

**United States Bankruptcy Court
District of New Mexico
Office of the Clerk**

Federal Building and United States Courthouse
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Clerk of Court

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March 8, 2002



Notice to Practitioners

- (1) Notice to Individual Consumer Debtors No Longer Required**
- (2) Drop Box in Clerk's Intake Office**
- (3) Enforcement of Requirement that Creditor Mailing Lists Accompany Petitions**



Notice to Individual Consumer Debtors No Longer Required

Effective March 11, 2002, we no longer require the filing of *Notice to Individual Consumer Debtors* (procedural form B201 or local form NM-102). A notice to individual consumer debtors submitted for filing will be returned to the filer unfiled.

Official Form 1, Voluntary Petition, now includes a declaration by the debtor(s) of awareness of the Bankruptcy Code chapters under which individuals may proceed, as well as a declaration by the attorney for the debtor(s) that this information has been given and explained. Thus, the filing of an additional notice is not necessary. Our local form 3, Notice to Individual Consumer Debtors, revised 02/01/00, will still be available at the clerk's office as a reference document for individual consumer debtors.

Drop Box in Clerk's Intake Office

To provide "no waiting" service to filers who don't have time to wait for a receipt, the Clerk's Office will soon have a drop box available within the intake office in Room 314 at the Albuquerque courthouse. We expect that the inside drop box will be in place by Monday, March 18, 2002.

Papers received in this drop box will be file stamped with the date of the day they are placed in the drop box. Depending on the intake workload, these documents may be processed on that same day or they may be processed on the next business day. (So, if you need endorsed copies or other information about the filings that same day, you should file the papers with the intake clerks and wait for them to be processed.) Either way, the Clerk's Office will see that anything placed in the inside drop box before 8:00 am will be file stamped with the previous business day's date.

This approach will improve the speed of our service, ensuring the safety of funds presented to the Clerk, while still allowing maintenance of appropriate internal controls and accountability mechanisms.

Enforcement of Requirement that Creditor Mailing Lists Accompany Petitions

Section 521(1) of the Bankruptcy Code and FED. R. BANKR. P. 1007(a)(1) require that a creditor mailing list accompany a petition. When the mailing list comes in with the petition, the Clerk's Office is able to immediately and completely process the case, insuring rapid notice of filing to creditors and providing creditors with maximum notice of the meeting of creditors pursuant to § 341(a) of the Bankruptcy Code.

If a mailing list does not accompany the petition or if the submitted list is defective, the Clerk's Office issues a notice of failure to properly submit mailing list. This notice provides that if the complete creditor mailing list is not submitted in a timely manner, then the Notice of Commencement of Case and of Meeting of Creditors (§ 341 notice) will be mailed only to the debtor, attorney for the debtor (if any), the case trustee, and the United States Trustee. If the complete mailing list is submitted subsequently, the attorney for the debtor is then obligated to send the § 341 notice to all creditors and other parties in interest with a form which explains why the creditors are receiving late notice¹. When the mailing list is not properly filed with the petition, notice of the filing of the case is delayed and creditors receive shorter notice of the creditors' meeting and associated deadlines. Such cases also take more time to process, reducing the efficiency of the Clerk's Office, and increase the attorney's work and costs.

At the Clerk's request, the United States Trustee has initiated a procedure to follow through on cases where, after an opportunity to cure the deficiency, the attorney for the debtor(s) or the *pro se* debtor(s) has failed to submit a complete creditor mailing list. The United States Trustee will file a motion to dismiss the case pursuant to 11 U.S.C. § 707(a)(3) or 11 U.S.C. § 1307(c)(9) and FED. R. BANKR. P. 1017(c), and may seek sanctions.

In recent rulings on such motions, the Court has indicated that counsel's assertion that the case was an emergency filing does not excuse the debtor from compliance with the statute and rules. The rulings on these motions have also included sanctions against attorneys who have repeatedly failed to comply with the requirements.

We expect and appreciate your compliance with the case commencement requirements of the Bankruptcy Code and of the Federal Rules of Bankruptcy Procedure. We will be more than happy to assist you with our procedures.

NORMAN H. MEYER, JR., Clerk of Court

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¹NM Form 32, Notice of Meeting of Creditors Given to Additional Parties