Interest of Creditors Test" is satisfied); **A Debtor attorney should carefully review Schedule C to determine if all claimed exemptions are proper and that the choice between the federal exemptions and state exemptions has been intelligently made. Schedule C should be compared to Schedules A and B to identify any property not claimed as exempt, to be sure all possible exemptions have been claimed. The debtor attorney should do the math and the value of debtor's equity in non-exempt property be accurately included in the plan. This will help avoid unpleasant surprises to the debtor, objections to exemptions and objection to confirmation by the trustee, and may point out feasibility issues which necessitate revision of the plan. A debtor attorney cannot fulfill his or her duty to the debtor or fully earn their fee without doing so.**
- That the "surplus" per Schedules I and J exceeds the proposed Plan Payments; that the Plan does not provide for step payments and/or balloon payments where there is no evidence of a reliable source to fund them; and that the debtor is not unemployed as of the date of the 341 meeting (i.e., the "Feasibility Test" is satisfied); **Debtor attorneys should verify with their clients shortly before the 341 meeting whether or not there have been any material changes in income or expenses or any changes or corrections are needed to the Schedules or Statement of Financial Affairs. If possible, Amended Schedules should be filed at least 2 business days prior to the meeting and hard copies of the amendments brought to the meeting for the PO to review.**
- That the debtor is current on any post-petition domestic support obligations; If not, an objection to confirmation will be filed by the trustee.
- That the debtor has filed the previous 4 years tax returns with IRS. **Debtor attorneys should be sure that a copy of the debtor's latest filed tax return (2 prior years for Dallas) has been provided to the trustee at least 2 business days prior to the 341 meeting or bring a hard copy to the meeting for the PO to review. Debtor attorneys should also verify with their clients that any unfiled returns are in the process of being prepared. If any of the previous 4 years tax returns have not been filed as of the 341 meeting, an objection to confirmation will be filed by the trustee.**
- Whether or not the case is a Level 2 business case that needs to be scheduled for a meeting with the business case analyst; If not a Level 2 business case, whether or not the debtor attorney charged more than the \$3,000.00 non-business case no-look fee.

- That the gross income on the past year's tax return divided by 12 is consistent with the monthly gross income reported on Schedule I. That the number of dependents on the last year's tax return is the same as the number in household per the form 22C

The PO will refer the case to the trustee or staff attorney to resolve any dispute by "stipulation" (in Ft. Worth), or to file a trustee's objection to confirmation (or objection to exemptions).

DEBTOR ATTORNEY ATTENDANCE AND PARTICIPATION AT THE 341 MEETING

Per the UST, the general rule is that debtor attorneys should attend the 341 meetings with their clients. The trustees understand that conflicts may arise and will allow paralegals to attend under such circumstances, but paralegal only attendance should not be the norm. Offices with a large volume of 341s at any given setting will be allowed to have paralegals attend some of the meetings so long as there is at least one attorney from the firm present for the entire 341 meeting session.

In Ft. Worth, if certain groups or associations of debtor attorneys are formed to "cover" for one another, the following conditions must be adhered to:

The attorney present for the group or association **MUST** have the authority to sign stipulations in each and every case, including but not limited to exemptions/best interest test, unsecured creditors' pool/disposable income test, or feasibility; OR be able to immediately reach someone by phone in order to obtain such authority. If the attorney present refuses to sign a stipulation or discuss the issue with the trustee or trustee staff attorney, or is unable to contact the appropriate attorney by phone, the non-present attorney will no longer be allowed to participate in the group or association process. The attorney present at the 341s will not be removed from the process, unless there is a pattern or practice of his or her lack of authority. Each office that will participate in such a group or association must provide each trustee with the names in the group, which the trustee may assume remain the same unless the trustee is provided information to the contrary at least one week prior to the 341 meeting. The trustee will attempt to schedule the meetings so that these groups or associations are together with the same PO, unless otherwise requested.