

REFLECTIONS ON A 341 HEARING

It's been 23 years since I last attended a 341 hearing. In the very old days, bankruptcy referees conducted the hearing. Modernly, bankruptcy judges are barred by law from attending. The 341 hearings are now conducted by the case trustees under the general supervision of the U.S. Trustee and the Department of Justice.

Anyway, I had rare business yesterday in the part of the Federal Building where the 341 hearings are heard. As I walked past the hearing room, a sight brought back some pleasant old memories. There was a husband and wife, clearly debtors, going over their case with their bankruptcy lawyer after the hearing. The attorney clearly knew them well from prior meetings in his office. He outlined what they should be doing, told them what would happen next, and gave them reassuring answers to their questions with a warm smile. When they were ready to go their separate ways, they shook hands.

Too many bankruptcy lawyers look upon their clients as mere customers. They think that the 341 hearing is a formality which can be handled by any warm body with a state bar card, so they hire some boob the clients have never seen before to "appear specially" at the 341 hearing. These lawyers should be ashamed of themselves.

Even in a "simple" case, the 341 hearing can be critical. If there is any inaccuracy in the schedules, the 341 hearing is the last chance the debtors have to disclose it voluntarily before questioning by the trustee makes it look like the debtors were hiding something. Questions often arise which require a thorough knowledge of the case to answer properly. More importantly, the 341 hearing is an opportunity for the bankruptcy lawyer, who has not seen his or her clients for about six weeks, to go over the case, make sure creditors have stopped billing and collection activities, and generally make sure that no loose ends like omitted creditors have popped up. In almost every case, no matter how small, there is some potential problem to address.

Even if everything is going smoothly and there are no problems, the 341 hearing is a time for lawyer and client to reconnect and confer. The client should feel secure in the knowledge that his attorney is there to protect him at the hearing. The lawyer should feel the satisfaction that comes from competent and complete representation of a client. Both lawyer and client are cheated when a stranger is hired to "specially appear." It's not illegal, just wrong.