HOW TO PREPARE FOR THE CHAPTER 7 MEETING OF CREDITORS Prepared for the Lou Jones Breakfast Club Tuesday April 13, 2010 Steven R. McDonald

I. WHAT IS THE MEETING OF CREDITORS?

A. This meeting is required pursuant to section 11 U.S.C. §341 and Bankruptcy Rules 2003 and 4002. The primary purpose of this meeting is to provide an opportunity for creditors, the trustee and the United States trustee to examine debtors under oath regarding the debtor's bankruptcy petition and schedules.

II. ATTORNEYS DUE DILIGENCE REQUIREMENTS

- A. Pursuant to 11 U.S.C. §707(b)(4)(C),(D) the signature of an attorney on a petition shall constitute a certification that the attorney has performed a reasonable investigation into the circumstances that gave rise to the petition and that such circumstances are well grounded in fact and warranted under existing law or a good faith argument for the extension, modification or reversal of existing law. See <u>Withrow v. Lafayette</u>, (B.A.P. 1st Cir. 5/26/2009)
- B. Prior to filing schedules the debtor should provide the following documents to their attorney to aid in the preparation of schedules. These documents must also be provided to the trustee prior to the meeting of creditors:
 - 1. Vehicle titles pursuant to LR 1007.4(a)(1).
 - 2. Recorded copy of <u>all</u> mortgages pursuant to LR 1007.4(a)(3):
 - a. In addition to the first page, please include the pages which reveal the legal description, loan amount, signatures, and notary for each mortgage;
 - b. Please indicate the property address on the first page of each mortgage if more than one parcel is listed in Schedule A.
 - 3. Recorded copy of all deeds pursuant to LR 1007.4(a)(2).
 - 4. Most recent property tax assessment for all real estate and/or appraisal pursuant to LR 1007.4(a)(4).
 - 5. State and federal taxes from the last two calendar years (including all business schedules) pursuant to §521 (b)(3) and LR 1007.4(a)(5).
 - a. Be sure to redact social security numbers for the debtor's dependents.
 - b. Carefully review the return for such items as income from interest and dividends.

- 6. Payment advices for the entire 60-day period prior to filing. pursuant to \$521(a)(1)(B)(iv) and LR 1007.4(a)(6).
- 7. The name, address, and telephone number of each holder of a Domestic Support Obligation; if there is a Child Support Agency that should receive notice, the name and address of that Child Support Agency; and the name and address of the debtor's employer pursuant to 11 U.S.C. §704(c)(1)(B)(ii), 11 U.S.C. §521(a)(3) and LR 1007.4(a)(7).
- 8. All other documents the trustee requests pursuant to LR 1007.4(a)(8). Including but is not limited to the following:
 - a. If the case converted to a Chapter 7 from a Chapter 13, file conversion documents within fifteen (15) days of conversion and file a B22A (Means Test) upon conversion. Rule 1019 (5)(B),(C)
 - b. If the debtor(s) owns a business, provide the most recent quarter's profit/loss statements and balance sheets.
 - c. If the debtor is involved in a personal injury case, please provide the name of the personal injury attorney and a letter from him/her regarding their opinion of the case's potential value.
 - d. Bank statements for any financial accounts which are open at the time of filing bankruptcy, including savings, checking, credit union, money markets, mutual funds, brokerage accounts or any other accounts showing holding of money or property. Rule 4002(b)(2)(B)
- C. Good practice procedures for meeting the due diligence requirements
 - 1. Prepare a pre filing check list and questionnaire for each file (See attachment for examples)
 - 2. Prepare a post-filing check list for each file. (See attachment for example)

III. DUTIES OF THE DEBTOR

- A. Schedules In addition to the documents listed above, the debtor also has a duty to provide the following:
 - 1. A schedule of assets and liabilities, current income and current expenditures and a statement of debtor's financial affairs.
- B. Identification
 - 1. Documents that establish the identity of the debtor, including a driver's license, passport, or other documents containing a photograph of the debtor. 11 U.S.C. §521(h).
 - 2. The Debtor's Social Security card

IV. TRUSTEE'S EXAMINATION - PREPARATION TECHNIQUES AND PITFALLS TO AVOID

- A. The debtor(s) must appear and take the Oath. Bankruptcy Rule 4002(a)(1) and 2003(b)
 - 1. Debtor(s) states name and address.
 - a. Previous names.
 - b. Verify SSN and inquire about previous SSNs
- B. Marital Status
 - 1. Are they listed on the matrix and schedules?
- C. Pre-petition credit counseling. 11 U.S.C. §109(h)
 - 1. This should be verified by the attorney because an individual is not eligible to be a debtor without this certification.
- D. Previous Residence in Another State
 - 1. Pursuant to 11 U.S.C. 522(b)(3)(A) any property that is exempt under federal law, or state or local law that is applicable on the date of filing of the petition at the place in which the debtors, domicile has been located for the 730 days immediately preceding the date of the filing of petition or if the debtors domicile has not been located in a single state for such 730-day period, the place in which the debtors domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.
 - a. If the debtor has not lived in Wisconsin for at least two years prior to filing his or her case, he or she **MAY** be limited to the exemption scheme of the state that they have moved from.
- E. Verification of Information in Petition and Schedules.
 - 1. Are all assets and liabilities listed?
 - 2. Are there any changes or corrections?
 - 3. Verification of signatures
 - a. Try blue ink.
- F. Previous Bankruptcy Filings
 - 1. Pursuant to 11 U.S.C. §727(a)(8) the debtor will not receive a discharge if he or she has received a discharge in a previous chapter 7 case commenced within eight years of the date of filing of the petition.
 - a. Check PACER and national PACER every time.
 - b. Credit reports will also list previous filings as well as judgments, lawsuits and the debtors other liabilities including mortgages and car loans. This can go a long way towards meeting an attorney's due diligence requirements.
- G. Verification of Assets and Re-verification
 - 1. Real Estate
 - 2. Vehicles
 - a. If the debtor has co-signed a car loan, his or her name may be on the title.
 - 3. Cash Value Life Insurance
 - 4. Retirement accounts and IRAs
 - 5. Stocks, Bonds and Ownership interests in businesses.

- H. Post-petition Inheritance
 - 1. Did the debtor receive a bequest, devise or inheritance within 180 days of filing?
 - 2. Did the debtor receive the right to a life insurance payment within 180 days of filing?
- I. Tax Refunds
 - 1. Same year tax refunds
 - 2. Previous year's tax refund
- J. Domestic Support Obligations (See II. B. 7. above)
- K. Personal Injury Claims
 - 1. CCAP will tell you if your client has filed suit against anyone. These claims are property of the estate Pursuant to 11 U.S.C. §541(a)(1)
 - a. Discuss these matters carefully with you client. Ask them if they have been injured and what sort of expense were associated with the injury. Even if your client has not yet filed suit, his or her right to do so may have value.
- L. Receivables
 - 1. This question is important if your client is self-employed or is paid on a commission basis as is typical for salesman and real estate agents.
- M. Verification of Income and Expenses
 - Do the math. Do not accept your client's estimate of their own income. Verify what your client has listed as their income by checking their pay advices and taxes. Failure to do this may result § 707(b)(3) motion to dismiss against your client.
- N. Preferences and Fraudulent Conveyances

a.

- 1. Payments of over \$600.00 to creditors that are made within 90 of filing bankruptcy and payments to insiders made within one year of filing.
- 2. Preferences are defined in §547 of the bankruptcy code. Generally, the trustee may avoid any transfer of an interest of the debtor in property to or for the benefit of a creditor for or on account of an antecedent debt owed by the debtor before such transfer was made while the debtor was insolvent and made on or within 90 days before the date of filing of the petition or between 90 days and one year for the filing of the petition if such creditor was an insider.
 - Defenses to a preference found in §547(c) include:
 - i. Contemporaneous exchange
 - ii. New value
 - iii. the ordinary course of business
- 3. Transfers of property in the two years prior to filing and fraudulent conveyances are defined in §548.

4. The trustee may avoid a transfer of an interest of the debtor in property that was made within two years before the date of filing of the petition if such transfer incurred with the actual intent to hinder delay or to fraud any entity to which the debtor was indebted. Transfers may also be avoided by the trustee if as a result of such transfer the debtor received less than a reasonably equivalent value in exchange.

TRUSTEE'S FORMAT FOR RECEIVING DOCUMENTS

All documents must be submitted to the trustee at least 7 days prior to the Meeting of Creditors or sooner.

Trustee	Paper (US Mail)	Email	Fax
Michael Dubis	X		
Virginia George		Х	
Myrna Yanira Gonzalez-Fernandini	X	Х	
Andrew Herbach	X	Х	
Jessica King		Х	
Bruce Lanser	X	Х	
Larry Liebzeit	X		
Helen Ludwig	X	Х	Х
Douglas F. Mann		Х	
Steven R. McDonald		Х	Х
Michael Maxwell		X	Х
John Scaffidi	X		
Matthew R. Schwitzer	X	Х	
Paul G. Swanson		Х	

Effective 4/12/10

TRUSTEE ADDRESSES FOR SUBMITTING DOCUMENTS

Michael F. Dubis

208 East Main Street, Waterford, WI 53185 Phone: (262) 534-6950; Fax: (no faxes please) Email: <u>mdubis@tds.net</u>

Virginia E. George

4421 North Oakland Avenue, #201 Shorewood, WI 53211 Phone: (414) 332-3211; Fax: (no faxes please) Email: <u>vegeorge@sbcglobal.net</u>

Myrna Yanira Gonzalez-Fernandini

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Bruce A. Lanser

N14 W24200 Tower Place, Suite 201 Waukesha, WI 53188 Phone: (262) 522-2280; Fax: (no faxes please) Email: <u>blanser@lanserlaw.com</u> **Larry H. Liebzeit** 512 West College Avenue; P.O. Box 845 Appleton, WI 54912-0845 Phone: (920) 739-6307; Fax: (no faxes please) Email: larry@blocklegalservice.com

Helen M. Ludwig

10150 West National Avenue, Suite 390 West Allis, WI 53227 Phone: (414) 321-0078; Fax: (414) 321-9040 Email: <u>hludwig@psblsc.com</u> **Douglas F. Mann** 740 North Plankinton Avenue, # 210 Milwaukee, WI 53203-2403 Phone: (414) 276-5355; Fax: (no faxes please) Email: DFMatty@aol.com

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John M. Scaffidi

P.O. Box 11975 Milwaukee, WI 53211 Phone: (414) 963-9303; Fax: (no faxes please) Email: <u>imscaffidi@rsmlaw.com</u>

Matthew R. Schwitzer

715 Superior Road, Suite 121A Green Bay, WI 54311-7595 Phone: (920) 321-2500; Fax: (no faxes please) Email: <u>mschwitzer@schwitzerlaw.com</u>

Paul G. Swanson

107 Church Avenue; P.O. Box 617 Oshkosh, WI 54903-0617 Phone: (920) 426-0456; Fax: (920) 426-5530 Email: <u>kstone@oshkoshlawyers.com</u> from: Attorney Richard Check's office

These items are necessary before we can actually file your case.

All Cases: -Need Received \$ Complete List of Creditors (Name, Address, Date, Account #'s, and Balance) 2006, 2007, 2008, and 2009 Federal & State Income Taxes or Tax Transcripts. Last 6 Months of Payment Advices (Pay Stubs) and/or Proof of Income from all Other Sources. Credit Counseling Certificates (1 pre-filing and 1 post-filing (before your case is discharged)) **Business Packet** If you own Real Estate: Received Need 1st page, Legal Description Page, and Signature Page of your Recorded Mortgage of all mortgages for Real Estate that you own. (Obtain from Register of Deeds.) Copy of Real Estate Tax Bill showing the Fair Market Value of the Real Estate. Copy of recent Mortgage Statement showing the balance of mortgage. Copy of Recorded Warranty Deed to the Real Estate. (Obtain from Register of Deeds.) If you own an Auto/Truck/Boat/Motorcycle/RV/Mobile Home:

Need Received

□ □ Copy of Title to **each** item owned. (No Replacement Title, must be original)

*****ADDITIONAL DOCUMENTATION MAY BE REQUESTED*****



ATTORNEYS AT LAW

Phone: 414.277.7742 • Fax: 414.277.1303

Client:		Date:					
<u>Have</u>	Need						
		Two Years Federal & State Tax Returns					
		2008 Federal 2009 Federal					
		2008 State 2009 State					
		Other					
		Seven (7) Months Payroll or Unemployment Stubs: Individual					
		From To Spouse					
		Copy of Drivers License(s)					
		Titles To Each Vehicle That Has A Loan (Car, Boat, Motorcycle, Motor Home)					
		Credit Counseling Certificate(s)					
		Six (6) Months Of Bank Statements For Each Financial Account					
		From To					
		Statement Of Any IRA, 401K Or Medical Savings Plan					
		Recorded Mortgages For Each Property Owned:					
		(Pages that show signatures, amount, legal description and recorded stamp)					
		Fair Market Analysis Or Appraisal Of Home					
		Property Tax Bill For Each Parcel Of Property Owned					
		Recorded Deed For Each Parcel Of Real Estate Owned					
		Address & Phone Number For Anyone That Child Support Is Owed					
		Name:					
		Address:					
		Report From Lawyer On Any Pending Personal Injury (If Applicable)					
		If Self-Employed or own a Rental Property - Six (6) Months Of Itemized					
		Income & Expenses: From to					
		Do We Have Current Address, Phone Number & Email?					
		Do We Have A Signed Retainer Agreement?					
		Total Retainer Of Needed Before We File					

Information received by: _

<u>From</u>: Altorny Todd C. Esser's office

Pre-Petition

The following questions apply to **BOTH** spouses if married.

🗆 Yes	🗆 No	Have you ever filed bankruptcy before?
🗆 Yes	🗆 No	Have you resided in any other State besides Wisconsin in the last 3 years?
□ Yes	🗆 No	Within 90 days of today's date, have you paid a total of \$600 or more to any one creditor?
□ Yes	🗆 No	In the last 12 months, have you repaid any debt to any relatives?
🗆 Yes	🗆 No	In the past 2 years, have you sold, given, bartered, traded, any property?
🗆 Yes	🗆 No	In the past 12 months, have you given anyone a lien on your property (car loan, refinancing or new mortgage, etc.)?
	🗆 No	Is your driver's license suspended or revoked?
□ Yes	🗆 No	Do you own a home or any other real estate?
□ Yes	🗆 No	Has your name appeared on the title to any different or other real estate in the past four years?
□ Yes	🗆 No	Do you own a motor vehicle?
□ Yes	🗆 No	Has your name been on the title to any different or other vehicle in the past 2 years?
□ Yes	🗆 No	Do you have life insurance policies with any cash surrender value (a policy that you can borrow against)?
□ Yes	□ No ·	Have you suffered any injury or loss that gives you the right to assert a claim against another person (sue for auto accident, workers/unemployment compensation, discrimination)?
□ Yes	🗆 No	Does anyone owe you any money (loan you have given someone or judgment you have against someone)?
□ Yes	🗆 No	Do you have an interest in any retirement plan, pension plan, profit sharing plan, thrift savings, 401(k), 403(b), Keogh or any similar plan?
🗆 Yes	🗆 No	Has anyone died within the last year and left you money?
🗆 Yes	🗆 No	Are you eligible to receive money from any estate or trust?
□ Yes	🗆 No	Do you have any claim or any legal or title interest in any property not in your possession?
□ Yes	🗆 No	Have you applied for or received any new credit (loan, credit card, etc) in the past 6 months?
		On any existing credit card, have you:
🗆 Yes	🗆 No	(a) used your credit card in the past 90 days?
□ Yes	🗆 No	(b) made any purchases of luxury goods or services totaling more than \$500 within the last 90 days?
🗆 Yes	🗆 No	(c) taken any cash advances totaling more than \$750 within the last 70 days?
🗆 Yes	🗆 No	(d) transferred a balance of \$1000 or more from any card to another card within the last six months?
□ Yes	🗆 No	Have you received federal and/or state income tax refund this year? Approx. – how much \$
🗆 Yes	🗆 No	Do you have any state or federal tax returns that have NOT been filed?

TODD C. ESSER & ASSOCIATES

Attorneys at Law

Of Counsel Erik B. Ellingson Steven E. Berg

<u>Associate</u> Todd A. Koenig Kyle A. Lindsey

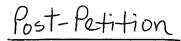
CLIENT QUESTIONNAIRE: POST-PETITION AND SCHEDULE SIGNING

NAME:

My marital status is as follows: (circle one) single married divorced

Y	N	N/A	My name, address and social security number as stated on the petition are correct.			
Y	N	N/A	If I am married, my spouse is filing this petition with me or I have listed the name, address and social security number of my non-filing spouse.			
Y	N	N/A	If I am divorced or widowed, I am entitled to receive any money, payments, or distribution of property, from my ex or deceased spouse.			
Y	N	N/A	I have carefully reviewed the bankruptcy petition and bankruptcy schedules before signing them.			
Y	N	N/A	All of the information stated on the bankruptcy petition and on the schedules is true and correct.			
Y	N	N N/A Other than as noted, are there any changes or corrections that should be made to the petition and schedules?				
Y	N	N/A Do the schedules, as prepared, disclose all my assets and all liabilities with no exceptions?				
Y	N	N/A	Did you tell your attorney about any property, money or other assets that is not properly described on my bankruptcy schedules.			
Y	N	N/A	Have I ever filed bankruptcy before?			
Y	N	N/A	Do I acknowledge and understand that I signed the bankruptcy petition and schedules under oath to tell the truth, under the penalty of perjury and under the laws of the United States?			
Y	N	N/A	Within 90 days prior to today's date, have I paid any one creditor a total of more than \$600?			
Y	N	N/A	In the last 12 months, have I paid any money to a relative?			
Y	NIn the past 2 years, have I transferred away from myself (sell, give, barter, trade, rummage sale)NN/Aany of my money or property?Have I hidden my property?					
Y	N	N/A	In the past 12 months, have I given anyone a lien on my property?			
Y	N	N/A	In the last 12 months, have I operated a business?			
Y	N	N/A	Do I anticipate a guaranteed 10% or more increase in my income in the next 6 months?			
Y	N	N/A	Do I own a house or any other real estate?			
Y	N	N/A	Has my name appeared on the title to any/different real estate in the past two years?			

11805 West Hampton Avenue Milwaukee, Wisconsin 53225 Telephone 414 461-7000 Facsimile 414 461-8860



We are a debt relief agency. We help people file for relief under the Bankruptcy Code.

widowed

DATE:

	1	1	
Y	N	N/A	Do I own a motor vehicle?
Y	Ν	N/A	Has my name appeared on the title to any other/different vehicle in the past 2 years?
Y	N	N/A	Do I own a life insurance policy with cash surrender value?
Y	N	N/A	Do I have the right to assert a claim for injuries against any other person(s) or a claim for any other reason?
Y	N	N/A N/A	Does anyone owe me any money?
Y	N	N/A	Am I waiting for an income tax refund, tax rebate or Homestead Credit?
			Do I have an interact in a Definition of Directory of the state of the
Y	N	N/A	Do I have an interest in a Retirement Plan, Contract or Account (Pension or Profit Sharing, IRA, 401(k), 403(b), Keogh or similar plan or contract)?
Y	N	N/A	Has anyone recently died (approximately past year) and left me money or property?
Y	Ν	N/A	Am I eligible to receive money or property from any currently open/existing estate or trust?
Y	N	N/A	Is there any other property to which I have a claim or any legal or title interest which has not been disclosed on my bankruptcy schedules?
Y	N	N/A	Do I acknowledge that if I should become entitled to receive the proceeds of a life insurance policy or an inheritance within 180 days (6 months) from the date my bankruptcy case is actually filed, that this also is an asset of the bankruptcy estate and I have an obligation to notify both my attorney and the bankruptcy trustee of this information?
Y	N	N/A	Do I acknowledge bankruptcy rules require that with regard to secured consumer debts, I carry out my stated intention to either reaffirm, redeem or surrender the property within 45 days of filing the bankruptcy petition?
Y	N	N/A	Have I received the Statement of Information drafted by the Office of the United States Trustee?
Y	N	N/A	I acknowledge that I have been informed that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and I have been informed about the relief available under each chapter and have both received and reviewed the Notice under §342(b).
Y	N	N/A	I acknowledge I have reviewed, read and understand all provisions as set forth in the Addendum
Y	N	N/A	to Fee Agreement and have discussed any question I have with my attorney. Have I applied for new credit (i.e. a loan or a credit card) in the past 6 months?
Y	N	N/A	Have I used a credit card in the past 3 months? For what? How much was charged?
Y	N	N/A	I direct/authorize Todd C. Esser & Associates to incorporate changes to my signed Petition and Schedules made during my signing appointment without returning to review the changes and re-sign the documents.

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LR 1007.3 Disclosure of Transfers and Loan Payments by the Debtor's Spouse. In any case filed by a married debtor in which the debtor's spouse is not a joint debtor, the Statement of Financial Affairs shall include transfer of marital property by each spouse and loan payments made with marital property by each spouse for the same period as required by the debtor.

LR 1007.4 Disclosure of Other Documents

- (a) In Chapter 7, 12 and 13 cases, the debtor shall provide copies of the following to the assigned trustee no later than 7 days prior to the first scheduled meeting of creditors:
 - (1) Titles to all vehicles;
 - (2) Recorded deeds and land contracts for all real estate;
 - (3) Recorded mortgages for all real estate;
 - (4) The most recent real estate tax bill for all real estate;
 - (5) The preceding two (2) years signed federal and state income tax returns and all schedules or transcripts thereof;
 - Payment advices or other evidence of payment receive within 60 days before the date of the filing of the petition by the debtor from any employer of the debtor;
 - (7) The name, address and telephone number of each holder of a Domestic Support Obligation; and,
 - (8) Any other documents requested by the trustee.
- (b) Tax returns and payment advices or other evidence of payment provided to the trustee under paragraphs (a)(5) and (a)(6) above, shall not be filed with the court unless otherwise ordered.

LR 1007.5 Disclosures Required Prior to Discharge

- (a) Chapter 7 Cases.
 - (1) The statement described in (2) below shall apply in a Chapter 7 case in which:
 - (a) The debtor uses exemptions from another State due to the length of debtor's domicile in that State pursuant to Sec. 522(b)(3)(A); and
 - (b) The residence, burial plot or homestead exempted under Sec. 522(p)(1)(A), (B), (C), and (D) exceeds, in the aggregate, the amount listed in section 522(p)(1).
 - (2) Debtors subject to (a)(1) above shall file with the court a statement stating:
 - (a) Whether or not there is a proceeding pending in which the

11 USC § 521. Debtor's duties

(a)The debtor shall--

(1) file--

(A) a list of creditors; and

(B) unless the court orders otherwise--

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate--

(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h);

(3) if a trustee is serving in the case or an auditor serving under section 586(f) of title 28, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case or an auditor serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title;

(5) appear at the hearing required under section 524(d) of this title;

(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either--

(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

(B) redeems such property from the security interest pursuant to section 722.

(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.

(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court--

(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).

(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).

(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.

(e)

(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

(2)

(A) The debtor shall provide--

(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan--

(A) at a reasonable cost; and

(B) not later than 5 days after such request is filed.

(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court--

(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

(4) in a case under chapter 13--

(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

(g)

(1) A statement referred to in subsection (f)(4) shall disclose--

(A) the amount and sources of the income of the debtor;

(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

(h) If requested by the United States trustee or by the trustee, the debtor shall provide--

(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

(i)

(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (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.

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case. (1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

(2) If the debtor does not file the required return or obtain the extension referred to in paragraph(1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.

11 USC § 704. Duties of trustee

(a) The trustee shall--

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;

(2) be accountable for all property received;

(3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) [sic-reference to previous subsection; now 521(a)(2)(B)] of this title;

(4) investigate the financial affairs of the debtor;

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee;

(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c);

(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and

(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that--

(A) is in the vicinity of the health care business that is closing;

(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

(C) maintains a reasonable quality of care.

(b)

(1) With respect to a debtor who is an individual in a case under this chapter--

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert

under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

(c)

(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall-

(A)

(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of--

(i) the granting of the discharge;

(ii) the last recent known address of the debtor;

(iii) the last recent known name and address of the debtor's employer; and

(iv) the name of each creditor that holds a claim that--

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(2)

(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.

Page 1 DARYL WITHROW, Debtor. FRANCIS LAFAYETTE, Appellant, v.

JOSEPH B. COLLINS, Chapter 7 Trustee, and PHOEBE MORSE, United States Trustee, Appellees. Bap No. MW 08-055. Bankruptcy Case No. 07-41243-HJB. United States Bankruptcy Appellate Panel, First Circuit. May 26, 2009.

Appeal from the United States Bankruptcy Court for the District of Massachusetts, Hon. Henry J. Boroff, U.S. Bankruptcy Judge.

Francis Lafayette, pro se, on brief for Appellant.

Joseph B. Collins, Esq., on brief for Appellee, Joseph B. Collins, Chapter 7 Trustee.

Ramona D. Elliot, Esq., and P. Matthew Sutko, Esq., on brief for Appellee, Phoebe Morse, United States Trustee.

Before Vaughn, Kornreich, and Tester, United States Bankruptcy Appellate Panel Judges.

TESTER, Bankruptcy Appellate Panel Judge

Francis Lafayette ("Attorney Lafayette") appeals from the bankruptcy court's order (the "Sanctions Order") imposing monetary sanctions against him for violating Bankruptcy Rule 9011 and §§ 707(b)(4)(C) and (D).1 Attorney Lafayette argues that the alleged errors in the Debtor's bankruptcy schedules, statement of financial affairs, and other documents were due to the Debtor's "memory failure" rather than his own actions (or inactions), and, therefore, he did not violate Bankruptcy Rule 9011. For the reasons set forth below, we AFFIRM.

BACKGROUND

Attorney Lafayette filed a skeleton chapter 13 petition on behalf of the debtor, Daryl Withrow (the "Debtor"). Less than two weeks



later, the Debtor converted his case to chapter 7. Thereafter, he filed the Debtor's schedules, statement of financial affairs, and Official Form B 22A. He also filed the Debtor's Rebuttal of Presumption of Abuse (the "Rebuttal"), wherein the Debtor sought to counteract the presumption of abuse otherwise suggested by the calculations on Form B 22A and preserve his discharge due to "special circumstances." Specifically, the Debtor noted that his average monthly income of \$5,333.33 (as set forth on Form B 22A) was based on overtime that he no longer received, and that his actual average monthly income was \$4,000.00. In addition, the Debtor claimed that he now needed to provide monthly support of \$100 to his mother due to a stroke she suffered after the filing of the Debtor's Chapter 13 case.

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The chapter 7 trustee (the "Trustee") filed a response to the Rebuttal (the "Rebuttal Response"), asserting that the Rebuttal was "false and misleading" for several reasons. First, the Trustee noted that the Debtor's Form B 22A did not list average monthly income of \$5,333.33; rather, the average monthly income actually reported was \$4,834.22. Second, recent pay stubs for postpetition work revealed that the Debtor was still receiving overtime pay. Third, the Trustee claimed that the Debtor's mother suffered a stroke prior to and not after the filing of his case.

Thereafter, Attorney Lafayette filed an interim application for compensation (the "Fee Application"), requesting professional fees of \$1,195.00.2 The Trustee objected. After repeating the concerns set forth in his Rebuttal Response, the Trustee asserted that because the Debtor testified at the § 341 meeting that he had "fully and truthfully" informed Attorney Lafayette of the facts and circumstances related to the schedules, statement of financial affairs, and the Rebuttal, the Trustee concluded that any errors were Attorney Lafayette's fault, and, therefore, the compensation should be denied. The U.S. Trustee also objected to Attorney Lafayette's Fee Application, adopting the reasons proffered by the Trustee.

The Debtor filed an affidavit seeking to clarify the discrepancies raised by the Trustee in his objection to the Fee Application. Among other things, the Debtor stated that his failure to list all of his bank accounts on his schedules and statement of financial affairs was due to his own forgetfulness. He also restated his commitment to provide financial support to his mother.

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At a hearing on the Fee Application, the Trustee and Attorney Lafayette proposed a "settlement" in which Attorney Lafayette would pay the Trustee \$1,000.00 to compensate him for time and expenses incurred due to Attorney Lafayette's errors in this case. The U.S. Trustee did not object to the proposed settlement. The bankruptcy court did not approve the settlement, however, suggesting that a Bankruptcy Rule 9011 sanction might be more appropriate. Attorney Lafayette objected to the imposition of a sanction and requested an evidentiary hearing on the matter. The bankruptcy court then entered a show cause order ("Show Cause Order") to provide Attorney Lafayette with the evidentiary hearing he requested.

In the meantime, the Trustee filed an affidavit citing additional concerns with the Debtor's schedules and statement of financial affairs. Among other things, he noted that the Debtor's schedules failed to exempt the equity in either the Debtor's residence or his automobile, and that although Attorney Lafayette promised at the § 341 meeting to amend the schedules, he had not done so. In addition, the Trustee restated



his concerns about the discrepancies between the Debtor's schedules, statement of financial affairs and his testimony at the § 341 meeting regarding his mother, his income and his overtime pay.

In a responsive affidavit ("Response Affidavit"), the Debtor claimed, among other things, that his schedules had been amended to accurately reflect the true value of his residence and vehicle.3 He also continued to deny that he received overtime pay, and stated, for the first time, that certain medication caused him to make mistakes when answering questions.

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Three days later, the bankruptcy court held an evidentiary hearing as set forth in the Show Cause Order. At the hearing, Attorney Lafayette admitted that the schedules were erroneous because they did not include an exemption for the Debtor's residence or his vehicle, that he told the Trustee at the § 341 meeting that he intended to amend the schedules, and that he helped the Debtor prepare his Response Affidavit which stated that the amended schedules had been filed when, in fact, they were not filed until after the filing of the Debtor's Response Affidavit. Attorney Lafayette also testified that the omission of open or recently closed bank accounts on the schedules and statement of financial affairs was due to the Debtor's forgetfulness, which he claims was justified because the accounts had minimal balances.

When questioned about discrepancies between the Debtor's Rebuttal and his actual Form B 22A regarding the Debtor's average current monthly income, Attorney Lafayette admitted that he had made a mistake, but was unable to explain why or elaborate further. In addition, when questioned about discrepancies between the Debtor's Schedule J, which provided that the Debtor had no reason to anticipate a reduction in income, and his Rebuttal, which provided that the Debtor would have less income due to support provided to his mother, Attorney Lafayette testified that the omission was due to the fact that the Debtor did not provide monetary support to his mother at the start of the case. This testimony, however, was inconsistent with the Debtor's affidavit wherein he stated that he began providing support to his mother months before filing his case.

On July 3, 2008, the bankruptcy court issued a Memorandum of Decision concluding that Attorney Lafayette had violated § 707(b)(4)(C) and Bankruptcy Rule 9011 in his preparation of

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the Debtor's schedules, statement of financial affairs and the Rebuttal.4 The bankruptcy court stated:

On the facts here, this Court can not find that Attorney Lafayette has met his Rule 9011 and § 707(b)(4)(C) obligations. After all of the argument and testimony, the Court still is not sure what the Debtor earned in the six months prior to the filing of the petition or what the Debtor earns now. Nor is the Court sure whether the Debtor intended to mislead the Court with respect to the information provided in his bankruptcy papers or his Section 341 meeting testimony. But the Court is sure of this - that Attorney Lafayette, at the very least, failed to (1) properly review information provided by the Debtor with respect to his prepetition income; (2) identify contradictions and inconsistencies in the schedules, Statement of Financial Affairs, Rebuttal and affidavits submitted on behalf of the Debtor before the filing of those documents; (3) promptly correct those contradictions and inconsistencies, even when identified by the Chapter 7 Trustee, on anything close to a timely basis; and (4) to place himself in a position of being able to explain the reasons for those contradictions and inconsistencies to the Court even in the context of an evidentiary hearing of which he had more than adequate notice. Certainly, there is no bright line that surrounds § 707(b)(4)(C) and (D) and Rule 9011. But wherever that line lies, this Court agrees with the Chapter 7 Trustee and the UST that Attorney Lafayette has crossed it.

Withrow, 391 B.R. at 229. Based on these findings, the bankruptcy court entered the Sanctions Order directing Attorney Lafayette to pay the Trustee the sum of \$3,585.00 as sanctions. This appeal followed.5 Although Attorney Lafayette sought a stay pending appeal of the Sanctions Order, his request was denied.

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JURISDICTION

Before addressing the merits of an appeal, the Panel must determine that it has jurisdiction, even if the issue is not raised by the litigants. See Boylan v. George E. Bumpus, Jr. Constr. Co. (In re George E. Bumpus, Jr. Constr. Co.), 226 B.R. 724 (B.A.P. 1st Cir. 1998). The Panel has jurisdiction to hear appeals from: (1) final judgments, orders and decrees; or (2) with leave of court, from certain interlocutory orders. 28 U.S.C. § 158(a); Fleet Data Processing Corp. v. Branch (In re Bank of New Eng. Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). A decision is considered final if it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment," id. at 646 (citations omitted), whereas an interlocutory order "only decides some intervening matter pertaining to the cause, and requires further steps to be taken in order to enable the court to adjudicate the cause on the merits." Id. (quoting In re American Colonial Broad. Corp., 758 F.2d 794, 801 (1st Cir. 1985)). A bankruptcy court's order imposing sanctions under Bankruptcy Rule 9011 is a final, appealable order where, as here, it resolves all of the issues pertaining to a discrete claim. See White v. Burdick (In re CK Liquidation Corp.), 321 B.R. 355, 361 (B.A.P. 1st Cir. 2005) (citing 10 Lawrence P. King, Collier on Bankruptcy, ¶ 9011.10 (15th ed. rev. 2004)); see also Tringali v. Hathaway Machinery Co., Inc., 796 F.2d 553, 558 (1st Cir. 1986); Caterpillar Fin. Servs. Corp. v. Braunstein (In re Henriquez), 261 B.R. 67, 70 (B.A.P. 1st Cir. 2001).

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STANDARD OF REVIEW



The Panel generally reviews findings of fact for clear error and conclusions of law de novo. See TI Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d 714, 719 n.8 (1st Cir. 1994). The Panel reviews the bankruptcy court's decision to impose sanctions under Bankruptcy Rule 9011 for manifest abuse of discretion. See CK Liquidation, 321 B.R. at 361 (citations omitted). An abuse of discretion occurs when the court ignores a material factor deserving significant weight, relies upon an improper factor, or makes a serious mistake in weighing proper factors. See id. (citing Colon v. Rivera (In re Colon), 265 B.R. 639 (B.A.P. 1st Cir. 2001)).

DISCUSSION

I. Violations of Bankruptcy Rule 9011 and § 707(b)(4)

Pursuant to Bankruptcy Rule 9011(b), an attorney or pro se party who presents a document (whether by signing, filing, submitting, or later advocating) certifies, among other things, that "the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Bankr. P. 9011(b).6 In addition, under new §§ 707(b)(4)(C) and (D) (as revised by BAPCPA), a debtor's attorney has a duty, equivalent to

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that under Bankruptcy Rule 9011, to perform a reasonable investigation into the circumstances giving rise to the documents before filing them in a chapter 7 case.7 For example, under new § 707(b)(4)(C), attorneys are subject to an automatic certification of meritoriousness, based upon a reasonable investigation, as to any "petition, pleading, or written motion" signed by them. See 11 U.S.C. § 707(b)(4)(C).8 Furthermore, under new § 707(b)(4)(D), an attorney's signature on a client's bankruptcy petition is deemed a representation that "the **CastCase**

attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect." See 11 U.S.C. § 707(b)(4)(D).9 One court, though critical of the wording of § 707(b)(4), stated that the legislature made its point explicitly:

[T]heir general drift is clear: debtors' counsel are to exercise significant care as to the completeness and accuracy of all recitations on their clients

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schedules, after they have made a factual investigation and legal evaluation that conforms to the standards applicable to any attorney filing a pleading, motion, or other document in a federal court. The content of a debtor's petition and schedules is relied on, and should have the quality to merit that reliance.

In re Robertson, 370 B.R. 804, 809 n.8 (Bankr. D. Minn. 2007).

Accordingly, any attorney who files schedules and statements on a debtor's behalf certification makes а regarding the representations contained therein. Although the certification is not an absolute guaranty of accuracy, it must be based upon the attorney's best knowledge, information and belief, "formed after an inquiry reasonable under the circumstances." Nosek v. Ameriquest Mortg. Co. (In re Nosek), 386 B.R. 374, 381 (Bankr. D. Mass. 2008). The First Circuit has held that the standard to be applied is "an objective standard of reasonableness under the circumstances." Id. (quoting Cruz v. Savage, 896 F.2d 626, 631 (1st Cir. 1990)). "Courts, therefore, must inquiry as to whether `a reasonable attorney in like circumstances could believe his actions to be factually and legally justified." Id. (quoting Cabell v. Petty, 810 F.2d 463, 466 (4th Cir. 1987)).

Thus, Attorney Lafayette had an affirmative duty to conduct a reasonable inquiry into the facts set forth in the Debtor's schedules, statement of financial affairs and Rebuttal before filing them. There is evidence in the record,

however, that Attorney Lafayette violated that obligation. It is undisputed that there were numerous errors and discrepancies in the documents filed by Attorney Lafayette on the Debtor's behalf. In fact, Attorney Lafayette admitted as much at the show cause hearing. For example, he conceded error regarding the inconsistent treatment of current monthly income on the Debtor's Rebuttal (which reflected that the Debtor's average current monthly income as set forth on Form B 22A was \$5,333.33), and the Debtor's actual

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Form B 22A (which reflected \$4,834.22 in current monthly income). In addition, there were discrepancies between the Debtor's Rebuttal (which listed actual monthly income without overtime pay in the amount of \$4,000) and the Debtor's Schedule I (which listed actual monthly income without overtime pay in the amount of \$3,309.73). There were also differences between the Debtor's Rebuttal (wherein he indicated that he anticipated that he would have to assist his mother financially for an indefinite period of time after the filing of his case) and his Schedule J (wherein he stated that he did not reasonably anticipate a significant increase or decrease in expenses in the upcoming year). There were also inconsistencies regarding whether the Debtor was actually receiving overtime and the frequency and extent of financial support being provided to his mother.

Although Attorney Lafayette conceded that there were numerous mistakes in the documents he filed on the Debtor's behalf, he blames the errors on his personal health issues and/or his client's faulty memory. He claims that the inconsistencies in the documents were not attributable to him, but were the fault of his client, stating: "The debtor got in the way of the process of the preparation of the documents with his mental condition" and his "personal forgetfulness." Attorney Lafayette's excuses are not persuasive and fail to justify why the mistakes were made and why they were not corrected in a timely fashion. Even if his excuses that the Debtor provided him with inaccurate information are true, they do not explain the numerous inconsistent statements in the various documents regarding the Debtor's income, entitlement to overpay and his support obligations to his mother. They are not sufficient to overcome the sloppy and careless actions (or inactions) of Attorney Lafayette in this case. Therefore, the evidence shows that Attorney Lafayette failed to conduct a reasonable

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investigation into the underlying facts before filing the Debtor's schedules, statement of financial affairs and Rebuttal, and that he was careless when preparing the documents. In addition, Attorney Lafayette fails to recognize that he had a duty to conduct a reasonable inquiry into the underlying facts before filing the documents, and that if he had done so, many, if not all, of the inconsistencies could have been prevented.

Based on the foregoing, the Panel concludes that there is sufficient evidence in the record to support the bankruptcy court's conclusion that Attorney Lafayette violated his § 707(b)(4) and Bankruptcy Rule 9011 obligations.

II. Imposition of Sanctions Under Bankruptcy Rule 9011 and § 707(b)(4)

Pursuant to Bankruptcy Rule 9011(c), if, after notice and an opportunity to respond, the bankruptcy court determines that an attorney has violated Bankruptcy Rule 9011(b), it may impose "an appropriate sanction." See Fed. R. Bankr. P. 9011(c). In addition, § 707(b)(4) provides authority for bankruptcy courts to order the attorney for the debtor to reimburse the trustee for reasonable costs in prosecuting a § 707(b) motion brought by the trustee if the court grants the motion and "finds that the action of the attorney for the debtor in filing a case under this chapter violated [Bankruptcy R]ule 9011." 11 U.S.C. § 707(b)(4)(A). As the Robertson court noted:

Though this new verbiage [of § 707(b)] has no directly-associated enforcement mechanism,



§ 707(b) now contains a basis in statute for the bankruptcy court to impose sanctions. These can take the form of "all reasonable costs" incurred by a successful movant under § 707(b), where "the action of the attorney for the debtor in filing a case under [the Bankruptcy Code] violated rule 9011 of the Federal Rules of Bankruptcy Procedure." 11 U.S.C. § 707(b)(4)(A)(i)-(ii). It also provides for "the assessment of an appropriate civil penalty against the attorney for the debtor," § 707(b)(4)(B)(i), payable to the trustee or the UST,

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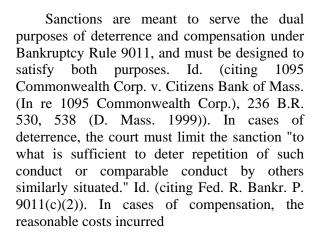
§ 707(b)(4)(B)(ii), if "the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure," 11 U.S.C. § 707(b)(4) (prefatory language).

Robertson, 370 B.R. at 809 n.8.

The bankruptcy court has discretion to determine what sanctions are appropriate under the circumstances when there has been a violation of Bankruptcy Rule 9011. In re Thomson, 329 B.R. 359, 362 (Bankr. D. Mass. 2005). The bankruptcy court usually considers several factors in determining whether to impose a sanction and what type of sanction to impose, including:

whether the conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law, what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and what amount is needed to deter similar activity by other litigants.

Id. (citing CK Liquidation, 321 B.R. at 362). This is not an exhaustive list of the factors that the bankruptcy court may consider. Id.



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as a result of the sanctionable conduct may appropriately form the sanction. Id. (citations omitted).

In reaching its decision to impose sanctions, the bankruptcy court noted that Attorney Lafayette has a history of "sloppy, careless and unprofessional" practices in representing consumer debtors. Withrow, 391 B.R. at 229 (citing In re LaFrance, 311 B.R. 1, 25 (Bankr. D. Mass. 2004)). In LaFrance, the bankruptcy court disallowed Attorney Lafayette's fee application and ordered him to disgorge those fees. The court further ordered that in all future cases in which he represented consumer debtors, Attorney Lafayette was required to deposit all client compensation in his client trust account and not withdraw funds unless the court allowed his fee application. 311 B.R. at 25. However, despite the strict mandate of the LaFrance decision, many fee applications of Attorney Lafayette have been denied because he continued to provide poor quality services to his clients. See, e.g., In re LaClair, 360 B.R. 388 (Bankr. D. Mass. 2006). As a result, the bankruptcy court concluded that the sanctions imposed by LaFrance were not sufficient to meet the bankruptcy court's intended goal of deterring Attorney Lafayette's sloppy and careless representation of his clients. Therefore, the bankruptcy court imposed sanctions against Attorney Lafayette in the amount of \$3,585, representing three times the amount which he intended to charge his client.



Attorney Lafayette does not argue that the sanction amount is inappropriate. Rather, he argues that the bankruptcy court should not have imposed sanctions at all. However, the evidence supports the bankruptcy court's conclusion that Attorney Lafayette violated Bankruptcy Rule 9011 and § 707(b)(4)(C) and, therefore, sanctions were warranted. The sanctions amount imposed by the bankruptcy court appears to be appropriate as it is designed to satisfy both

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purposes of deterrence and compensation. Moreover, there is no evidence that in imposing the \$3,585 sanction, the bankruptcy court ignored a material factor deserving significant weight, relied upon an improper factor, or made a serious mistake in weighing proper factors. See CK Liquidation, 321 B.R. at 366 (citing Colon, 265 B.R. at 639).

Under the circumstances, there is no evidence that the bankruptcy court abused its discretion in ordering sanctions against Attorney Lafayette in the amount of \$3,585.

CONCLUSION

For the reasons set forth above, the Sanctions Order is AFFIRMED.

Notes:

1. Unless expressly stated otherwise, all references to "Bankruptcy Code" or to specific statutory sections shall be to the Bankruptcy Reform Act of 1978, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, 119 Stat. 23, 11 U.S.C. §§ 101, et seq. All references to "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure.

2. Attorney Lafayette is required to file fee applications in all cases in the District of Massachusetts in which he represents debtors.



See In re LaFrance, 311 B.R. 1, 25 (Bankr. D. Mass. 2004).

3. In fact, the Debtor had not yet filed his amended schedules and would not do so for two more days.

4. The bankruptcy court's Memorandum of Decision is published. See In re Withrow, 39,1 B.R. 217 (Bankr. D. Mass. 2008).

5. On July 14, 2008, Attorney Lafayette filed a "Notice of Appeal to the District Court." App. at 44. However, he failed to file a separate statement of election to appeal to the district court, as required by Fed. R. Bankr. P. 8001(e) and 28 U.S.C. § 158(c)(1). Consequently, the Panel denied the transfer of the appeal to the district court.

6. Rule 9011(b) is not limited to statements below which appear an attorney's signature. Rather, the rule provides that filing, submitting or even advocating with respect to a document filed with a court has the same effect as signing the document. Therefore, it is well established that Bankruptcy Rule 9011(b) applies to debtors' attorneys even with respect to a debtor's schedules, statement of affairs and other documents disclosing assets, which debtors, but not counsel, are required to sign. See, e.g., In re M.A.S. Realty Corp., 326 B.R. 31, 38 (Bankr. D. Mass. 2005).

7. Although this case was commenced under chapter 13, the schedules, statements and Form B 22A were completed after the conversion to chapter 7. Thus the provisions of chapter 7, including section 707, are applicable. See 11 U.S.C. § 103(b).

8. Section 707(b)(4)(C) provides, in relevant part:

The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

11 U.S.C. § 707(b)(4)(C).

9. Section 707(b)(4)(D) provides:

The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

11 U.S.C. § 707(b)(4)(D).



UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF WISCONSIN

IN RE:

Joe Conversion,

Debtor.

Chapter 13 Proceedings Case No. 08-00001

CONVERSION OF CASE TO CHAPTER 7

NOW COMES Joe Conversion, the debtor herein, and shows to the Court as follows:

1. That the debtor filed a petition for relief under Chapter 13 of the United States

Bankruptcy code on January 1, 2008.

2. That the debtor is eligible to be debtor under Chapter 7 of the United States Bankruptcy

Code and desires to convert this case to a case under that Chapter.

WHEREFORE, debtor prays for relief under Chapter 7 of the Bankruptcy Code.

Dated this _____ day of _____, 2010.

Joe Conversion, Debtor

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF WISCONSIN

IN RE:

Joe Conversion,

Debtor.

Chapter 13 Proceedings Case No. 08-00001

FINAL REPORT AND SCHEDULE OF POST-PETITION DEBTS IN CHAPTER 13 CASE CONVERTED TO CHAPTER 7 CASE

The debtor, Joe Conversion, does hereby file this report as a final report and schedule of

post-petition debts pursuant to the requirements of Rule 1019(5)(B) & (C) of the Rules of

Bankruptcy Procedure as follows:

Schedule of Unpaid Debts not Listed in the Final Report and Account Incurred after Confirmation but before Conversion:

See attached

Schedule of Executory Contracts and Unexpired Leases Entered into or Assumed after the Filing of the Petition but before Conversion:

None

In re

Joe Conversion

Debtor

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME,	С	Hu	sband, Wife, Joint, or Community	С	U	D	
MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	ONT – NGEN		I S P U T E D	AMOUNT OF CLAIM
Account No. GAP7064			2009 Medical Expenses	T	DATED		
Glendale Anesth Prov 4555 W. Schroeder Dr. Milwaukee, WI 53223		-					
Account No. 804753			Med1 02 North Shore Pathologists Sc	+			1,035.00
Oac Po Box 371100 Milwaukee, WI 53237		-					126.00
Account No.			utility service	+	┢		
We Energies Attn: Bankruptcy Dept A130 PO Box 2046 Milwaukee, WI 53201-2046		-					
				\bot			1,500.00
Account No.							
_0 continuation sheets attached			(Total of	Sub f this			2,661.00
			(Report on Summary of		Fota dule		2,661.00

In re Joe Conversion

Debtor(s)

Case No. 08-00001

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF	DEBTOR AND SE	OUSE		
Divorced	RELATIONSHIP(S): None.	AGE(S):			
Employment:	DEBTOR		SPOUSE		
Occupation	Customer Service Agent				
Name of Employer	Here & Now				
How long employed	1 yr.				
Address of Employer					
	or projected monthly income at time case filed)		DEBTOR		SPOUSE
	nd commissions (Prorate if not paid monthly)	\$	1,000.00	\$	N/A
2. Estimate monthly overtime		\$	180.00	\$	N/A
3. SUBTOTAL		\$	1,180.00	\$	N/A
4. LESS PAYROLL DEDUCTIO	NS				
a. Payroll taxes and social se	ecurity	\$	200.00	\$	N/A
b. Insurance		\$	0.00	\$	N/A
c. Union dues		\$	0.00	\$	N/A
d. Other (Specify):		\$	0.00	\$	N/A
		\$	0.00	\$	N/A
5. SUBTOTAL OF PAYROLL D	EDUCTIONS	\$	200.00	\$	N/A
6. TOTAL NET MONTHLY TAK	KE HOME PAY	\$	980.00	\$	N/A
7. Regular income from operation	of business or profession or farm (Attach detailed statem	ent) \$	0.00	\$	N/A
8. Income from real property	· ·	\$	0.00	\$	N/A
9. Interest and dividends		\$	0.00	\$	N/A
dependents listed above	port payments payable to the debtor for the debtor's use or	that of \$	0.00	\$	N/A
11. Social security or government	assistance				
(Specify):		\$	0.00	<u></u>	<u>N/A</u>
		\$	0.00	\$	N/A
12. Pension or retirement income13. Other monthly income		\$	0.00	\$	N/A
(Specify):		\$	0.00	\$	N/A
(Speeny).		\$	0.00	\$	N/A
14. SUBTOTAL OF LINES 7 TH	IROUGH 13	\$	0.00	\$	N/A
15. AVERAGE MONTHLY INC	OME (Add amounts shown on lines 6 and 14)	\$	980.00	\$	N/A
16. COMBINED AVERAGE MC	ONTHLY INCOME: (Combine column totals from line 15	5)	\$	980.	00

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document: **None.**

Joe Conversion In re

Debtor(s)

08-00001

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home) a. Are real estate taxes included? Yes No	\$ 475.00
b. Is property insurance included? Yes NoX 2. Utilities: a. Electricity and heating fuel	\$ 0.00
2. Utilities: a. Electricity and heating fuel b. Water and sewer	\$ <u>0.00</u> \$0.00
c. Telephone	T
d. Other Cellphone	\$ <u>0.00</u> \$ 45.00
3. Home maintenance (repairs and upkeep)	\$ <u>45.00</u> \$0.00
4. Food	\$ <u>260.00</u>
5. Clothing	\$ <u>200.00</u> \$ <u>40.00</u>
6. Laundry and dry cleaning	\$ <u>40.00</u> \$ <u>10.00</u>
7. Medical and dental expenses	\$ <u>75.00</u>
8. Transportation (not including car payments)	\$ <u>75.00</u> \$ <u>140.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ <u>140.00</u> \$ <u>0.00</u>
10. Charitable contributions	\$ <u>0.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)	φ
a. Homeowner's or renter's	\$ 0.00
h. Life	\$ <u>0.00</u>
c. Health	\$ <u>0.00</u>
	+
d. Auto e. Other	\$ <u>97.00</u> \$0.00
12. Taxes (not deducted from wages or included in home mortgage payments)	φ
	\$ 0.00
(Specify)	\$0.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the	
plan)	\$ 0.00
a. Auto	+
b. Other	\$ 0.00
c. Other	\$ 0.00
14. Alimony, maintenance, and support paid to others	\$ 0.00
15. Payments for support of additional dependents not living at your home	\$ 0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ <u>0.00</u>
17. Other Misc. Personal Expenses	\$ 30.00
Other	\$0.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	\$1,172.00
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year	
following the filing of this document:	
None.	
20. STATEMENT OF MONTHLY NET INCOME	-
a. Average monthly income from Line 15 of Schedule I	\$ 980.00
b. Average monthly expenses from Line 18 above	\$ 1,172.00
c. Monthly net income (a. minus b.)	\$ -192.00
	·

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing and that it is true and correct

to the best of my knowledge, information and belief.

Dated this _____ day of _____, 2010

Joe Conversion

Form 8 (10/05)

United States Bankruptcy Court

Eastern District of Wisconsin

In re Joe Conversion

Debtor(s)

Case No. 08-00001 Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.

I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.

I intend to do the following with respect to property of the estate which secures those debts or is subject to a lease:

Description of Secured Property 2005 Kia Sportage (37,000 mi.)	Creditor's Name Wfs Financial/Wachovia Dealer Services	Surrendered X	as exempt	11 U.S.C. § 722	11 U.S.C. § 524(c)
		Property will be	Property is claimed	Property will be redeemed pursuant to	Debt will be reaffirmed pursuant to

Description of Leased Property	Lessor's Name	Lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)
-NONE-		

Debtor(s)

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

(Continuation Sheet)

Date

Signature

Joe Conversion Debtor

United States Bankruptcy Court
Eastern District of Wisconsin

Joe Conversion		Case No.	08-00001	
	Debtor(s)	Chapter	7	

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$ 750.00*
Prior to the filing of this statement I have received	\$ 750.00*
Balance Due	\$ 0.00

2. \$ **25.00** of the filing fee has been paid.

3. The source of the compensation paid to me was:

Debtor 🗌 (Other (s	pecify):
------------	----------	----------

4. The source of compensation to be paid to me is:

Debtor		Other (specify)
--------	--	-----------------

5. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.

6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
- d. [Other provisions as needed]

Negotiations with secured creditors to reduce to market value; exemption planning; preparation and filing of reaffirmation agreements and applications as needed; preparation and filing of motions pursuant to 11 USC 522(f)(2)(A) for avoidance of liens on household goods.

7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

Representation of the debtors in any dischargeability actions, judicial lien avoidance, relief from stay actions or any other adversary proceeding.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated:

In re

Attorney

* Related to conversion to Chapter 7 only. In prior Chapter 13 proceedings, attorney charged a total of \$3,000 and received a total of \$2,000 either directly from the debtor or through disbursements made by the Chapter 13 Trustee

In re Joe Conversion

Debtor(s) 08-00001

Case Number:

(If known)

According to the calculations required by this statement:

□ The presumption arises.

■ The presumption does not arise.

(Check the box as directed in Parts I, III, and VI of this statement.)

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

	Part I. EXCLUSION FOR DISABI	E	D VETERANS	S A	ND NON-CONSU	UM	IER DEBTO	RS	
1A	If you are a disabled veteran described in the Veter Declaration, (2) check the box for "The presumptio VIII. Do not complete any of the remaining parts o								
	\Box 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. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).								
1B	If your debts are not primarily consumer debts, che the remaining parts of this statement.	ck t	he box below and c	coi	mplete the verification	in P	art VIII. Do not	complete any of	
	Declaration of non-consumer debts. By checking	-			· ·		-		
	Part II. CALCULATION OF M					·			
	Marital/filing status. Check the box that applies an		-		-	mer	t as directed.		
	a. Unmarried. Complete only Column A ("De								
	 b. □ Married, not filing jointly, with declaration of "My spouse and I are legally separated under a 								
2	purpose of evading the requirements of § 707(
	for Lines 3-11.			•		·			
	c. Married, not filing jointly, without the decla					ab	ove. Complete b	oth Column A	
	 ("Debtor's Income") and Column B ("Spou d.					Sno	uso's Incomo'')	for Linos 3 11	
	All figures must reflect average monthly income re-					spo	Column A	Column B	
	calendar months prior to filing the bankruptcy case	, en	ding on the last day	y o	f the month before				
	the filing. If the amount of monthly income varied six-month total by six, and enter the result on the a			, ye	ou must divide the		Debtor's Income	Spouse's Income	
			•						
3	Gross wages, salary, tips, bonuses, overtime, con					\$	1,718.34	\$	
	Income from the operation of a business, profess enter the difference in the appropriate column(s) of								
	business, profession or farm, enter aggregate numb								
	not enter a number less than zero. Do not include								
4	Line b as a deduction in Part V.		D.L.	r					
	a. Gross receipts	\$	Debtor 0.00	\$	Spouse				
	b. Ordinary and necessary business expenses	\$	0.00						
	c. Business income	Su	btract Line b from	Liı	ne a	\$	0.00	\$	
	Rents and other real property income. Subtract 1	Line	b from Line a and	l er	nter the difference in				
	the appropriate column(s) of Line 5. Do not enter a								
5	part of the operating expenses entered on Line b		Debtor	rt	v. Spouse				
5	a. Gross receipts	\$	0.00	\$					
	b. Ordinary and necessary operating expenses	\$	0.00						
	c. Rent and other real property income	Su	btract Line b from 1	Li	ne a	\$	0.00	\$	
6	Interest, dividends, and royalties.					\$	0.00	\$	
7	Pension and retirement income.					\$	0.00	\$	

8	Any amounts paid by another person or entity, or expenses of the debtor or the debtor's dependent purpose. Do not include alimony or separate maint spouse if Column B is completed.	ts, in	cluding child supp	port pa	aid for that	\$	0.00) \$	
9	Unemployment compensation. Enter the amount in However, if you contend that unemployment comp benefit under the Social Security Act, do not list th or B, but instead state the amount in the space below	ensa ne am	tion received by yo	ou or y	our spouse was a				
	Unemployment compensation claimed to be a benefit under the Social Security Act Debtor	r \$	0.00 Spc	ouse \$		\$	0.00) \$	
10	Income from all other sources. Specify source and on a separate page. Do not include alimony or sep spouse if Column B is completed, but include all maintenance. Do not include any benefits received received as a victim of a war crime, crime against h domestic terrorism.	oarat othe	te maintenance pay er payments of alin der the Social Secur	yment mony o rity Ac	s paid by your or separate et or payments				
	a. Ioan repayment from Son	\$	266.67		Spouse				
	b. Sale of used Books	\$	2.50	\$					
	Total and enter on Line 10					\$	269.17	\$	
11	Subtotal of Current Monthly Income for § 707(b Column B is completed, add Lines 3 through 10 in					\$	1,987.5 ⁻	\$	
12	Total Current Monthly Income for § 707(b)(7). I Column A to Line 11, Column B, and enter the tota the amount from Line 11, Column A.					\$			1,987.51
	Part III. APPLIC	AT	ION OF § 707	(b)(7)) EXCLUSIO	N			
13	Annualized Current Monthly Income for § 707(I enter the result.	b)(7)	. Multiply the amo	ount fr	om Line 12 by the	e numbe	er 12 and	\$	23,850.12
14	Applicable median family income. Enter the media (This information is available by family size at www.								
	a. Enter debtor's state of residence: WI		b. Enter debto	or's ho	usehold size:	,	1	\$	41,233.00
	Application of Section 707(b)(7). Check the applic		•						
15	 The amount on Line 13 is less than or equal to top of page 1 of this statement, and complete Pa The amount on Line 13 is more than the amount on Line 13 is more than	art V	/III; do not complet	te Part	s IV, V, VI or VI	I.		bes not	arise" at the

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

	Part IV. CALCULATION	N OF CURRENT MONTHLY INCOME FOR § 707(b)(2	2)				
16	16 Enter the amount from Line 12.						
17	Marital adjustment. If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero.						
	a.	\$					
	b.	\$					
	с.	\$					
	d.	\$	\$				
	Total and enter on Line 17						
18	18 Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.						
	Part V. CALCULATION OF DEDUCTIONS FROM INCOME						
	Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)						

Т

19A	National Standards: food, clothing and other items. Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$	
19B	National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the number of members of your household who are under 65 years of age, and enter in Line b2 the number of members of your household who are 65 years of age or older. (The total number of household members must be the same as the number stated in Line		
20A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and household size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	\$ \$	
20B	Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and household size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero. a. IRS Housing and Utilities Standards; mortgage/rental expense b. Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42 c. Net mortgage/rental expense Subtract Line b from Line a. Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 20A and		
21	20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:	\$	
22A	Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation. Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8. □ 0 □ 1 □ 2 or more. If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)		
22B	Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for you public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at <u>www.usdoj.gov/ust/</u> or from the clerk of the bankruptcy court.)		

23	Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) □ 1 □ 2 or more. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.		
	 a. IRS Transportation Standards, Ownership Costs Average Monthly Payment for any debts secured by Vehicle b. 1, as stated in Line 42 c. Net ownership/lease expense for Vehicle 1 	\$ \$ Subtract Line b from Line a.	¢
24	Local Standards: transportation ownership/lease expense; Vehicle the "2 or more" Box in Line 23. Enter, in Line a below, the "Ownership Costs" for "One Car" from the (available at <u>www.usdoj.gov/ust/</u> or from the clerk of the bankruptcy Monthly Payments for any debts secured by Vehicle 2, as stated in Li the result in Line 24. Do not enter an amount less than zero.	e 2. Complete this Line only if you checked e IRS Local Standards: Transportation court); enter in Line b the total of the Average ne 42; subtract Line b from Line a and enter	\$
	 a. IRS Transportation Standards, Ownership Costs Average Monthly Payment for any debts secured by Vehicle b. 2, as stated in Line 42 c. Net ownership/lease expense for Vehicle 2 	\$ \$ Subtract Line b from Line a.	\$
25	Other Necessary Expenses: taxes. Enter the total average monthly e state and local taxes, other than real estate and sales taxes, such as inc security taxes, and Medicare taxes. Do not include real estate or sale	\$	
26	Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.		\$
27	Other Necessary Expenses: life insurance. Enter total average mon life insurance for yourself. Do not include premiums for insurance any other form of insurance.	\$	
28	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations included in Line 44.		\$
29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.		\$
30	Other Necessary Expenses: childcare. Enter the total average monthly amount that you actually expend on childcare - such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.		\$
31	Other Necessary Expenses: health care. Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. Do not include payments for health insurance or health savings accounts listed in Line 34.		\$
32	Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service - such as pagers, call waiting, caller id, special long distance, or internet service - to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.		\$
33	Total Expenses Allowed under IRS Standards. Enter the total of L	\$	

		-	Additional Living Expense Deductions any expenses that you have listed in Li		
	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.				
34	a.	Health Insurance	\$		
	b.	Disability Insurance	\$		
	c.	Health Savings Account	\$		\$
	Total and enter on Line 34. If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below: \$				
35	Continued contributions to the care of household or family members. Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.			derly, chronically pay for such	\$
36	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.			l Services Act or	\$
37	Home energy costs. Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.			\$	
38	Education expenses for dependent children less than 18. Enter the total average monthly expenses that you actually incur, not to exceed \$137.50 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.			\$	
39	Additional food and clothing expense. Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must demonstrate that the additional amount claimed is reasonable and necessary.			\$	
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).				\$
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40			\$	

		Subpart C: Deductions for De	bt Payment		
42	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.				
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?	
	a.		\$	□yes □no	<u>^</u>
43	payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.				\$
	Name of Creditor a.	Property Securing the Debt	\$	e Cure Amount	
				otal: Add Lines	\$
44	Payments on prepetition priority claims. Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 28.			\$	
	Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.				
45	a. Projected average monthly Chapter 13 plan payment. \$ b. Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) X		\$		
46	c. Average monthly administrative expense of Chapter 13 case Total: Multiply Lines a and b Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.			\$	
40	Total Deductions for Debt Laying				φ
		Subpart D: Total Deductions f			.
47		nder § 707(b)(2). Enter the total of Lines			\$
	Part VI.	DETERMINATION OF § 707(1	b)(2) PRESUMP	TION	1
48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))			\$	
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))			\$	
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result.			\$	
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.			\$	
52	 Initial presumption determination. Check the applicable box and proceed as directed. □ The amount on Line 51 is less than \$6,575. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI. □ The amount set forth on Line 51 is more than \$10,950 Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI. □ The amount on Line 51 is at least \$6,575, but not more than \$10,950. Complete the remainder of Part VI (Lines 53 through 55). 			of page 1 of this der of Part VI.	
53				\$	
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.			\$	

	Secondary presumption determination. Check the applicable box and proc	ceed as directed.		
55	□ The amount on Line 51 is less than the amount on Line 54. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.			
55	□ The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.			
	Part VII. ADDITIONAL EXPENSE CLAIMS			
56	66 Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.			
	Expense Description	Monthly Amount		
	a.	\$		
	b.	\$		
	c	\$		
	d.	\$		
	Total: Add Lines a, b, c, and d	1 \$		
	Part VIII. VERIFICAT	TON		
	I declare under penalty of perjury that the information provided in this statement is true and correct. (If this is a joint case, both debtors must sign.)			
57	Date: Sig	gnature:		
		Joe Conversion (Debtor)		