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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**DETLEF K. SCHLIEPER and
LAURA L. SCHLIEPER,**

Debtors.

Case No. **20-90039-BPH**

O R D E R

At Butte in said District this 31st day of March, 2020.

In this Chapter 7¹ case, the Chapter 7 Trustee filed a Motion to Reset § 341 Meetings set for April 14, 2020, and Assignment of Telephonic Call in Number (ECF No. 17) (“Motion”).

The Motion was granted on the same day it was filed, March 25, 2020. *See* Order at ECF No.

18. The Motion was consistent with General Orders 2020-4 and 2020-5 (“General Orders”).

One premise underlying the General Orders was, “Permitting these scheduled § 341 Meetings to go forward at the Courthouses creates an unacceptable risk of exposure to the Virus to the Court Security Officers, case Trustees, individual debtors, creditors, attorneys and other Court personnel.”

Debtors objected to the Court’s Order (“Objection”) at ECF No. 20, arguing that, “to the extent the Court’s Order approves the ‘UST Directives’ constitutes an impermissible intrusion on the attorney client relationship, an inappropriate extension of executive branch control over the independence of lawyers, an unwarranted extension of the provisions of § 521(h) to the private

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.

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bar and presents other problems as noted below.” Debtors request reconsideration of the Order pursuant to Local Bankruptcy Rule 9013-1(g)(2).

The Objection includes a series of subsections, each of which sets forth a short argument.

The arguments specifically focus on instructions included by the UST that provide as follows:

- Debtors must provide valid government identification (such as a valid Montana Driver’s License) and proof of their social security number (such as an original social security card) to their attorney prior to the meeting of creditors and show their identification to their attorney via a video communication system (such as Skype or Facetime, etc.) during the meeting of creditors.
- During the meeting of creditors, Debtors’ attorneys will: (i) confirm on the record that they have reviewed the debtor’s identification (stating what form of identification was reviewed) and whether that the name on the identification matches the name on the petition and whether the picture and identifying information on the identification matches the debtor; and (ii) confirm on the record that they have reviewed proof of the debtor’s social security number, what form of proof of social security number was reviewed, and whether the social security number on it matches what was reported to the court in the debtor’s bankruptcy case.

ECF No. 20. Debtors argue that requiring their counsel to perform these ministerial acts and then further obligating him to make representations on the record: (i) constitutes an impermissible delegation of the Trustee’s authority; (ii) impermissibly redefines the scope of the attorney-client relationship between debtor and counsel; and, (iii) are tantamount to an extension of executive branch control over the private bar.

Debtors have an affirmative obligation to provide a document that establishes their identity, if such a document is requested by the UST, or case trustee. § 521(h). Further, each individual debtor is required to bring to the meeting of creditors under § 341, a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and, evidence of social security number(s), or a written statement that such documentation does not exist. Rule 4002. Ordinarily in this District, § 341

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meetings in Chapter 7 cases occur in person at the Courthouses and the provision of identification by the debtor to the trustee is a simple ministerial task. As a result of the pending health crisis, § 341 meetings no longer occur in person at the Courthouses, consistent with Center for Disease Control (“CDC”) and UST guidance. Notably, the judiciary has also adopted measures that reflect the current crisis.²

If viewed in a vacuum, without regard to the existing circumstances, the UST instructions requiring Debtors to furnish valid government identification and proof of their social security number (such as an original social security card) to their attorney, prior to the meeting of creditors, and that counsel confirm that the information provided is consistent with the information previously provided in the case might require the scrutiny Debtors have applied in their Objection. However, under the existing circumstances this Court is not persuaded that the UST instructions are an involuntary expansion of the scope/alteration of the attorney client engagement defined by the lawyer and client or alters the lawyer’s role in the attorney client relationship in fundamental ways, that the UST instructions are an impermissible delegation of authority, that the instructions impose on the private bar duties that are inconsistent with the Code, or reflects the slow creep of executive branch control over the private bar.

Notably, Debtors objections are entirely speculative and consist of arguments that are rhetorical. Consider:

Clients were not told at the outset of the engagement that their own lawyer would be placed in a potentially adverse position to them. What happens if the debtor client shows up with an illegible or damaged identification or SSN document? The lawyer is in the position to exercise discretionary authority to determine if the document meets the standards expected by the UST? There has been no notice, no training, no guidance, just a directive that “you will do this.” If the tasks in the UST directive are not done correctly or to the UST’s liking, will there be oversight and enforcement? Who is going to advocate

² On March 31, 2020, the Judicial Conference of the United States temporarily approved the use of video and teleconferencing for civil proceedings during the COVID-19 national emergency.

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on behalf of the client that “this is good enough”? Vigorously advocate while simultaneously being the gate keeper beholden to the USTP?

ECF 20. Or, consider:

In the UST Directive, the request is implicitly made and then the time and financial burden of compliance with that request is assigned to debtor’s counsel. Whoa. Wait a minute. Look Mr. US Trustee, if you want to exercise your discretion under § 521(h), then you step up to the plate and take responsibility for the time, cost and oversight to implement your discretionary decision.

Id. And,

If the USTP can, by mere directive, control the conduct of the private bar and order it to do tasks that are explicitly assigned to the USTP or a panel trustee by statute and the USTP’s own handbooks, where does it stop? What is coming next? How far is this going to go? Exigent circumstances have been used by the executive branch to water down the Bill of Rights and over-rule the rule of law on numerous occasions in the nation’s history. All were a mistake and not warranted by the rule of law in an orderly society.

ECF 20. Finally,

If the UST directive wants to make a clerk or errand boy out of the private bar and police client compliance with USTP duties, that is incompatible with the basic role of the lawyer, the lawyer’s fundamental ethical duties and fiduciary duty of undivided loyalty.

ECF No. 20. Contrary to Debtors’ arguments or characterizations of the instructions, debtor’s counsel are simply being asked to confirm that they have reviewed appropriate identification, confirm that the individuals appearing at the § 341 Meeting are the same individuals that filed the case, and that the information provided to counsel before the § 341 Meeting by debtors “matches what was reported to the court in the debtor’s bankruptcy case.”³

Having considered the existing circumstances, the UST instructions appear to reflect an effort by the UST that allows cases to proceed expeditiously and economically, despite the existing health crisis, and are consistent with guidelines that discourage and prohibit social

³ Having just filed Official Form 121 on March 4, 2020, compliance with the instruction by counsel does not strike the Court as nearly as onerous as Debtors suggest.

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interaction.⁴ Further to the extent Debtors' arguments hinge on their interpretation of Rule 4002, the parties are reminded that the "rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding." Rule 1001.

Under the immediate circumstances the Court expects counsel and all parties to temper their advocacy with common sense, practicality, and extend the benefit of the doubt to any opposing party that seeks an accommodation, including the UST and panel trustees. Motions and pleadings that do not further the just, speedy, and inexpensive determination of every case and proceeding, or that ignore the realities the parties and Court are facing are not welcome. If compliance with the UST instructions proves to be the herculean task counsel suggests that it will be, or counsel chooses to take a stand on principle and refuses to assist the assigned trustee in any manner that would permit the assigned trustee to satisfy Rule 4002(b), counsel shall simply explain that to the assigned Trustee at the § 341 Meeting. Such an approach would disappoint the Court and be inconsistent with the Court's expectations of counsel and the parties.

Finally, the Court would encourage counsel and the assigned trustee to work together and endeavor to find a solution prior to or following the § 341 Meeting that does satisfy Rule 4002(b). If after such efforts, the assigned trustee harbors a concern that Rule 4002(b) has not been satisfied and the individuals attending the § 341 Meeting are not the debtors in the case, the Court will consider any real controversies that arise at the § 341 Meeting by appropriate motion.⁵

IT IS ORDERED that Debtors' Objection to the Chapter 7 Trustee's Motion at ECF No.


⁴ Presently, Montana is subject to a shelter in place Order issued by the Governor, and individuals traveling to or returning to Montana must self-quarantine for two weeks.

⁵ If in fact the individuals that appear at the § 341 Meeting are not in fact the debtors that filed the case, compliance with Rule 4002(b) will be the least of the parties and Court's concerns.

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17 is overruled; and, Debtors' Motion for Reconsideration at ECF No. 17 is denied. The hearing noticed for May 7, 2020, at 9:00 AM at MISSOULA HEARINGS 201 E. BROADWAY, MISSOULA, MT is vacated.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana