

Case Opening – Chapter 7, 11, 12 and 13 Petitions filed on Debtor’s Behalf

Docketing Event

Bankruptcy > Miscellaneous > Voluntary Petition (Chapter 7)
Bankruptcy > Miscellaneous > Voluntary Petition (Chapter 11)
Bankruptcy > Miscellaneous > Voluntary Petition (Chapter 12)
Bankruptcy > Miscellaneous > Voluntary Petition (Chapter 13)
Bankruptcy > Miscellaneous > Personal Health Information Papers

Negative Notice: N/A

Accompanying Orders: N/A

Code and Rule References:

[11 U.S.C. § 301](#)

[Fed. R. Bankr. P. 1004.1](#)

[Local Rule 1004-1.1](#)

[Local Rule 5005-4](#)

Fee: Chapter 7 = \$335, Chapter 11 = \$1,717, Chapter 12 = \$275, Chapter 13 = \$310

Applicable Chapters: 7, 11, 12, 13

Implemented: 1/31/2020

Last Revision: 8/5/2021 2:25:37 PM

Description

An appointed representative, such as a guardian, conservator, or similar fiduciary, may file a voluntary petition on behalf of an infant or incompetent person. An infant or incompetent person without a duly appointed representative may file a voluntary petition by next friend or guardian ad litem.

Local Rule 1004-1.1 provides specific instructions for the filing of a voluntary petition on behalf of an infant or incompetent person.

A voluntary petition filed on the debtor’s behalf by a **court-appointed representative** shall be accompanied by a copy of the appointment instrument or order.

A voluntary petition filed on the debtor’s behalf by a **non-court appointed representative**, such as the holder of a power of attorney, a proposed next friend, or a proposed guardian ad litem, shall be accompanied by a declaration under penalty of perjury by the representative and a copy of the power of attorney, if any. The contents of the declaration must include the information stated under Local Rule 1004-1.1(b)(2). If a representative seeks to be appointed as guardian ad litem or next friend of an incompetent person, the documents required by Local Rule 1004-1.1(b)(3) must be filed. The representative must serve a copy of the petition and declaration on the debtor, all creditors, the United States Trustee, any government entity from which the debtor receives funds and the debtor’s closest relative, if known.

Upon filing papers required under Local Rule 1004-1.1, the Court may set a status conference either to approve the filing or to dismiss the case. Unless the Court orders otherwise, the non-court

appointed representative cannot take further action in the bankruptcy case pending the status conference.

Filing Checklist:

Review the petition to determine if it:

- Is signed by someone other than the debtor;
- If signed by a court-appointed representative, a copy of the appointment instrument or order must accompany the voluntary petition;
- If signed by any other representative, a declaration under penalty of perjury by the representative must accompany the voluntary petition and a copy of a power of attorney, if any;
- Does the declaration contain the following required information:
 - the reason for filing the bankruptcy petition;
 - the representative's name, address, and relationship to the debtor;
 - whether a representative was appointed for the debtor under non-bankruptcy law before the petition was filed;
 - if applicable, whether the power of attorney expressly authorizes the filing of a bankruptcy petition, and whether the debtor was a minor or has been adjudicated an incompetent person prior to the date of the power of attorney;
 - if applicable, why appointment of the representative as next friend or guardian ad litem is necessary, including the reasons why the debtor is unable to file the petition himself or herself or otherwise unable to manage his or her financial affairs;
 - if applicable, why appointment of the representative would be in the debtor's best interest;
 - the fee, if any, that the representative would charge the debtor for serving as next friend or guardian ad litem;
 - the representative's professional and criminal history, if any;
 - the representative's competence to handle the debtor's financial affairs, including the representative's knowledge of the debtor's financial affairs;
 - whether the representative has any current or potential future interest in the debtor's financial affairs; and
 - whether any of the debtor's debts were incurred for the benefit of the representative.
- If the representative seeks appointment as guardian ad litem or next friend on behalf of the debtor, the following documents must be filed:
 - a letter from the debtor's physician regarding the debtor's ability to conduct the debtor's own financial affairs that may be filed under seal as set forth in Local Rule 5005-4 Sealed Papers; and
 - a copy of any power of attorney or other document giving the representative the authority to act for the debtor.
- Is properly served on the debtor, all creditors, the United States Trustee, any government entity from which the debtor receives funds and the debtor's closest relative, if known, and includes a proper certificate of service.