

Pep Talks for First-Time Filers

By: Judge McEwen

Rarely do I concede defeat. My pleas for a pro se law clerk—such as some other bankruptcy courts have—fell on deaf ears over a period of years, even after an internal survey indicated (at least to me) that a pro se law clerk would allow case managers to save time that could be devoted to case managing instead of talking to unrepresented debtors. Rather than give up, I recalled the mantra my former boss drilled into all his lawyers' heads: "Think of a way it can be done." So, recognizing that we have been in the top ten bankruptcy courts in the nation in pro se-filers-per-judge (and in some years at the top spot), I had to think of another way to triage pro se cases early in the case.

Absent a pro se law clerk, who is the next best person to meet with a first-time individual debtor to talk about problem areas and tips for success? Me! Yes, with the help of Denise Garcia, our chamber's Courtroom Deputy, we set an early-case status conference in each case filed by an unrepresented individual who has not filed before, or at least not in the last ten years.

The order we enter is titled Order Setting Status Conference to Discuss How to Make Your Case Successful, and it includes the reason for the setting as "you would likely benefit from participation in a status conference to discuss your purpose for filing bankruptcy and what obligations you must meet to make this case successful." We invite the debtor to participate by phone by contacting Denise and providing her with a telephone number to call at the time of the conference. (We do not make them use Court Call.) We set two or three cases for pep talks at the same time for efficiency's sake. Before each status conference, Denise provides the debtor, by email, a list of tips that I go over with them at their appointed court date. The tips come in two versions, one for a chapter 7 case and a slightly different one for a 13.

When the debtor appears, by phone or in person, I start out by saying that the court date is more of a "pep talk" than a hearing. I tell the debtor that we want them to be successful and that we care that their case is a success. Then, one by one, I go over the tips we sent them.

One of the tips is on the difference between exempt and non-exempt property. That one generates a laugh when I tell the debtor that, as a matter of law, "everything you think you own at this moment is really owned by the trustee, including the shirt you are wearing or the cell phone you are holding." I then go on to explain when he or she can expect his or her "wish list" of property to keep—as listed on Schedule C—to "jump out of the trustee's pile and back into your pile of stuff." Until then, I caution the debtor against selling or giving away any asset without first consulting the

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trustee. I do tell debtors that they can consume what is in the refrigerator and pantry unless they have an expensive wine collection, and that statement draws another chuckle. I also cover the tax-refund-you-get-next-year-for-this-year issue as part of this tip.

An early study of the cases in which the debtors appeared for the pep talk yielded a 100 percent success rate. Maybe that measure is not scientific evidence of a correlation between the pep talk and success, given that many people are driven to get things right regardless. But if I saved one case from getting dismissed or one contested matter on turnover of a tax refund, then that one debtor (or their creditors) got benefit from the pep talk, and that one successful debtor is enough impact for me.

And besides, a valuable byproduct of the pep talk is the enhanced image of the judicial branch in the minds of the debtors. They appreciate that we care. And we need more citizens to recognize and appreciate that our judicial system is a national treasure, right? So, the pep talks are really a success for the Court, too.