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Column

Dicta
Judge Jim D. **Pappas**
Chief U.S. Bankruptcy Judge, District of **Idaho**

*35 WE'VE GOT TO STOP MEETING LIKE THIS

If Andy Rooney were familiar with bankruptcy proceedings, he might well ask "You ever wonder why they hold those **creditors**' **meetings**?" And after 15 years of involvement with the bankruptcy system in various roles, I can't come up with a decent answer to this question. So now that the National Bankruptcy Review Commission is studying needed changes to the Bankruptcy Code, courts or other aspects of the system, and while many will gasp in shock at the suggestion, I would recommend that we do away with mandatory **creditors**' **meeting**, at least in chapter 7 cases. [1]

There aren't any compelling reasons for holding **creditors** **meetings** most of the time. One significant consequence of scheduling these **meetings** is that the court can dismiss those bankruptcy cases where the debtor inevitably fails to appear. From the perspective of a bankruptcy judge, this is a terrific case management tool, so eliminating the **meetings** is certainly not doing my colleagues or me any favor. However, this consideration hardly justifies the hassle and expense to the court, clerk's staff, U.S. Trustee, panel trustee, **creditors** and others who in arranging the **meetings** assume that real bankruptcy cases are in process.

Even assuming the debtor shows up for the festivities, the cost of this procedure to the parties and system exceeds any resulting benefits. There were about 537,551 non-business chapter 7 cases filed in the United States last year. A **creditors**' **meeting** was scheduled by the U.S. Trustee in each case. Obviously time and money would be saved if this task could be avoided, resources that could perhaps be devoted to monitoring the progress of those frequently sluggish reorganization cases, reviewing fee applications or ferreting out bankruptcy fraud.

In most districts, the U.S. Trustee delegates the responsibility of conducting the **creditors**' **meetings** to private panel trustees. Many feel the panel trustee is the primary beneficiary of the **meeting**, and because trustees are not paid by the hour, there is little cost involved in the **meeting**. That is, of course, unless one assumes the trustee's time is worth something.

As a practical matter, these "**meetings**" are a joke. Depending upon the local practice, 10 or more **meetings** are scheduled per hour, [2] guaranteeing that no meaningful examination of the debtor occurs. Trustees review the written schedules to obtain most of the information about a case, and **creditors** are usually the second-best source of intelligence about a debtor's financial affairs. If a trustee does have an unanswered question, a phone call to debtor's counsel or a private **meeting** with the debtor is more apt to bear fruit than a public inquisition. Debtors become understandably cautious when the trustee's questions come on the record.

Creditors appear even more rarely than debtors at the scheduled **meeting**, and typically only if they are interested in several debtors on the same calendar. Their lack of enthusiasm about the **meetings** is also understandable. In posing questions, **creditors** get precious little information from the debtor for their offort. If they do happen upon a productive line of questions to which the debtor is willing to respond without a judge present, debtor's counsel invariably intervenes to chill the interrogation until the presiding officer compels an end to the session. What are the **creditors**' real options in such event? Either schedule the debtor for a Rule 2004 examination or bring the matter to the attention of the court in some other fashion, neither of which are practical choices when the amount of the **creditor's** claim is small.

Not just panel trustees and **creditors** find these **meetings** dissatisfying. For a debtor, little good can result from the experience. A mistaken or, worse yet, false response to a question can cost the debtor a discharge. True and accurate answers, on the other hand, may lead to exactly the same result. Is any real purpose served by the usual exchange that occurs when debtor's counsel inquires of the client: “Are you the debtor named in the bankruptcy petition?”; “Is the information in the schedules accurate?”; and (my personal favorite), “Why did you file for bankruptcy relief?”

Some suggest there are reasons for **creditors**' **meetings** apart from providing parties an opportunity to examine the debtor. For example, some contend that the prospect of testifying at a **creditors**' **meeting** may discourage a debtor from engaging in fraud in connection with the case. If a debtor is willing to file false schedules under penalty of perjury, do we really think the same debtor would not also lie at the **creditors**' **meeting**?

Occasionally, it is said that the requirement to appear at the **meeting** serves to discourage the filing of the bankruptcy. That is, because of the embarrassment associated with public confession of one's insolvency, a debtor is more likely to avoid the “shame” of filing in the first place.

Baloney! Given the number of chapter 7 petitions filed each year, there is little social stigma attached to a filing. Moreover, a bankruptcy petition is a lawful request for relief, not a confession of moral or even financial sin. A debtor's appearance at a **creditors**' **meeting** hardly represents a financial scarlet letter. Bankruptcy filings are public record, and petitioners' names are commonly published in local newspapers and credit reports, which are clearly a more effective public announcement of the event than appearance at the **creditors**' **meeting**.

These **meetings** cost all involved in the bankruptcy process plenty. Court clerks have to notice **meetings**, and panel trustees, their employees, debtors and their lawyers must attend them, usually in rented premises. And what do you suppose the cost is to a debtor for counsel's appearance at the **meeting** in proportion to the total fee? It is probably the largest component since most client interviews and paperwork preparation for filing a bankruptcy petition is performed by counsel's staff. As expenses increase, even more debtors will be forced to forego competent legal advice in favor of a “petition mill” or, even worse, one of those vexing “do-it-yourself” filings, where everyone else in the system is compelled to assist in representing the debtor's interests.

So I say amend the Code to repeal the mandatory **creditors**' **meeting** in nonbusiness chapter 7 cases *unless* requested by a party in interest. The result will be a substantial reduction in the number of useless **meetings** and those **meetings** that do occur will be worthwhile, attended by motivated, focused participants, not rushed to an unsatisfactory conclusion.

In other words, Mr. Rooney, your question is a profound one, and there is no satisfactory justification for the present system. I only hope Rooney's next query isn't “How did some of these people get to be bankruptcy judges, anyway?”

Footnotes

1 For fear of being labeled an absolute heretic, I would concede there may be good reasons to retain **creditors**' **meetings** in the reorganization chapters. Having a pre-arranged opportunity for debtors and **creditors** to **meet**, negotiate and compromise is probably justification enough for the **meetings** without regard to any discovery activities associated with the examination of the debtor.

2 If 10 **meetings** are conducted every hour, each **meeting** takes, on average, six minutes. In theory, then, more than 53,755 hours were expended system-wide in conducting **creditor** **meetings** in non-business chapter 7 cases in 1994.

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