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Marvin
Isgur/TXSB/05/USCOURTS
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To Rules_Comments@ao.uscourts.gov
cc
bcc
Subject Please see comments on attached letter.

Attached is a letter containing comments on the proposed rules. My thanks to the Committee for the extremely diligent work. I hope that my comments are helpful.
A hard copy follows.

Sincerely,

Marvin Isgur
United States Bankruptcy Judge
Southern District of Texas



Comments on rules.pdf

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
515 RUSK AVENUE
HOUSTON, TEXAS 77002



December 15, 2006

CHAMBERS OF
MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Mr. McCabe and Members of the Committee:

I am a United States Bankruptcy Judge in the Southern District of Texas. Let me thank the Committee for the outstanding work that has been done in preparation of the proposed rules and forms. Given the complexity of the new statute, the breadth of intelligence reflected in the proposed rules and forms is remarkable.

Although I have a few detailed comments that I set forth at the end of this letter, I principally wish to address a single issue that affects a number of rules and official forms. That issue concerns automatic dismissal of cases under § 521(i).

In the Southern District of Texas, the clerk independently reviews each case to determine whether a § 521(a)(1) deficiency exists. If the clerk reports a deficiency, the Court issues an order advising the debtor that the case may be automatically dismissed. If the issue is not timely corrected, the Court issues a dismissal order. The review by the clerk is a difficult process that I believe could be made more workable by the changes suggested in this letter.

Automatic Dismissals

Section 521(i) mandates that if "an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under [§ 521(a)(1)] within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

Although one may debate the meaning of the term "automatically dismissed," the rules should accommodate courts that apply a common sense definition to the statute. One common sense way to view the statute is that the court should establish an automated procedure for the review and dismissal of non-compliant cases. This view appears to be shared by most courts that have considered the issue. *In re Ott*, 343 B.R. 264, 266 (Bankr. D. Colo. 2006); *In re Fawson*, 338 B.R. 505, 510-11 (Bankr. D. Utah 2006); *In re Cloud*, 2006 WL 3438600 (Bankr. N.D. Okl.

Nov. 29, 2006). *But see In re Jackson*, 348 B.R. 487 (Bankr. S.D. Iowa 2006). Unless the rules allow for an automated review of compliance with § 521(a)(1), the courts will fall short of Congress' mandate. The changes that are proposed in this letter do not impose the majority view. Courts (like the *Jackson* Court) that have found that a motion is required to trigger a § 521(i) dismissal may still do so. However, the proposed rules assist the Courts that follow the majority view to implement a more accurate automated system.

Moreover, the Rules and Official Forms should be drafted to allow easy compliance with § 521(a)(1) by pro se debtors and by counsel not familiar with bankruptcy procedures. Our rules and forms have been developed over the years with a sequential numbering system (thus, a debtor must fill out a Form B22 as well as an Official Form 6 and Form 7, but need not worry about intervening forms). Additionally, they have been developed, when possible, to allow the same rule to apply to consumer and business cases (e.g., Rule 1007).

I am suggesting a reorganization of some of the rules and forms to:

1. Establish a set of prescribed forms that must be filed in every chapter 7 and chapter 13 case filed by an individual.
2. Sequentially number the prescribed forms.
3. Prescribe forms flexible enough to fit all situations that have yet been reported.

Create a New Rule 1007(b) that Applies Only to Individual Chapter 7 and Chapter 13 Cases.

I propose that Interim Rule 1007(b) be amended to read as follows and that the Interim Rule 1007(b) become Rule 1007(c), with the balance of Interim Rule 1007 appropriately renumbered:

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(1) An individual debtor in a case under chapter 7 or chapter 13, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms. In addition to the following documents, the debtor must file a list of creditors with the petition. The list of creditors shall be in the form of Official Form 6L¹. These documents, when filed in accordance with these rules, meet the requirements of § 521(a)(1) of the Code:

- | | | |
|------------|--------------------------|---|
| <i>(A)</i> | <i>Official Form 6A:</i> | <i>Schedule of Real Property;</i> |
| <i>(B)</i> | <i>Official Form 6B:</i> | <i>Schedule of Personal Property;</i> |
| <i>(C)</i> | <i>Official Form 6C:</i> | <i>Schedule of Property Claimed as Exempt;</i> |
| <i>(D)</i> | <i>Official Form 6D:</i> | <i>Schedule of Creditors Holding Secured Claims;</i> |
| <i>(E)</i> | <i>Official Form 6E:</i> | <i>Schedule of Creditors Holding Unsecured Priority Claims;</i> |

¹ Proposed form attached as Exhibit "1".

- (F) Official Form 6F: Schedule of Creditors Holding Unsecured Nonpriority Claims;
- (G) Official Form 6G: Schedule of Executory Contracts and Leases;
- (H) Official Form 6H: Schedule of Codebtors;
- (I) Official Form 6I: Schedule of Current Income of Individual Debtor(s);
- (J) Official Form 6J: Schedule of Current Expenditures of Individual Debtor(s);
- (K) Official Form 6K: Declaration Concerning Debtor's Schedules;
- (L) Official Form 7A: Statement of Financial Affairs;
- (M) Official Form 7B²: Statement of Payment Advices; and
- (N) Official Form 7C: Statement of Monthly Net Income, which shall be filed in the form of Official Form 7C(i) for a case under chapter 7, and Official Form 7C(iii) for a case under chapter 13.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) 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 as prescribed by the appropriate Official Form.

(4) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in an amount in excess of the amount set out in § 522(q)(1) in property of the kind described in § 522(p)(1), the debtor shall file a statement as to whether there is pending a proceeding in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).

(5) The debtor shall file a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

Proposed additions and deletions to Rule 1007(b).

1. I have added a creditor matrix requirement to the introduction to Rule 1007(b). Although this repeats a requirement set forth in Rule 1007(a)(1), I suggest that all of § 521(a)(1)'s requirements should be contained in one place.
2. I have expanded the generic references to schedules to specifically list the Official Forms. For example, if a debtor has no real property, and therefore files no Schedule "A", the clerk will be unable to determine whether § 521(a)(1)'s filing requirements have been satisfied. The current Official Form for Schedule "A" includes an option to write "none" in the schedule. However, it is imperative that a Schedule "A" be filed to allow for automaticity.

² Proposed form attached as Exhibit "2".

3. I have deleted the description of payment advices from the rule. The description is proposed for the newly proposed Official Form. The interim rule does not address what should be filed by a debtor without any payment advices. The proposed form and rule require all debtors to file a new Statement of Payment Advices. As set forth in the proposed form, the statement may be that the debtor received no applicable payment advices.
4. I have included a new Statement of Monthly Net Income. This contemplates moving the current Forms B22 into new Statements within Official Form 7. The purpose of this change is to consolidate all requirements under § 521(a)(1) into both Rule 1007(b)(1) and into Official Forms 6 and 7. A debtor that completes all Official Forms 6 and 7 would satisfy § 521(a)(1) and avoid automatic dismissal.
5. I have moved the current Interim Rule 1007(b)(1)(F) to Rule 1007(b)(5). This document is not a requirement of § 521(a)(1).
6. I have deleted the credit counseling requirement. This requirement has been satisfied by the new Exhibit D to the Official Form Petition.
7. I have moved Interim Rule 1007(b)(4) to Rule 1007(b)(1)(N). Interim Rule 1007(b)(4) eliminates the requirement for some debtors to file the form at all. This creates true automaticity problems. As set forth in more detail below, I have merely added a box to the current Form B22A to allow a debtor with debts that are not primarily consumer debts to check a box on the Form B22A. Also, the instructions contained within the Interim Rule 1007(b)(4) are repeated on the Official Form. The Rule will be easier to follow if it merely mandates the use of the Official Form.
8. I have deleted Interim Rule 1007(b)(5). If this suggestion is adopted, it will be in Rule 1007(c) and does not belong in a rule limited to chapter 7 and chapter 13 debtors.
9. I have moved Interim Rule 1007(b)(6) to Rule 1007(b)(1)(N). See comment in paragraph 7 above.
10. I have left Interim Rule 1007(b)(8) and made a separate comment with respect to this matter below under other comments.

Rule 1007(c)

The new Rule 1007(c) (i.e., the old Rule 1007(b)), would be adopted as proposed, but subsection (1) would read as follows:

Except in a chapter 9 municipality case, a debtor that is not an individual in a chapter 7 or a chapter 13 case, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

Currently proposed Rule 1007(c) should be amended to eliminate items covered by the draft Rule 1007(b) set forth above. I am happy to submit a draft on this issue, but the changes would be ministerial and I suggest that the overall concept of automaticity first be considered.

New Forms Required and Changes to Current Forms

To implement the changes in individual cases, the following changes and additions would be required to the official forms:

1. A new Official Form 6L should be added. A proposed form is attached as exhibit "1".
2. The Declaration Concerning Debtor's Schedules should be amended by titling it "Schedule L".
3. The Statement of Financial Affairs should additionally be titled "Statement A".
4. A new form 7B should be added in the form set forth as attached to this letter as exhibit "2". This new form is intended to address the most frequent issue faced by my Court on automatic dismissals. By requiring that every debtor complete a Form 7B, the court will be able to discern which cases do not require payment advices to be filed.
5. New form 7C's should be added in the form of the present Forms B22. The purpose of the renumbering is to eliminate confusion over what must be filed. I suggest a single change to the proposed forms, and that is a change to proposed Form 22A by adding a subsection 1(b). The currently proposed rule requires Form 22A (now proposed by me as Form 7C(i)) to be filed only by debtors with primarily consumer debts. This creates a great difficulty with the automaticity of dismissals. Moreover, the plain language of § 521(a)(i) requires that the amount of monthly net income (i.e., the means test) be filed by all debtors. I suggest that Part I be modified to read as follows:

Part I. EXCLUSION FOR DISABLED VETERANS AND FOR INDIVIDUALS WITH DEBTS THAT ARE NOT PRIMARILY CONSUMER DEBTS

(a) If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The Presumption does not arise" at the top of this statement, and (3) complete the verification in Part VII. Do not complete any of the remaining parts of this statement.

Veteran's Declaration. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 374(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).

1

(b) If your debts consist primarily of debts other than consumer debts, (1) check one of the two following boxes, (2) check the box for "The Presumption does not arise" at the top of this statement, and (3) complete the verification in Part VII. Do not complete any of the remaining parts of this statement.

Debtor's Declaration. My debts are not composed primarily of consumer debts. The schedules I and J filed in this case accurately represent my monthly net income.

Debtor's Declaration. My debts are not composed primarily of consumer debts. Attached to this Statement of Monthly Net Income is an accurate statement of my monthly net income, itemized to reflect my sources of income and my monthly expenses.

I believe that the adoption of the foregoing changes will allow the court's clerk to establish computerized procedures to determine whether debtors have filed the proper documents. Congress mandated automatic dismissals. From a practical point of view, dismissals cannot be automated if the clerk's office must determine *whether* a document must be filed. The clerk's office cannot determine whether debts are primarily consumer debts or whether a debtor received payment advices. I recognize that some persons may try to take advantage of the system by filing false declarations. However, there are appropriate remedies for those who file false documents. By requiring all individuals to file the same § 521(a)(i) documents, § 521(i) can be implemented as intended.

Additional Comments

Rule 2007.2. An issue has arisen with respect to the implementation of the ombudsman provisions of § 333. The statute requires that the court order an ombudsman not later than 30 days after the commencement of the case. However, the court may not learn that a health care business has commenced a case until the 30 days has expired or until it is too late to schedule a

hearing with adequate notice before the expiration of 30 days. I suggest a new Rule 2007.2(a) be inserted as follows:

Within 3 business days of the filing of a petition by a debtor in a case under chapter 7, 9, or 11 in which the debtor is a health care business, the debtor must file a motion seeking expedited consideration of whether a health care ombudsman should be appointed pursuant to § 333 of the Code.

Rule 4004(c)(3). I am concerned that the proposed rule fails to implement the statute as written, at least as it applies to chapter 13 cases. Section 727(a)(12) and § 1328(h) each require notice and hearing “held not more than 10 days before the date of the entry of an order granting the discharge.” The proposed rule only becomes effective if a debtor files a Rule 1007(b)(8) statement in a chapter 13. If the debtor never files a Rule 1007(b)(8) statement, then the discharge would be issued without review. In certain jurisdictions, homesteads are available for exemption in amounts greater than the \$125,000 limit in § 522(q)(1). Under the proposed rule, a debtor would receive a discharge if the debtor exempted more than \$125,000 and failed to file a Rule 1007(b)(8) statement. There is no effective way to implement the complex procedures suggested by the proposed rules. Moreover, the failure to file a Rule 1007(b)(8) statement may be due to unfamiliarity with the requirement to file the statement. In such an event (i.e., an absence of fraud), it is unlikely that a discharge would be vacated.

A second problem with this rule concerns the payment of domestic support obligations (“DSO”) in chapter 13 cases. The discharge cannot be issued without a debtor’s certification that all amounts payable under a DSO that are due on or before the date of the certification have been paid. See § 1328(a). I did not locate a certification in the proposed rules with respect to DSO’s.

The rules contemplate that chapter 13 discharges will be issued on motion. See Rule 1007(c). In the Southern District of Texas, we require a chapter 13 debtor to file an affirmative certification requesting a discharge in which the debtor affirms the debtor’s entitlement by specific factual averments. There is then notice and an opportunity for hearing just before entry of the discharge. If no party files an objection, the discharge is issued. If an objection is filed, a hearing is held. If a debtor cannot make the certification, but is nevertheless entitled to a discharge, she may seek the discharge at a hearing. Attached as Exhibit “3” is a modified form of the certification used in the Southern District of Texas.

I suggest that providing a debtor’s certification in a chapter 13 case will address both the DSO issue and the homestead issue. This certification can be incorporated into a motion for discharge. I believe that the certification would substitute for the Rule 1007(b)(8) statement. The form used in this District is intended to be dispositive (if no objection is filed) for granting discharges. If an objection is filed, the court would be required to review the facts to determine if a debtor who could not file the certification was nevertheless eligible for a discharge.

Official Forms—Petition, Exhibit D. I am concerned that the new warning language regarding credit counseling may mislead debtors. Although I appreciate the thought that a warning notice

might be helpful, that has not been my experience (albeit the experience is limited because of the newness of the form).

The reality is that very few debtors qualify for the waiver or the time extension for credit counseling. The form has led several pro se debtors in my court to check credit counseling boxes that are wrong.³ I have attached as exhibit "4" a reworded form that may clarify the issue. In any event, rather than encouraging the uninformed to get credit counseling, the new form has simply allowed the filing of false statements. It is true that I would not be aware of whether an individual read the warning and then decided to get credit counseling. However, I suggest that such an event is unlikely.

I have a separate issue with the warning itself. There is an issue as to whether ineligible cases get dismissed or whether petitions filed by ineligible persons get dismissed. This issue has two principal effects. First, if the petition is dismissed (rather than the case), then no automatic stay arises. Second, if the case is dismissed (rather than the petition), then the automatic stay in any refiled case would only have a 30-day life (subject to § 363(c)(3)). The majority of opinions hold that cases (rather than petitions) are dismissed based on eligibility. See *In re Jones*, --- B.R. ----, 2006 WL 3020477 (Bankr. S.D. Tex. Oct. 20, 2006) and *In re Seaman*, 340 B.R. 698 (Bankr. E.D.N.Y. 2006). The minority view is that petitions are dismissed. See *In re Rios*, 336 B.R. 177, (Bankr. S.D.N.Y. 2005). I subscribe to the minority view. See *In re Salazar*, 339 B.R. 622 (Bankr. S.D. Tex. 2006). The only appellate decision that I have seen was issued by Judge Briant (S.D.N.Y) (*In re Finlay*, 2006 WL 3240522 (S.D.N.Y. Nov. 3, 2006)) in which he held as follows:

As earlier noted, the Bankruptcy Court concluded that under the law, a voluntary case is "commenced" only if an entity "eligible to be a debtor" files a petition with the Bankruptcy Court under 11 U.S.C. § 301, and that under 11 U.S.C. § 109(h), an individual "may not be a debtor" unless pre-petition credit counseling is obtained, or the Bankruptcy Court grants an extension. See Opinion at 15.

Section 362 of the Bankruptcy Code provides the following as to automatic stays:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], operates as a stay, applicable to all entities, ...

³ Two anecdotal situations may be helpful. In one situation, a debtor checked box 3 on the current Exhibit "D". At a hearing on the pro se debtor's application to pay filing fees in installments, it became apparent that the debtor checked the box out of convenience and had simply ignored the warnings. In another example, a debtor had also checked box 3. That debtor had a substantial mental disability and was unable to comprehend the form. I ultimately determined that the debtor had a mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities. Those same mental deficiencies made her unable to understand the warnings, and probably led her to check the incorrect box. In this situation, less may be better.

11 USCS § 362.

The Bankruptcy Court concluded that when read together, Sections 109(h), 301, and 362(a) establish that no automatic stay can exist for debtors who fail to obtain the required credit counseling or qualify for a “waiver” or extension of time to do so. See Opinion at 17.

This Court agrees.

See p. 4 of Westlaw opinion.

If Judge Bricant is correct, then the current form advises the debtors of the wrong risks. The risk is not that the case may be dismissed; the risk is that the case will not come into being because the petition will be dismissed without ever resulting in an order for relief. A debtor filing a petition without having first received credit counseling may not invoke the automatic stay.

The Official Forms should not guess at the ultimate outcome of this issue. I suggest that if a warning is to be issued that it be more generic than the current warning. Moreover, I suggest that the form eliminate the “equality” of the various options. In this situation, the form should encourage pre-petition credit counseling and allow independent determination of whether an exception to the normal rule exists. Attached as exhibit “4” is a proposed revision.

Conclusion

I again wish to thank you for all of the hard work that is reflected in the proposed rules and forms. I hope that these comments are helpful. Please feel free to contact me if I can provide any clarification regarding my comments.

Sincerely,

Marvin Isgur
713-250-5635

Exhibit "1"

Official Form 6L
Schedule of Creditors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re: _____, Case No. _____
Debtor (if known)

SCHEDULE OF CREDITORS

This statement is to be completed by every individual debtor. Check the box that applies.

I have provided a list of creditors and their addresses to my counsel. He has been instructed to file the list of creditors and addresses on the Court's electronic filing system in accordance with the Court's published procedures.

Attached to this Schedule of Creditors is a list containing the name and address of each entity included or to be included on Official Forms 6D, 6E, 6F, 6G and 6H. The attached list is filed in the format required by the Clerk of the Court as published on the Court's website and as available at the Office of the Clerk of the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

Debtor's Signature

Exhibit "2"

Official Form 7B
Statement of Payment Advices

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re: _____, Case No. _____
Debtor (if known)

STATEMENT OF PAYMENT ADVICES

This statement is to be completed by every individual debtor. Check the box that applies.

Attached to this Statement of Payment Advices are copies of all payment advices or other evidence of payment, with all but the last four digits of the debtor's social security number redacted, received by me from an employer within 60 days before the filing of the petition.

I received no payment advices or other evidence of payment from an employer within 60 days before the filing of the petition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

Debtor's Signature

Exhibit "3"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re: _____, Case No. _____
Debtor (if known)

**DEBTORS' CERTIFICATION AND
MOTION FOR ENTRY OF CHAPTER 13 DISCHARGE**

THIS MOTION SEEKS AN ORDER DISCHARGING THE DEBTORS PURSUANT TO § 1328(a) OF THE BANKRUPTCY CODE. IF YOU OPPOSE THE MOTION, YOU MUST FILE AN OBJECTION WITHIN 20 DAYS OF THE DATE LISTED BELOW IN THE CERTIFICATE OF SERVICE. YOUR OBJECTION MUST SET FORTH THE SPECIFIC FACTUAL ALLEGATIONS WITH WHICH YOU DISAGREE. IF NO TIMELY OBJECTION IS FILED, THE COURT MAY GRANT THE RELIEF.

The Debtors move for entry of a discharge under § 1328(a) of the Bankruptcy Code.

1. By signing below, the Debtors certify under penalty of perjury under the laws of the United States of America that the following statements, as modified by paragraph 2 hereof, are true and correct:

A. We have completed the personal financial management instructional course from an agency approved by the United States Trustee. A copy of Official Form 23 is attached.

B. If I owe a debt arising from (a) any violation of any state or federal securities laws, regulations or orders; (b) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security; (c) a civil remedy under § 1964 of title 18; or (d) a criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years, then I have not claimed an exemption for my residence in an amount in excess of \$125,000.

C. All amounts payable by me on a domestic support obligation, that are due through this date (including amounts due before the petition was filed in this case, but only to the extent provided for by the plan) have been paid;

D. I have not received a discharge in a case filed under chapter 7, 11 or 12 of the Bankruptcy Code during the four-year period before the date that my petition was filed in this case;

E. I have not received a discharge in a case filed under chapter 13 of the Bankruptcy Code during the two-year period before the date that my petition was filed in this case;

F. No criminal proceeding is pending against me alleging that I am guilty of a felony; and

G. No civil case is pending against me alleging that I am liable for any (a) violation of the Federal securities laws, any State securities law, or any regulation or order issued under Federal securities laws or State securities laws; (b) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security; (c) civil remedy under § 1964 of title 18; or (d) criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

2. The following exceptions exist to the certification contained in paragraph 1: _____

3. I have made all payments required by my confirmed chapter 13 plan.

Signed: _____
Debtor's Signature Date

Spouse's Signature (in Joint Case Only) Date

Exhibit "4"

EXHIBIT D TO PETITION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

In re: _____, Case No. _____
Debtor (if known)

INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE
WITH CREDIT COUNSELING REQUIREMENT

This statement is to be completed by every individual debtor. Check the box that applies.

Within 180 days *before* the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis. **A copy of the certificate and a copy of any debt repayment plan developed through the agency are attached.**

Within 180 days *before* the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis. **A copy of the certificate and a copy of any debt repayment plan developed through the agency will be filed within 15 days.**

I am filing a separate, sworn motion with the Court regarding my eligibility to be a debtor. **I understand that if I am not eligible, the filing of this bankruptcy petition may not stop my creditors and may make any future bankruptcy filing by me less effective. I understand that if the Court does not grant my motion, I may lose my assets even though I am filing this petition. I further understand that the motion must comply with § 109(h)(3) or § 109(h)(4) of the Bankruptcy Code.**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

Signature of debtor