

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

**Procedures for Notice of Unavailability to Attend
§ 341 Meeting and Special Rescheduling of § 341 Meeting Date**

May 4, 2007

Background

Pursuant to 11 U.S.C. § 343, debtors are required to attend the § 341 meeting of creditors. Special rescheduling is allowed by the United States trustee only for “good cause” and if the next available meeting date for the same location and trustee falls within the 35- or 60-day range for holding the meeting pursuant to Fed. R. Bankr. P. 2003. The United States trustee considers good cause to be:

1. serious medical reasons
2. active military duty assignments
3. previously scheduled court hearings
4. unforeseen emergencies (including inclement weather)
5. attorney’s non-court related absences where substitute counsel cannot be obtained or where due to the complexity of the matter, substitute counsel cannot adequately represent the debtor.

The United States trustee allows the Clerk’s office to reschedule the § 341 meeting of creditors when the cause stated in the notice of unavailability is clearly one of the first four reasons and the next scheduled meeting for the location and trustee originally assigned falls within the 35- to 60-day range.

When the reason for unavailability is either reason five or it is one of the first four reasons and the next scheduled meeting for the location and trustee originally assigned does not fall within the 35- to 60-day range, the Clerk’s office refers the matter to the United States trustee for determination.

Process for Debtor’s Attorney

If the § 341 meeting date¹ assigned by the judge/trustee assignment module in CM-ECF is a day when the debtor or the debtor’s attorney is unable to attend the meeting, the attorney for the debtor docket the CM-ECF event, “**Unavailability of Atty for Debtor/Debtor to attend 341 meeting (Notice)**” via the BANKRUPTCY - NOTICES menu. This event creates a text-only entry on the case docket, i.e., it does not require a document pdf file.

The filer enters the name of the person unavailable, the date(s) of unavailability, and the specific reason for not being available.

¹After filing the petition and uploading the creditor.txt file in CM-ECF, the debtor’s attorney runs the judge/trustee assignment (JTA) event which assigns the judge and trustee for the case and schedules the § 341 meeting of creditors.

Process for the Clerk's office

1. If the reason stated in the Notice of Unavailability is one of the first four reasons and the meeting can be rescheduled for the same location and trustee within the 35/60-day range, the Clerk's office will
 - a. Send the notice of §341 meeting originally created by the JTA to give notice to creditors of the filing of the bankruptcy and deadlines.
 - b. Reset the meeting to accommodate the person's schedule.
 - c. Prepare, file and send a Notice of Change to Meeting of Creditors, which automatically updates the meeting date and time.

2. When the reason stated in the Notice of Unavailability is either reason number five or one of the first four reasons and the next scheduled meeting for the location and trustee originally assigned does not fall within the 35- to 60-day range, the Clerk's office will
 - a. Send an e-mail to the United States trustee's office asking for a determination.
 - b. Send the notice of §341 meeting originally created by the JTA to give notice to creditors of the filing of the bankruptcy and deadlines.
 - c. Wait for the United States trustee's office response.
 - d. If the United States trustee's office approves,
 - (1) reset the meeting to accommodate the person's schedule, and
 - (2) prepare, file and send a Notice of Change to Meeting of Creditors.
 - e. If the United States trustee's office does not approve, the UST will advise the attorney and notify the Clerk's office. The Clerk's office will make this entry on the docket:

In response to the notice of unavailability (document number _____), the United States trustee has determined that the § 341 meeting of creditors will not be rescheduled.

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