

MEMORANDUM

TO: All Attorneys who file **Reaffirmation Agreements**

FROM: Judge Pat E. Morgenstern-Clarren

DATE: February 12, 2008

RE: Tips for How a Reaffirmation Agreement Can Proceed Smoothly Through the Court

A growing number of reaffirmation agreements are being set for hearing because the agreement is deficient in some respect. Doing it right the first time will save everyone time and effort. To that end, I thought it would be helpful to identify some of the more common problems that result in hearings being set or approval denied:

1. Regardless of whether the presumption of undue hardship arises, the filing is deficient in one or more of the following ways:
 - a. The reaffirmation agreement is not on the right form — (The Judicial Conference of the United States changes these forms from time to time and the clerk’s office sends blast emails to alert counsel to the change);
 - b. The presumption box in the upper right hand corner does not have either box checked;
 - c. The caption does not identify the correct court or judicial officer;
 - d. Part A.1.d. of Form 240A is blank or does not otherwise identify either (i) the item or type of item securing the debt, or (ii) the original purchase price of the item or original amount of the loan;
 - e. Part B.1 of Form 240A is blank or describes the collateral securing the underlying debt instead of describing the original credit agreement;
 - f. Part B.2 of Form 240A is blank or does not otherwise indicate whether any changes were made

to the original credit agreement — (The absence of any changes to the original credit agreement should be indicated by the word “none” or “N/A”);

- g. The printed name and title of the individual signing for the creditor is not provided in the Reaffirmation Agreement;
 - h. Part C (the attorney certification) is not signed by the debtor’s counsel of record, if the debtor is represented by an attorney;
 - i. Part D (the statement in support of the agreement) has not been filled out completely;
 - j. Part D does not show on its face that the debtor can afford to make the required payments;
 - k. The reaffirmation agreement contains one of the following inconsistencies: (i) the amount of income listed in Part D of the agreement is inconsistent with the amount of income listed on Schedule I; (ii) the amount of expenses listed in Part D of the agreement is inconsistent with the amount of expenses listed on Schedule J; (iii) the repayment amount provided in the repayment schedule in Part A is inconsistent with the monthly payment amount listed on Schedule J, where Part B indicates that no changes have been made to the original credit agreement.
2. When the presumption of undue hardship arises, the reaffirmation agreement fails on its face to rebut that presumption due to one or more of the following errors or omissions:
- a. The numbers show on their face that the debtor cannot make the payments on the debt he or she is seeking to reaffirm, and no explanation is provided in Part D showing how the debtor can afford to make the required payments;
 - b. The explanation provided in Part D lacks specificity, such as by merely stating that the debtor

will get a second job, cut expenses, receive money from a relative, or rely on fluctuations in the monthly budget to make the required payments — (The details of any arrangement that will change the debtor’s income should be stated so that the court can review whether those arrangements will, in fact, produce sufficient income to pay the debt. Attaching an amended budget, listing precisely the expenses that are being eliminated, or providing the exact amount by which the debtor’s income or expenses will increase or decrease may be necessary to show that the debtor can afford the monthly payments on the reaffirmed debt. As I have said in court, the debtor loses the advantage of the bankruptcy fresh start if the debtor leaves the bankruptcy court having assumed an obligation that he or she cannot pay.);

- c. Counsel for the debtor did not check the appropriate box in Part C of Form 240A indicating that, in his or her opinion, the debtor is able to make the required payments.

Please review these issues with the individuals in your office who participate in the filing of reaffirmation agreements.

Thank you.