

Keeping Your Trustee Happy
Lou Jones Breakfast Club April 10, 2012
Bruce Lanser
Virginia George

- I. Preparation of the Bankruptcy Schedules, Statement of Financial Affairs and the Means Test. The ACT of Bankruptcy Law: Accurate, Complete, Truthful
 - A. Accurate
 1. It's the Petition Date "STUPID"— Much like the campaign motto "It's the economy stupid..." attorneys should focus like a laser on the petition date. The most common deficiency is inaccuracies caused by stale information creeping into the schedules. Best practice is to interview, interview, and re-interview the debtor.. Do not rely on a stale information from the client questionnaire.
 - B. Complete
 1. Schedule A Real Property: every interest in real property should contain a statement of the type of interest, fee simple, joint, or percentage of interest, a complete address, a description of the dwelling (homestead or non-homestead, single family, duplex, etc), the current tax bill fair market value and the debtor's estimate of fair value with analysis of any deductions. Be prepared to provide a broker's price opinion if the debtor has claimed full exemption and the debtor's value is substantially less than the tax bill fmv.
 2. Schedule B 1. Cash:
Consider that if the debtor receives a large amount of cash in the weeks before filing the trustee is going to ask what happened to the cash and will expect more than "I bought stuff for my kids.
 3. Schedule B 2 Accounts: Best practice is to require the debtor to find out the close of business balance the night before filing. Remember to explain to the debtor that outstanding checks are not deducted. In addition please identify the accounts by bank name, titled owners, and last 4 of account number.
 4. Schedule B 4. Household Goods: An itemization is required. Value of the total is required and if high wage earner be prepared to provide breakdown of value by item or category of item.
 5. Schedule B 12. Retirement: Obtain a statement of the account and read it to determine the account is classified as retirement, the account statement must say IRA or ERISA qualified or 401(K). If these designations are missing the account may actually be an investment account.
 6. Schedule B13 and 14 Businesses: The debtor's disclosure of business interest must include the correct legal name of the entity, type of entity,

and a complete disclosure of assets and liabilities. Get accountant prepared balance sheet and then do a real time petition date “reality” check. Ask the debtor is their any chance they are going to see any money or any chance they will be able to pay off family or friends when the business winds up?

7. Schedule B 18. Tax Refunds: An anticipated tax refund is property of the estate and should be quantified and exempted. Remember the Wisconsin exemptions do not provide safe harbor for anticipated refunds, so plan accordingly.
8. Schedule B 25. Vehicles: Every vehicle entry should include the year, make, model and mileage as well as some statement of the cars condition. NADA and KELLEY blue book are both acceptable online valuation tools. The debtor must provide the case trustee with copies of car titles
9. Schedule C Exemptions: Remember that use of (d)(1) for a homestead reduces the federal wild card. This reduction is not accounted for in the Best Case Software and must be done manually. As attorneys you a duty of candor to the court and it is a violation of the ethics rules to knowingly claim an exemption the debtor has no legal basis to claim in the hopes the trustee won’t catch it.
10. Schedule E DSO: Please include all the required information including First and Last name, Last known address including street name, city, state and zip code, Payee’s phone number.
11. Schedule I and J Income and Expenses: They go together for a reason– The income, deductions from income, SOFA Q1, and Means Test should all “tie out” For example if the debtor’s pay stub shows a deduction for child support that should be included on Schedule I, 4 d. Other (Specify). If a single debtor is living with another adult the schedule I 13, should disclose the monthly contribution to income and that number should tie out to Means Test line 8. Please remember to list the occupation/ job title–If a debtor is a low paid hourly worker that reduces the amount of scrutiny the trustee must exercise to determine if assets exist for administration. If the debtor is self-employed, a consultant, commission based it is important to disclose the occupation so the trustee can inquire about potential assets arising from the occupation.
12. Statement of Financial Affairs Question 1 and 2: The debtor’s annual income is the most salient predictor of assets for administration. Almost no assets are administered in low income cases. Question 1 requires a disclosure of “Gross amount of income the debtor received from employment, trade or profession, or from operation of the debtor’s business...” If a debtor is a business owner it is insufficient to list the Line 7 1040 income because this is not the gross amount received by the debtor. The purpose of the income question is to help the trustee discover assets, and for the debtor to make a full disclosure. Accordingly, the debtor must disclose gross amount of income rather than the net adjusted gross income.

13. Statement of Financial Affairs Question 3 and 10: List all the transfers with corresponding payment amounts. It isn't that hard to review the debtor's banking statements and determine the universe of transfers. Just do it.
 14. Statement of Financial Affairs Question 4: List all the legal proceedings. Especially important to ask if any funds paid to any creditor the debtor was in litigation with. This is often overlooked and frequently generates surprise assets.
 15. Statement of Financial Affairs Question 8: Losses from gambling must be fully disclosed. Best practice is to tread carefully on quantifying a loss. Get the records. Error on the side of full disclosure.
 16. Statement of Financial Affairs Question 18: Business- correctly identify the entity by legal name. Complete the category for TIN, address, nature of business and beginning and ending dates.
 17. Means Test. B22A
 - a. When calculating income use the highest income figure on the pay stub.
 - b. Look at a pay calendar when you are gathering the info— pay attention to how many pay stubs the debtor received in each month and use a calculator or better yet an excel spread sheet to calculate.
 - c. If you list rental income on Q5 remember to list that income on Schedule I.
 - d. Find out who is helping the debtor financially— if the debtor has a lifestyle beyond the means of their paystub ask them how they afford the lifestyle— often times attorneys don't ask, and consequently, debtor's don't tell. Many debtors are accustomed to hiding income from family, friends and the government so you have to be direct.
- C. Truthful: Expressing or given to expressing the truth. The schedules should be truthful. Plain and simple.