

**REAFFIRMATION AGREEMENTS BEFORE JUDGE PEPPER --
ANSWERS TO FREQUENTLY-ASKED QUESTIONS ABOUT PROCEDURE**

What are the factors that cause the Judge to schedule a hearing on a reaffirmation agreement?

A. Debtors who did not have a lawyer help them in negotiating the reaffirmation agreement.

Section 524(c)(6)(A) of the Bankruptcy Code requires that in cases where debtors were not represented by lawyers when they negotiated the reaffirmation agreement, the agreement requires court approval, unless the debt being reaffirmed is a “consumer debt secured by real property.” The Court may give that approval only after it determines that the agreement does not impose an undue hardship on the debtor and is in the best interest of the debtor.

So—in all cases involving reaffirmation of consumer debts that are not secured by real property, **the Court will schedule a hearing** on the reaffirmation agreement:

- **if the debtor is not represented by a lawyer in the bankruptcy case; or**
- **where the debtor has a lawyer in the bankruptcy case, but that lawyer did not sign Part C of the reaffirmation agreement.**

B. Debtors who did have a lawyer help them in negotiating the reaffirmation agreement.

Section 524(m)(1) of the Bankruptcy Code says that if, when one subtracts the debtor’s monthly expenses from his or her monthly income, there is not enough left over to pay the monthly payment on the debt being reaffirmed, the Court must “presume” that the reaffirmation agreement works an undue hardship on the debtor. The Court may disapprove such an agreement, but only after a hearing.

There are exceptions to this rule: if the creditor is a credit union, section 524(m)(1) does not apply. And again, if the debt is a consumer debt secured by real estate, the Court will not hold a hearing.

So—in cases involving reaffirmation of consumer debts that are not secured by real property, and are not owed to a credit union, **the Court will schedule a hearing** on the reaffirmation agreement:

- ***where the debtor’s income minus the debtor’s expenses does not leave enough left over to make the reaffirmation payment, and the debtor did not explain on Part D of the reaffirmation agreement how he/she plans to afford the payments; or***
- ***where the debtor did not fill out Part D of the reaffirmation agreement.***

Part D of my reaffirmation agreement clearly shows that I have enough money left over each month to make the payments, but the Judge scheduled a hearing anyway. Why?

Most likely it is because the income and expense numbers you listed in Part D don't match the income and expense numbers listed on your Schedules I and J, and Schedules I and J don't show enough money left over to make the payment.

The Court realizes that between the time a debtor files Schedules I and J and the time the reaffirmation agreement gets filed, lots of things may change in the debtor's life. The debtor may get a new job, get a raise, surrender a house or car (and thus do away with that monthly expense), etc. But unless you tell the Court why the numbers on Part D are different than the numbers on Schedules I and J—in other words, unless you tell us what's changed between the petition date and the reaffirmation agreement date—we don't know about those changes. Part D has blank lines on it for the express purpose of allowing the debtor to explain to the Court what's changed and how the debtor can make the payments, and if the debtor explains that to the Court's satisfaction, the Court won't schedule a hearing.

I'm the debtor's lawyer, and I signed Part C of the reaffirmation agreement, telling the Court that I don't think this agreement works an undue hardship on the debtor. Why is the Court having a hearing, if it's my opinion that the debtor can make the payments?

Again, the Court has to look at the income and expense numbers on Part D and on Schedules I and J. If those numbers make it look like the debtor can't afford the payment, and the debtor hasn't explained how he or she can afford the payments, the Court will schedule a hearing—even if the attorney has expressed the opinion that the debtor can pay.

The debtor signed the reaffirmation agreement and the creditor sent it in before I—the debtor's attorney—got a chance to look at it. The debtor didn't explain on Part D that he/she surrendered the second car and thus has an extra \$300 per month to use to pay the reaffirmation payment. Is there anything I can do to avoid the hearing?

Sure. Write a letter to the Court explaining how the debtor can make the payments—the surrendered car or the raise or the fact that the mother-in-law is helping with payments. If the explanation satisfies the Court, the Court will take the hearing off of the calendar.

It's really hard on my client to have to miss work to come down to the federal courthouse for a reaffirmation hearing.

The Court understands that, and there are several options. First, and again, the debtor can provide a written explanation for how the debtor plans to make the payments—what's changed since the debtor filed the petition, in other words—and

if the Court is satisfied with that explanation, the debtor may not need to attend a hearing at all.

Second, the Court can try to schedule hearings with regard to the debtor's work schedule. If counsel contacts and lets us know that, for example, the debtor has a lunch break from 12:00 to 1:00, the Court can try to schedule the hearing for that time period. Or if the debtor does not start work until 2:00, the Court can schedule the hearing in the morning.

Finally, if the debtor lives a fair distance away, such that it would take a half-hour or more of travel time to get to the courthouse, the Court will entertain a request to allow the debtor to appear by telephone at the hearing. Counsel or the debtor should call and make this request in advance of the hearing.

As the debtor's attorney, do I have to attend the hearing?

It is up to the attorney and the attorney's client. If the attorney and client agree that the attorney does not need to appear, then the attorney does not have to do so.

I'm the lawyer for the creditor—do I have to appear at the hearing?

The Court will send you a notice of the hearing, but you are not required to participate unless you choose to do so.

I'm a creditor, and the Chapter 7 debtor is leasing a vehicle from me. Will the Court hold a hearing on the agreement to reaffirm the lease?

No. See 11 U.S.C. § 365(p), which says nothing about court approval or court involvement.

SOME FINAL TIPS:

- *Use the correct form. It's Official Form 240A. You can find it on the Court's web site—click the "Forms" link on the left.*
- *Make sure the creditor and at least one debtor sign the agreement.*
- *Make sure the date the parties sign the agreement is a date before the date of discharge.*
- *Expect the Court to ask a lot of questions at the hearing if the debtor is asking to reaffirm unsecured debt, or debt on what appears to be a luxury item.*
- *Be aware—it is the Judge who decides when to schedule a hearing, not the Judge's staff.*