

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
STEVEN ERIC HUFFMAN) CASE NO. 04-15677
)
)
Debtor)

ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on July 18, 2005

The local rules of this court require that “every application, motion, or other request for an order from the court, including motions initiating contested matters, shall be filed separately, except that requests for alternative relief may be filed together.” N.D.Ind.L.B.R. B-9013-1(a). In this chapter 7 case the trustee has filed a motion to compel attendance at § 341 meeting, or, in the alternative, motion to dismiss.

Despite the motion’s title, the court wonders whether it really is a request for alternative relief. That type of request generally involves choosing between two mutually exclusive remedies for the conduct complained of. A quintessential example of a request for alternative relief would be a motion to convert or dismiss a case. See, 11 U.S.C. § 1307(c); 11 12(b). There, the same underlined conduct authorizes the court to do one of two different things – and it cannot possibly do both. That does not seem to be the case where the trustee’s present motion is concerned. The court could, potentially, enter an order compelling the debtor to attend a meeting of creditors and providing that the failure to do so would result in the dismissal of the case. This would be cumulative not alternative, relief.

The underlying basis for each component of the trustee's dual request is different. Dismissal of the case is authorized by § 707(a) of the United States Bankruptcy Code, while an order compelling the debtor's attendance at the meeting of creditors is more properly the subject of Bankruptcy Rule 2005. While Bankruptcy Rule 7018 authorizes the joinder of multiple claims in a single adversary proceeding, that rule does not apply to contested matters. Fed.R.Bankr.P.Rule 9014(c). The trustee's two requests are also subject to different procedures. While both require some kind of hearing, only the debtor needs to be apprised of the hearing at which the court will consider compelling its attendance. All creditors and parties in interest, on the other hand, are entitled to at least twenty (20) days notice of the hearing to consider whether the case should be dismissed. Fed R.Bankr.P. Rule 2002(a)(4).

In light of the forgoing, it appears that the trustee's motion to compel attendance at § 341 meeting or, in the alternative, motion to dismiss has been filed in contravention of Local Bankruptcy Rule B-9013-1(a). The trustee shall have eight (8) days from this date within which time to amend its filing so that it complies with the local rules of this court or to show cause why it should not be required to do so. The failure to do so will result in the present filing being stricken without further notice.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court