

# OBA Bankruptcy and Reorganization Section Bankruptcy Court Rules that Debtors Must Attend the Meeting of Creditors

By Gary D. Hammond and Jeffrey E. Tate

Individuals who file bankruptcy seek the far reaching protection that the Bankruptcy Code<sup>1</sup> may offer. In order to obtain the benefits of filing bankruptcy, however, individual debtors must comply with the requirements imposed by the Bankruptcy Code. One of the fundamental requirements imposed by the Bankruptcy Code is the debtors' attendance at a meeting held approximately twenty (20) to forty (40) days after the debtors file their bankruptcy petition. This meeting is governed by section 341 of the Bankruptcy Code and is commonly referred to as the "341 Meeting."<sup>2</sup>

After an individual files bankruptcy the United States Trustee's office for the district in which the bankruptcy is filed will set the 341 Meeting. After the 341 Meeting is scheduled a notice is sent to debtors, their counsel, the creditors and the trustee if one is appointed. For various reasons debtors may not be able to attend the 341 Meeting when it is originally scheduled. For example, debtors may be ill, unable to rearrange their work schedule, may be out of town or incarcerated.

Section 343 requires debtors to appear at the 341 Meeting.<sup>3</sup> Despite the mandatory language, however, debtors periodically seek to be excused from attending the 341 Meeting. In a recent case, *In re Agan*, 285

B.R. 324 (Bankr.W.D.Okla. 2002), Judge Richard Bohanon has held that debtors must attend the 341 Meeting.

In *Agan* the debtor claimed that she was not able to attend the 341 Meeting because it interfered with her work. Debtor filed a motion seeking to be excused from attending the 341 Meeting. Debtor stated in her motion that she could not attend the 341 Meeting based on "...work restrictions from her employer." The motion to excuse attendance was unopposed.

Judge Bohanon began his discussion by analyzing sections 341 and 343. As Judge Bohanon correctly noted, section 343 states that a debtor "shall" appear at the 341 Meeting and submit to examination under oath. He also observed that neither the Bankruptcy Code nor the Bankruptcy Rules provide for a waiver of the required attendance.

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Although other sections of the Bankruptcy Code allow bankruptcy judges to exercise discretion based upon "cause" or a similar finding, section 343 does not contain any language allowing a bankruptcy judge to exercise any discretion to waive a debtor's attendance at the 341 Meeting. According to the *Agan* decision, there is "...no apparent reason to doubt that if Congress had

wanted to give bankruptcy judges the power to excuse debtors' attendance at the meeting for some good reason it would have said so."

Judge Bohanon did remark that there might be a limited exception to section 343. According to the Agan court the "...only variance permitted from the result mandated by an absolute statute is in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters.'" Judge Bohanon determined that section 343 is plain and unequivocal and that application of section 343 to the case at bar did not reach an absurd result.<sup>4</sup>

In concluding that the debtor is required to attend the 341 Meeting Judge Bohanon did state that there is one departure from the mandatory requirement imposed by section 343. Individuals who file bankruptcy and are in the military may have some relief. The Soldiers' and Sailors' Relief Act, 50 App. U.S.C. § 521 may apply. Even if applicable, however, "[m]ilitary debtors are not excused from appearing at the meeting of creditors but, upon a proper showing, it may be stayed until they are able to appear."<sup>5</sup>

Many sections of the Bankruptcy Code allow bankruptcy judges discretion in deciding a particular issue. Allowing the debtor to escape the 341 Meeting is not one of those situations, at least with respect to facts similar to *Agan*. Attorneys whose clients file bankruptcy in the Western District of Oklahoma should be aware that their clients might not be able to avoid the mandatory language of 343. If their clients fail to attend the 341 Meeting their case may be dismissed.

1. All statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101 *et. seq.*, unless otherwise noted.

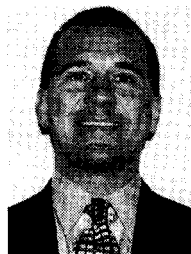
2. The meeting is also referred to as the "First Meeting Of Creditors" as creditors oftentimes attend to ask the debtors and their counsel certain questions.

3. 11 U.S.C. § 343 states in pertinent part that "[t]he debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a)...."

4. Judge Bohanon also noted that if an individual cannot attend the 341 Meeting he or she is ineligible for bankruptcy relief. Possibly recognizing the harshness of the statute's application he stated that "...if it is perceived as bad policy it is a prerogative of the elected representative to modify the Code, not the courts."

5. Judge Bohanon also recognized that certain bankruptcy authorities suggest that, in appropriate cases, debtors might appear by telephone or video conference. And, in the case of disabled debtors the United States Trustee must find ways for them to appear without them being subjected to discrimination. As Judge Bohanon correctly stated, however, those matters were not before him.

#### ABOUT THE AUTHORS



Gary Hammond is a shareholder of Groom & Hammond PC. He focuses his practice on bankruptcy and commercial litigation. Mr. Hammond is the author of numerous articles and a frequent speaker on bankruptcy and commercial litigation topics. Mr. Hammond received

his BBA with an emphasis in finance from OU and his JD from OU College of Law. He is a Chapter 7 Panel Trustee for the Western District of Oklahoma. Mr. Hammond is a member of the Oklahoma County Bar Association, OBA, American Bankruptcy Institute and Commercial Law League of America.



Jeffrey E. Tate is an associate with Groom & Hammond PC, Oklahoma City. His main areas of practice are bankruptcy, commercial litigation, collection law and employment litigation. He received his undergraduate degree from OSU and his JD from OU College of Law. Mr.

Tate is a member of the American Bankruptcy Institute, Commercial Law League of America, Oklahoma County Bar and OBA. He currently serves as Oklahoma County Bar Association YLD Board of Directors Chairperson. He has published bankruptcy-related articles for the OBJ and for Oklahoma Bankers Association publication, *Oklahoma Banker*.