

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF STANDING ORDER # 06-07,
LOCAL RULE OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 08-1

**REGARDING FILING MANDATORY
REAFFIRMATION AGREEMENT
COVER SHEET & CERTIFICATIONS**

WHEREAS, the Court is in the process of revising its Local Rules to incorporate the numerous standing orders that were issued after the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) and to address other issues of local practice and procedure created primarily by the passage of BAPCPA; and

WHEREAS, in its December 14, 2007 draft of the proposed revisions of the Local Rules, the Court included a new local rule requiring that a separate certification of compliance with the provisions of 11 U.S.C. § 524 be filed with each reaffirmation agreement, see Proposed Vt. LBR 4008-1(b) (Dec. 14, 2007 draft); and

WHEREAS, the Judicial Conference’s Advisory Committee on Bankruptcy Rules is currently proposing a mandatory reaffirmation agreement cover sheet (“Official Form 27”)¹ to be filed that

- (1) “requires the disclosure of financial information necessary for the court to make its determination under § 524(m) of the [Bankruptcy] Code as to whether the reaffirmation agreement creates a presumption of undue hardship,” Committee Note (Form 27);
- (2) was subject to a public comment period that ended on February 15, 2008;
- (3) is subject to final approval by the Advisory Committee on Bankruptcy Rules, the Standing Committee, the Judicial Conference, and the Supreme Court; and
- (4) is likely to be mandatory on a national level as of December 1, 2009; and

WHEREAS, after exploring with the Vermont bankruptcy bar the possibility of using a modified version of proposed Official Form 27, the Court has decided to implement the proposed national version of Official Form 27, with one modification, for a six-month trial period beginning March 17, 2008; and

WHEREAS, the one modification to Official Form 27 the Court shall require is the addition to the “Filer’s Certification” that the reaffirmation agreement is in compliance with 11 U.S.C. § 524; thus, the “Filer’s Certification” shall read: “I _____ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified in this Reaffirmation Agreement Cover Sheet and complies with the requirements set forth in 11 U.S.C. § 524;” and

WHEREAS, by implementing use of Official Form 27 now, the Court seeks to (a) prepare the Vermont bankruptcy bar for the likely mandatory implementation of Official Form 27, (b) improve the currently onerous process of having a reaffirmation agreement approved, (c) reduce the number of appearances debtors will need to make, and reduce the number of hearings it will need to hold, prior to

¹ For convenience, in this Standing Order the Court shall refer to the proposed Official Form 27 as “Official Form 27”.

approval of reaffirmation agreements, and (d) generally streamline its ability to make its statutorily required determination under 11 U.S.C. § 524(m); and

WHEREAS, to facilitate satisfactory completion of Official Form 27, the Court has drafted a corresponding instruction sheet that is available for guidance to the party (or parties) who will complete Official Form 27.

THEREFORE, IT IS HEREBY ORDERED that any party filing a reaffirmation agreement must complete, and then file with that reaffirmation agreement, Official Form 27 with the modified “Filer’s Certification” in order to bring the reaffirmation agreement before the Court for its approval; and

IT IS FURTHER ORDERED that this change is effective **April 1, 2008**.

IT IS FURTHER ORDERED that proposed revised Vt. LBR 4008-1(b) shall now read:²

(b) Separate Cover Sheet & Certification Required. Together with Form 240A, a separate cover sheet, “Official Form 27,” shall be completed and filed. See Vt. LB Form P-3. The completed and filed Official Form 27 shall include the modified “Filer’s Certification” which shall read: “I _____ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified in this Reaffirmation Agreement Cover Sheet and complies with the requirements set forth in 11 U.S.C. § 524.” A Form 240A reaffirmation agreement that does not include this mandatory cover sheet shall be considered defective; in such an instance, the Clerk’s Office will send the filer a deficiency notice. (**Note:** The Court has created an instruction sheet to assist the filer(s) in successfully completing Official Form 27. See Vt. LB Form P-4.) The Form 240A reaffirmation agreement and Official Form 27 shall be served upon the debtor, the debtor’s attorney, if any, and the Office of the U.S. Trustee.

IT IS FURTHER ORDERED that if, in conjunction with filing Official Form 27, a debtor seeking to overcome a presumption of undue hardship files a written statement that identifies a third party as the additional source of funds for making the payments under the reaffirmation agreement, then the third party must either appear and present testimony affirming his/her commitment to provide such additional funding or file an affidavit or certification made under penalty of perjury indicating: (1) the third party’s relationship to the debtor; (2) the third party’s ability and willingness to assist the debtor; (3) that the assistance of the third party is a voluntary commitment and is not a guarantee or promise of payment in favor of the creditor; and (4) the third party’s understanding that his/her assistance may be a basis for the Court’s approval of the reaffirmation agreement.

IT IS FURTHER ORDERED that this new requirement is effective **April 1, 2008**.

IT IS FURTHER ORDERED that this new requirement shall be included as an additional paragraph to proposed Local Rule Vt. LBR 4008-1. Subject to comments and final approval, this paragraph shall read:

Additional Requirement When Debtor Identifies a Third Party as the Additional Source of Funds. If a debtor seeking to overcome a presumption of undue hardship files a written statement that identifies a third party as the additional source of funds for making the payments under the reaffirmation agreement, then the third party must either appear and present testimony affirming his/her commitment to provide such additional funding or file an affidavit or certification made under penalty of perjury indicating: (1) the third party’s relationship to the debtor; (2) the third party’s ability and willingness to assist the debtor; (3) that the assistance of the third party is a vol-

² This proposed Local Rule is subject to final approval.

untary commitment and is not a guarantee or promise of payment in favor of the creditor; and (4) the third party's understanding that his/her assistance may be a basis for the Court's approval of the reaffirmation agreement.

Attached to this Standing Order are: (1) a fillable PDF version of Official Form 27 with the modification to the "Filer's Certification"; and (2) the Court's corresponding instructional sheet. They shall also be available on the Court's website, www.vtb.uscourts.gov, under the "Legal Resources Page".

SO ORDERED.

Rutland, Vermont
February 22, 2008

A handwritten signature in black ink, appearing to read "Colleen A. Brown". The signature is written in a cursive style with a horizontal line underneath the name.

Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**INSTRUCTION SHEET TO
“OFFICIAL” FORM 27,
REAFFIRMATION AGREEMENT
COVER SHEET & CERTIFICATIONS**

**SUPPLEMENT TO
STANDING ORDER # 08-1
(A/K/A VT. LB FORM P-4)**

In conjunction with Standing Order # 08-01, this instruction sheet is provided to assist the filer(s) in successfully completing Official Form 27, the cover sheet that must be filed with each reaffirmation agreement filed in this District. Use of this instruction sheet is optional, but strongly encouraged to help reduce the necessity of debtors (and possibly others) from having to appear at evidentiary hearings as a prerequisite for obtaining approval of a reaffirmation agreement. These instructions explain how to fill out each item, check box, and certification of Official Form 27.

Enumerated Items:

Item 1 – “Amount of debt as of commencement of case.” Fill in the dollar figure reported in Schedule D of the Debtor’s petition for the Creditor’s claim that the Debtor now seeks to reaffirm.

Item 2 – “Describe collateral, if any, securing debt.” Where the Debtor has pledged some kind of property as a condition for receiving a loan from the Creditor, the pledged property is called the “collateral”; it secures the Creditor’s loan (or “debt”) that the Debtor is seeking to reaffirm. A description of that property (or collateral) must be provided here. So, for example, if a Debtor has pledged a car in exchange for the Creditor’s loan, a description of the car’s make, model, year, VIN, and overall condition should be provided. Similar identifying information should be provided for other collateral so that the Court can easily identify the asset in the Debtor’s petition and assess its value.

Item 3 – “Amount of debt being affirmed.” This is the dollar figure reported in the Disclosure Statement of the Reaffirmation Agreement. It is found at the bottom of the first page of Form 240A. This “amount of debt” includes all fees and costs (if any) that have accrued as of the date of the reaffirmation agreement.

Item 4 – “Repayment term of reaffirmation.” The “term” is simply the length of the loan; one may think of it as the total number of payments the Debtor must make to the Creditor to pay off the loan. Under the reaffirmation agreement, the term may be longer than the original term of the Creditor’s loan. This information is found on page 3 of Form 240A

Item 5 – “Monthly payment under reaffirmation.” This is the monthly loan payment due to the Creditor under this reaffirmation agreement. This amount may not be the same amount that the Debtor had been paying the Creditor in the past. This information is found on page 3 of Form 240A.

Item 6 – “Annual percentage rate under reaffirmation.” This is the rate of interest the Creditor is charging the Debtor for making the loan; it is a percentage figure. The percentage rate on the loan may be fixed or variable. The “Annual Percentage Rate” to be reported here is found on page 2 or 3 of Form 240A. Note that this interest rate may not be the same rate as what the Creditor was originally charging the Debtor under the original loan.

Item 7 – “Debtor’s monthly income at reaffirmation.” Provide the Debtor’s most current income information; it may be more or less than the Debtor’s monthly income when s/he filed for bankruptcy relief. This figure is calculated by adding together the Debtor’s take-home pay and all other income received. It must be the same dollar figure the Debtor reports in Part D of Form 240A (on page 8).

Item 8 – “Income from Schedule I, line 16.” Refer to the Debtor’s Schedule I (filed with the bankruptcy petition). Copy the dollar figure found on line 16 of Schedule I onto the line for Item 8.

Item 9 – “Explain any difference in the amounts set out on lines 7 and 8.” The Court requires a specific explanation. So, if the Debtor’s monthly income is currently more than what it was on the date the bankruptcy case was filed, the Debtor must identify in Item 9 all new sources of income and the monthly amounts received from each source. Or, if the Debtor’s monthly income is now less than what it was when the Debtor filed bankruptcy, the Debtor must explain the reason for this reduction and specify the amount of the monthly reduction.

Item 10 – “Debtor’s monthly expenses at reaffirmation (without this reaffirmed debt).” Here, the Debtor must report all his/her current monthly expenses except for the monthly payment s/he plans to make under this reaffirmation agreement. (So, **do not** include the monthly payment that will be due under the this reaffirmation agreement.) This must be the same dollar figure the Debtor reports in Part D of Form 240A (on page 8), as his/her “actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements,” if any.

Item 11 – “Current expenditures from Schedule J, line 18.” Refer to the Debtor’s Schedule J (filed with the bankruptcy petition). Copy the dollar figure found on line 18 of Schedule J onto the line for Item 11.

Item 12 – “Explain any difference in the amounts set out on lines 10 and 11.” The Court requires a specific explanation. So, if there is a difference between the Debtor’s expenses on the date the bankruptcy petition was filed and the Debtor’s current expenses, at a minimum, the Debtor must identify those categories of expenses that have changed, explaining the reason(s) for the change(s), and stating the amount of the change(s) in each category of expenses. For example, it is **not sufficient** to state, “I have reduced my discretionary spending by \$100.” Rather, a sufficient explanation would be, “I have reduced my discretionary spending by decreasing entertainment expenses by \$60, dry cleaning expenses by \$15, and gift expenses by \$35.”

Check Boxes:

Check the **first box** if the dollar figure in Item 10 is more than the dollar figure in Item 7. The Bankruptcy Code’s presumption of “undue hardship” has been triggered requiring the Court to review the facts and figures that give rise to this “hardship” and to decide whether to approve the reaffirmation agreement. See 11 U.S.C. § 524(m).

Note: A Debtor may provide a written statement to the Court explaining how s/he can afford to make the reaffirmation payments, even though s/he appears to have insufficient income to make the payment. If the Debtor chooses not to provide this statement, or if the statement is insufficient, the Debtor will be required to appear at a hearing in order to obtain Court approval of the reaffirmation agreement. If the written statement identifies a third party as an additional source of funds for making those payments, then either the third party must testify or file an affidavit or certification made under penalty of perjury indicating the third party’s:

- relationship to the Debtor;
- ability and willingness to assist the Debtor;

- assistance is voluntary and is not a guarantee or promise of payment to the Creditor; and
- understanding that his/her assistance may be a basis for the Court's approval of the reaffirmation agreement.

Check the ***second box*** if the Debtor was not represented by an attorney in negotiating the reaffirmation agreement. In this District, if an attorney charges a Debtor a flat fee for representation in a Chapter 7 case, negotiating reaffirmation agreements is a service covered by the fee and the attorney cannot charge an additional fee to assist the Debtor with any reaffirmation agreement. See Vt. LBR 2016-1(f)(2)(A). Therefore, a Debtor should only check this box if s/he is not represented by an attorney in the bankruptcy case.

Certifications:

“Filer’s Certification” – In this District, the “Filer’s Certification” has been modified to include language that the reaffirmation agreement meets the requirements set out in 11 U.S.C. § 524. Thus, the filer must certify that the agreement attached to the cover sheet is a true and correct copy of the reaffirmation agreement under consideration and that the reaffirmation agreement meets the requirements set out in § 524. The party filing the reaffirmation agreement and the cover sheet (whether the Creditor, Debtor or another party) must complete and sign this certification. A cover sheet without an executed “Filer’s Certification” shall be considered deficient and will not be processed by the Court.

“Debtor’s Certification” – The Debtor must execute the “Debtor’s Certification.” A cover sheet without an executed “Debtor’s Certification” shall be considered deficient and will not be processed by the Court.

Questions

Any questions about this instruction sheet, or the deficiency procedure, should be directed to Kathleen Ford, Chief Deputy Clerk, at (802) 776-2003; however, neither she nor anyone in the Clerk's Office is permitted to give legal advice.