

## MEMORANDUM CONCERNING PROCEDURES FOR 341 MEETINGS

**I. Debtors shall appear and submit to examination under oath at the scheduled 341 creditors' meeting:** The debtor(s) must appear and submit to examination under oath at the scheduled 341 creditors' meeting. The initial meeting will be scheduled no fewer than 21 days but not more than 50 days after the order of relief (generally, the filing of the petition) is entered. Generally, the Trustee conducts these meetings at the following locations:

**Beaumont and Lufkin Division Cases:** 5681 Eastex Freeway (Highway 69), Beaumont, Texas. Meetings held at this location will, of all probability, be conducted by video, with the debtor(s), their attorney, and any creditors present being located the Trustee's Beaumont office and the Trustee and/or his staff acting as the hearings officer being located in the Trustee's Tyler office.

**Tyler and Marshall Division Cases:** 110 North College Avenue, Suite 1200, Tyler, Texas. Meetings held at this location will be held "face to face" with everyone involved in the meeting being located in the Trustee's Tyler office.

The debtor(s) and all other parties in interest will receive a notice of the day, time, and location of the meeting through a notice issued by the Bankruptcy Court (Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines).

**II. Documents to be produced to the Trustee at least seven (7) days prior to the scheduled 341 creditors' meeting:** The debtor(s) and their attorney, if any, will receive a copy of the Trustee's initial letter setting forth, among other things, all of the documents as requested by the Trustee to be produced to the Trustee at least seven (7) days prior to the scheduled 341 creditors' meeting in order to allow for sufficient time for the Trustee and/or his staff to review these documents. The debtor(s) and their attorney, if any, should review this initial letter.<sup>1</sup> As the debtor(s) and their attorney knows or should know, some of these documents are required to be produced prior to the 341 creditors' meeting pursuant to the provisions of the Bankruptcy Code and/or the Court's Local Rules. Other documents are being requested by the Trustee in order to allow the Trustee to perform his statutory duties in relation to his administration of these bankruptcy cases.

**A. Consequences of the Debtor(s)' and/or Debtor(s)' attorney's failure to timely produce the documents:**

1. The failure to timely produce these documents may result in the dismissal of the bankruptcy and/or the entry of an initial denial order if the 341 creditors' meeting has not yet been held or concluded when the case comes up for confirmation. If the debtor(s) and/or their attorney do not wish the initial confirmation to be denied (or continued with such continuance counting as a denial), the debtor(s) and/or their attorney will need to be present in Court to request the Court not to deny confirmation due to the 341 meeting not being held or concluded.

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<sup>1</sup> This information is repeated in "Procedures From Date of Filing Through Confirmation" under Trustee's Memorandums on the Trustee's website at [www.ch13tyler.com](http://www.ch13tyler.com).

2. The Trustee reserves the right to reset the initial 341 creditors' meeting in the event that the Trustee has not had sufficient time to review the documents that were not produced at least seven (7) days prior to the scheduled 341 creditors' meeting.

B. No more reminder e-mails from the Trustee concerning missing documents: Under the Trustee's prior procedures, the Trustee's staff spent a large amount of time and effort to send out e-mails reminding the attorneys of the need to produce certain documents. Effective immediately, the Trustee and/or his staff will no longer send out reminder e-mails to the debtor(s)' attorney advising the attorney that the Trustee has not received certain documents in a particular case. The Trustee expects the debtor(s)' attorney and/or the debtor(s) to know what documents need to be produced to the Trustee within the time guidelines as requested by the Trustee.

C. Documents should be forwarded to the Trustee as follows:

**By E-Mail (the preferred method of delivery):** [docs@ch13tyler.com](mailto:docs@ch13tyler.com)

**By FAX: 903-597-1313**

**By mail to the Trustee's correspondence address (least preferred method of delivery): Chapter 13 Trustee, 110 N. College Avenue, #1200, Tyler, TX 75702**

Debtor(s) should, in a timely manner, bring these documents to their attorney who should, in turn, timely forward such to the Trustee. Each e-mail, FAX, or correspondence containing these documents should have, on the reference line, the debtor(s)' name, case number, date of the upcoming 341 creditors' meeting, and a summary of the attached documents.

III. Reset of the Initial 341 Meeting at the Request of the Debtor(s): The debtor(s) and/or their attorney may request that the initial 341 meeting be reset by one of two ways: (a) forwarding an e-mail to the Trustee per the procedures as set forth herein; or (b) by attending the setting of the initial 341 creditors' meeting and requesting a reset date from the presiding officer of the meeting. The initial 341 creditors' meeting will be reset by this office **one time** to the Trustee's next available reset date for the division in which the case is pending. Generally, the Trustee will not reset 341 creditors' meetings more than one time. Absent unusual circumstances, the Trustee will not reset the 341 meeting for a special setting outside his normal reset dates.

**Reset made in person at the setting of the initial 341 creditors' meeting:** The debtor(s) and/or their attorney may appear at the setting of the initial 341 creditors' meeting and request the 341 meeting be reset along with an explanation of why the initial meeting will not be able to go forward. The debtor(s) and/or their attorney will be given the new date and time of the reset 341 creditors' meeting by the hearings officer.

**Request made by e-mail prior to the date of the initial 341 creditors' meeting:** The debtor(s) and/or their attorney should send an e-mail to the Trustee at [docs@ch13tyler.com](mailto:docs@ch13tyler.com) thereby requesting that the initial 341 meeting be reset along with a reason for the need to request the reset of the 341 meeting. Neither the debtor(s)' attorney, his or her representative, nor the debtor(s) need to physically attend the initial 341 creditors' meeting in order to make the request to the Trustee or his hearings officer for

this reset. The debtor(s) and/or their attorney will receive an e-mail back from the Trustee or his staff advising them of the new date and time of the reset 341 creditors' meeting.

A. Format of the E-Mail requesting the reset meeting:

1. Subject line should set forth the case number, name of debtor, and words to the affect "Request for Reset of 341 creditors' meeting scheduled for [date]".
2. Body of the e-mail should contain language requesting that the initial 341 creditors' meeting be reset to the next reset date for the division that the case is pending in **and** the reason that the initial 341 creditors' meeting should be reset.

B. Expectations of the Trustee: In relaxing the procedures for resetting the initial 341 creditors' meeting, the Trustee expects the following:

1. The debtor(s) and their attorney or representative should make every effort to attend the initial setting of the initial 341 creditor(s)' meeting in order to assure the proper and timely prosecution of the debtor(s)' case. The requesting of a reset of the initial 341 creditors' meeting should be the exception and not the standard procedure. If the Trustee believes that this new procedure is being abused, the Trustee reserves the right to re-implement the Trustee's old procedures of requiring certain attorneys and/or their representatives to appear at the scheduled initial 341 meeting to specifically request a reset of the 341 meeting.
2. In the event that the debtor(s) and/or their attorney believe that it is likely that a creditor and/or the creditor's representative will be in attendance at the initial 341 creditors' meeting, the debtor(s)' attorney should make a reasonable effort to contact the creditor and/or the creditor's representative to advise the creditor that the initial meeting will not go forward.
3. The debtor(s) and their attorney or representative should attend the reset 341 creditors' meeting.

C. Exceptions of when the Trustee will not reset the Initial 341 Creditor's Meeting: The Trustee will not reset the initial 341 creditors' meeting based upon the following:

1. The Trustee receives no communication from the debtor(s) or their attorney. The Trustee will immediately file a motion to dismiss the bankruptcy and will not reset such unless the Court so orders.
2. The Trustee will not reset the initial 341 creditors' meeting in the event that the e-mail does not state the reason for need to reset the meeting or if the requesting party at the initial 341 meeting cannot state the reason for the need to reset the meeting.
3. The Trustee will not reset the initial 341 creditors' meeting if the debtor(s) and/or their attorney have not timely filed all of their schedules, statement of financial

affairs, Chapter 13 plan, the means test, and the other documents required by the Bankruptcy Code to be filed unless (a) the Court has extended the time to file such documents and the new deadline has not yet passed or (b) the debtor(s) and/or their attorney have filed a motion for extension of time that has not yet been ruled upon by the Court. If such documents have been filed but were late, the Trustee will not reset the initial 341 creditors' meeting unless the debtor(s) have filed a motion to allow the late filed documents.

4. The Trustee will not reset the initial 341 creditors' meeting if the Trustee believes or suspects that the debtor(s) have filed the bankruptcy in bad faith and that the request for resetting the meeting is actually motivated by the debtor(s)' desire to delay the proper prosecution of the case. For example, if the debtor(s) have a history of filing prior bankruptcies that supports the conclusion that the debtor(s) have no intention of properly prosecuting the current case (failure to appear at 341 creditors' meetings in these previous cases, failure to make any plan payments in these previous cases, etc.), the Trustee will not reset the initial 341 creditors' meeting in the current case.

5. The Trustee will not reset the rescheduled 341 creditors' meeting at the request of the debtor(s) or their attorney. In the event that the debtor(s) fail to appear at the rescheduled 341 creditors' meeting, the Trustee will file a motion to dismiss the case at which time the debtor(s) and/or their attorney will need to be prepared to defend to the Court the failure of the debtor(s) to appear at the initial and rescheduled 341 meetings. The Trustee will only reset the meeting for a third time upon the entry of an order by the Bankruptcy Court. If the Bankruptcy Court appears to be inclined to order the Trustee to reset the 341 creditors' meeting a third time, the Trustee will request the Court to enter a conditional dismissal order in the case thereby allowing for the automatic dismissal of the bankruptcy case pursuant to the relief requested in the Trustee's Motion to Dismiss without further notice or hearing in the event the debtor(s) fail to appear at the third 341 creditors' meeting.

**IV. Continue and/or Reset 341 Meeting by the Trustee:** The Trustee reserves the right to continue and/or reset the 341 creditor(s) meeting in the event that the documents as described above were not received by the Trustee seven (7) days prior to the meeting's date to allow the Trustee an adequate time to review such. The Trustee also reserves the right to continue the 341 creditor(s) meeting in the event that, upon examination of the documents so provided or upon examination of the debtor(s) at the meeting causes the Trustee to request such other documents or information about the debtor(s) affairs that may or may not require additional testimony.

**V. Time and Place of Reset 341 creditors' meeting:** Upon receipt of a request by the debtor(s) and/or their attorney to reset the 341 creditors' meeting and assuming that the request is within the guidelines as set forth herein, the hearings officer will advise the debtor(s) and/or their attorney of the date and time of their reset 341 creditors' meeting either at the initial meeting or by return e-mail, as the case may be. Generally, the 341 creditors' meeting will be reset at 9:00 o'clock a.m. on the

Trustee's next reset date for the division that the case is pending. Since the reset date and time will be announced on the record at the initial 341 creditors' meeting, the Trustee will not object to proceeding with the reset 341 creditors' meeting where the debtor(s) and/or their attorney have failed to give any notice to any party of the reset date.

**Exception: The Trustee would expect the debtor(s) and/or their attorney to give notice to any creditor and/or creditor's representative that the debtor(s) gave notice that the initial 341 meeting would not be going forward and that creditor and/or creditor's representative is not present at the initial 341 meeting to receive the new date and time. See Paragraph III(B)(2) above.**

However, the debtor(s) and/or their attorney will need to make their own independent determination whether such additional notice would be required by the Court if any other party objects to the lack of additional notice of the reset date.

Generally, on the morning of the reset 341 creditors' meeting, the hearings officer will proceed to call the case(s) on a "first come, first serve" basis. In other words, the hearings officer will first call the case(s) of the debtor(s)' attorney that arrives first. When finished with those cases, the hearings officer will proceed to call the case(s) of the debtor(s)' attorney that had arrived second. The hearings officer will precede in this manner until all of the reset 341 creditors' meetings have been called.

#### **VI. Conducting of the actual 341 Meeting:**

A. The Trustee and/or his staff will preside over the meeting as the hearings officer. The hearings officer will "call" the meeting and request the debtor(s) to produce (a) their valid driver's license or other government issued photo identification and (b) their social security card.

1. If the meeting is being conducted by video in Beaumont, the debtor(s) or their attorney should have provided the Trustee with a copy of such pursuant to the Court's Local Rule of Bankruptcy Procedure 4002. Assuming that the copy of such provided to the Trustee is legible, the hearings officer will request the debtor(s) or their attorney to verify that the copies previously provided to the Trustee is a true and correct copy of the originals that are being produced at the meeting. The hearings officer shall then proceed to verify the accuracy of the identity of the debtor(s) and the accuracy of the social security number as disclosed on the debtor(s)' documents as filed with the Bankruptcy Court. At this point, the meeting shall proceed.

2. If the meeting is being conducted in Tyler, the debtor(s) or their attorney will produce the original photo identification and social security card to allow the hearings officer to verify the accuracy of the identity of the debtor(s) and the accuracy of the social security number as disclosed on the debtor(s)' documents as filed with the Bankruptcy Court. At this point, the meeting shall proceed.

3. In the event that photo identification has expired, the hearings officer will conduct the meeting but will not conclude it until such time as the debtor(s) are able to produce to the Trustee valid photo identification(s).

4. In the event that the debtor(s) have no photo identification, valid or not, the hearings officer will not conduct the meeting and, if such is the initial setting, will reset the meeting to allow the debtor(s) an opportunity to obtain such a valid photo identification. In the event that the meeting is a rescheduled meeting, the hearings officer will not conduct the meeting; will not reset the meeting; and will cause a motion to dismiss be generated and filed in the case. In the event that there are creditor(s) and/or other parties in interest present at the meeting and such creditor(s) and/or other parties in interest wish to ask the debtor(s) questions, the hearings officer will confirm with such creditor(s) and/or other parties that the hearings officer has not verified the identification of the debtor(s) but will proceed to administer the oath to the debtor(s) and allow the creditor(s) and/or other parties in interest to ask the debtor(s) questions. At the conclusion of these questions, the hearings officer shall not conclude the meeting.

5. In the event that the debtor(s) have no social security card or other acceptable proof of their social security number (but did have acceptable evidence of the debtor(s)' identification), the hearings officer shall proceed to conduct the meeting but will not conclude it.

B. Once the hearings officer determines to proceed with the meeting, the hearings officer shall administer the oath to the debtor(s) thereby requesting the debtor(s) to swear or affirm that all of the testimony that they give is the truth.

C. Once the oath is given, the debtor(s) will be asked a series of questions as prepared by the United States Trustee's Office that must be asked and answered by all debtor(s). A copy of these questions is provided at both locations of the 341 meeting and the questions are normally asked by the debtor(s)' attorney to the debtor(s). In the event that the debtor(s)' attorney fails to ask the questions or in the event that the debtor(s) are not represented by counsel, the hearings officer will ask the questions to the debtor(s).

D. Once the basic questions are asked of the debtor(s), the hearings officer will follow up with some questions, if any, that the Trustee had in relation to the debtor(s)' Chapter 13 plan, schedules, and other documents as filed with the Court.

E. Once the hearings officer is satisfied, the hearings officer shall allow the creditor(s) and/or other interested parties, if any, a reasonable opportunity to question the debtor(s).

**The Trustee would remind all parties that the time for conducting a 341 meeting is limited (with approximately 15 to 20 minutes scheduled for each meeting). If a creditor and/or a party in interest has more questions than what can reasonably be accommodated with the time allotted and within the format of a 341 creditors' meeting, the creditor and/or a party in interest has the right under the Bankruptcy Rules to conduct a deposition (i.e., an examination under Bankruptcy Rule 2004) of the debtor(s) which allows the creditor and/or party in interest more time to ask such questions. The hearings officer will be the sole judge of whether to give a creditor and/or other party in interest more time to question the debtor(s) at the 341 creditors' meeting.**

F. In the event that the hearings officer is satisfied with the testimony as given at the 341 meeting and assuming that none of the exceptions as set forth herein applies that would prevent the hearings officer from proceeding with concluding the meeting, the hearings officer shall conclude the meeting.

**VII. Obtaining a copy of the Transcript of the 341 Meeting:** The debtor(s), creditor(s), and/or any party in interest may obtain a copy of the audio transcript (if the meeting was conducted in the Trustee's office in Tyler) or an audio and video transcript (if the meeting was conducted in the Trustee's office in Beaumont by video) of the 341 creditors' meeting. To request a copy of such, the debtor(s), creditor(s), and/or party in interest may submit such a request in writing to the Trustee along with a cashier's check or money order in the amount of \$15.00 made payable to "The Standing Chapter 13 Trustee" to the following address:

Chapter 13 Trustee  
110 N. College Ave., Suite 1200  
Tyler, TX 75702

The request must contain the debtor(s)' case number, the date of 341 meeting, and a return address for the Trustee to mail the transcript to. Generally, the Trustee's staff will mail a copy of the transcript to the requesting party the same day that it is received.