Good Faith:
What's Left of It?

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2010 Educational Materials

<u>Dismissal for Lack of Good Faith in Chapter 7 Cases</u>

Section 707 of the Bankruptcy Code (United States Code, Title 11) deals with dismissal of a Chapter 7 case. As originally enacted in 1978, §707 consisted only of what is currently subsection (a), including only parts (1) and (2), providing for dismissal of a case "for cause" including unreasonable delay by the debtor, or failure of the debtor to pay certain charges and fees. Notice and a hearing were required, and dismissal was permissive.

In 1984, Congress, in an effort to prevent abuse of the bankruptcy system, designated then existing §707 as §707(a) and added what is currently part (b)(1) as subsection (b), providing that a case could be dismissed if the court found that "the granting of relief would be a substantial abuse of the provisions of this chapter." This subjective standard provided that only the United States Trustee or the Court could move for such a dismissal. Most importantly, it provided a presumption in favor of granting Chapter 7 relief to the debtor.

In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), the most notable change of which was the addition of parts (2)-(7) to §707(b). These additions to the Code have created a mechanical and objective test for establishing a presumption of abuse. The Court nevertheless retains discretion. Even where your client's financials do not give rise to presumptive abuse under §707(b)(2), or where you are able to effectively rebut that presumption, the Court shall, pursuant to §707(b)(3), consider whether the petition was filed in "bad faith", or whether abuse is evidenced by "a totality of the circumstances".

Section 707(b)(1) is still the mainstay provision which authorizes dismissal of a case for "abuse." A motion to dismiss a case for filing a petition in bad faith (or lacking good faith) is authorized under §707(b)(3)(A) or §707(a).

Consumer debt or business debt - §707(b)(1)

The first analysis of the debtor's situation should be to determine whether or not his or her debts are "primarily consumer debts." Section 707(b)(1) provides that a Court may dismiss a case "filed by an individual debtor under this chapter whose debts are primarily consumer debts ... if it finds that the granting of relief would be an abuse of the provisions of this chapter." If, therefore, the debtor's debts are not primarily consumer debts, then no further analysis under §707(b) must be done.

11 U.S.C. §101(8) defines "consumer debt" as "debt incurred by an individual primarily for a personal, family or household purpose." Consumer debt is distinguished from business debt, the latter of which is incurred with a "profit motive." <u>Stewart v. United States Trustee (In re</u>

Stewart), 175 F.3d 796, 806 (10th Cir.1999); *accord* Cypher Chiropractic Center v. Runski (In re Runski), 102 F.3d 744, 747 (4th Cir.1996); In re Booth, 858 F.2d 1051, 1054-55 (10th Cir.1990); In re Miller, 335 B.R. 335, 339 (Bankr.E.D.Pa.2005). To determine whether a debt is a consumer debt, the Court must examine the purposes for which the debt was incurred. Consumer United Capital Corporation v. Straughter (In re Straughter), 219 B.R. 672, 681-82 (Bankr.E.D.Pa.1998).

Nothing in §101(8) suggests that a debt meeting this definition nonetheless mutates into a non-consumer debt merely because it is secured by real property. Rather, under the plain language of §101(8), a debt incurred by an individual primarily for a personal, family, or household purpose is a consumer debt regardless of whether it is secured or unsecured. The Court must (read should) follow the plain statutory language. Indeed, the majority of courts have held that a debt secured by a debtor's real property is a consumer debt if it is incurred primarily for a personal, family, or household purpose. *See, e.g.,* Price v. United States Trustee (In re Price), 353 F.3d 1135, 1138 (9th Cir.2004) ("[T]he statutory scheme so clearly contemplates that consumer debt includes debt secured by real property that there is no room left for any other conclusion." (internal quotation marks omitted)); Zolg v. Kelly (In re Kelly), 841 F.2d 908, 912 (9th Cir.1988) ("A literal reading of the [Bankruptcy] Code's simple language leads inexorably to the conclusion that consumer debt includes secured debt."); Cox v. Fokkena (In re Cox), 315 B.R. 850, 855 (8th Cir. BAP 2004) ("With respect to debt secured by real property, if the debtor's purpose in incurring the debt is to purchase a home or make improvements to it, the debt is clearly for family or household purposes and fits squarely within the definition of a consumer debt under § 101(8)."); Morris v. Zabu Holding Co. (In re Morris), 385 B.R. 823, 829 (Bankr.E.D.Va.2008) (holding that a debt incurred for a personal, family, or household purpose is a consumer debt even though it is secured by the debtor's real property); In re Naut, 2008 WL 191297 at *5 (Bankr.E.D.Pa. Jan. 22, 2008) (same); In re Hoffner, 2007 WL 4868310 at * 1 (Bankr.D.N.D. Nov. 21, 2007) (same); In re Davis, 378 B.R. 539, 546-47 (Bankr.N.D.Ohio 2007) (same); King v. Wells Fargo Bank, N.A. (In re King), 362 B.R. 226, 230 (Bankr.D.Md.2007) (same).

Courts have adopted varying approaches to defining whether debts are "primarily" consumer debts as opposed to business-related or other non-consumer debts. The majority view is that a debtor's liabilities are primarily consumer debts if the aggregate dollar amount of such debts exceeds 50% of the debtor's total liabilities. *See* Hoffner, 2007 WL 4868310 at *2 ("The majority of courts that have considered the issue have found that 'primarily' means more than half of the total dollar amount owed."). *See also* Stewart v. United States Trustee (In re Stewart), 175 F.3d 796, 808 (10th Cir.1999) (holding that a debtor has "primarily consumer debts" if the aggregate amount of consumer debt is more than 50% of the total debt); Kelly, 841 F.2d at 913 (holding that when "more than half ... of the dollar amount owed is consumer debt, the statutory threshold is passed"); Naut, 2008 WL 191297 at *7 (same); In re Beacher, 358 B.R. 917, 920 (Bankr.S.D.Tex.2007) (same); In re Victoria, 389 B.R. 250, 254 (Bankr.M.D.Ala.2008) ("primarily" consumer debt means more than half). If the dollar amount of debtor's consumer debt is greater than the dollar amount of debtor's non-consumer debt, then the case is subject to the provisions of § 707(b).

The profit motive test simply involves ascertaining whether the debt was "incurred with an eye toward profit." *See* In re Davis, 378 B.R. 539, 547 (Bankr.N.D.Ohio 2007) (citing In re Booth, 858 F.2d 1051, 1055 (5th Cir.1988); In re Almendinger, 56 B.R. 97 (Bankr.N.D.Ohio 1985)). A debt incurred with a profit motive clearly is not a consumer debt. However, there are other types of debt that are not business debts, but which also fall outside the category of consumer debt. In IRS v. Westberry (In re Westberry), 215 F.3d 589, 593 (6th Cir.2000), the court held that income taxes are not consumer debt for the purpose of enforcing the co-debtor stay under 11 U.S.C. § 1301. The court based its decision on findings that the debt was not incurred voluntarily; it was incurred for a public, rather than a personal purpose; the taxes were assessed on earning money, not spending it; and there was no extension of credit involved in the transaction. Id. The court pointed out that the Bankruptcy Code treats tax debts quite differently from consumer debts. It also noted that the language of the statute was plain, thereby eliminating the need to go beyond the language of the statute to divine meaning, or intent, from the use of the phrase "consumer debt."

In summarizing the context in which § 707(b)(1) was passed, and the policy rationale motivating its enactment, the Sixth Circuit has explained:

> Section 707(b) was among the consumer credit amendments to the Bankruptcy Code enacted in 1984. These amendments were passed in response to an increasing number of Chapter 7 bankruptcies filed each year by non-needy debtors. Under prior practice, aside from potential § 523(a) exceptions, § 707(a) dismissals, and § 727(a) objections to discharge, debtors enjoyed an unfettered right to a "fresh start" under Chapter 7, in exchange for liquidating their nonexempt assets for the benefit of their creditors. Section 707(b) introduces an additional restraint upon a debtor's ability to attain Chapter 7 relief.... Bankruptcy judges now have discretion to dismiss a consumer case when the filing is abusive.
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> In essence, § 707(b) allows a bankruptcy court to deal equitably with the unusual situation where an unscrupulous debtor seeks to enlist the court's assistance in a scheme to take unfair advantage of his creditors; it serves notice upon those tempted by unprincipled accumulation of consumer debt that they will be held to at least a rudimentary standard of fair play and honorable dealing.

In re Krohn, 886 F.2d 123, 125-26 (6th Cir.1989) (citations and internal quotation marks omitted).

Equal to or less than median income - §707(b)(6)&(7)

Once it is determined that the debtor has "primarily consumer debts," the next step in the analysis is to determine whether the income, at the time of filing, is equal to or less than the median family income for the state in which the debtor lives.

Sections §707(b)(6) & (7), taken in combination, essentially serve as a gatekeeper to the use of §707(b). These sections mandate that if the debtor's income is equal to or less than the median family income for the applicable state, only the Court or the United States Trustee may bring a motion to dismiss for abuse under §707(b). However, no one, not even the Court or the United States Trustee, may bring a motion to dismiss for presumed abuse under §707(b)(2) if the debtor's income is equal to or less than the applicable median family income.

Abuse under §707(b)(2)

If the debtor's income is above median family income, the next step will be to analyze whether or not the debtor can survive scrutiny for abuse under subparts (1), (2), and (3) of §707(b).

Section 707(b)(1) lays out the general rule that a court may dismiss or, with the debtor's consent, convert a case to a Chapter 11 or Chapter 13, if it finds that the granting of relief would be an "abuse." This technically leaves subjective scrutiny of the debtor's financial condition and other factors for abuse to the Court. In reality, however, following BAPCPA, the first, and automatic, analysis for abuse is done under §707(b)(2).

Section 707(b)(2)(A) defines what is commonly called the "Means Test." The Means Test is, in essence, an objective and mechanical analysis of the debtor's financial condition and ability to pay the debts he owes. The language of §707(b)(2)(A) gives rise to a "presumption of abuse" where the debtor has excess monthly income relative to both the debt he owes and monthly expenses. Some of the monthly expenses are the debtor's actual expenses, and some of the monthly expenses are amounts prescribed by the Census Bureau and the IRS, as adjusted from time to time.

Section 707(b)(2)(B) describes the ways in which this presumption of abuse may be rebutted. Specifically, the presumption of abuse may be rebutted through the showing of "special circumstances" which justify additional expenses or adjustments to current monthly income.

Absent effective rebuttal under subpart (b)(2)(B), if the debtor's Means Test gives rise to a presumption of abuse, the court must, according to the statute, dismiss his or her case, unless the debtor consents to conversion to either Chapter 11 or Chapter 13.

Section §704(b)(1) requires the United States Trustee to file a statement of presumed abuse within 10 (ten) days of the meeting of creditors. The deadline for the United States Trustee to file a motion to dismiss for presumed abuse under §707(b)(2) is 30 (thirty) days after the statement is filed. For any other party, Federal Rule of Bankruptcy Procedure 1017(e)(1) requires a motion to dismiss for abuse under §707(b) to be filed within 60 (sixty) days of the meeting of creditors.

Bad faith and totality of the circumstances - §707(b)(3)

If the debtor is able to successfully avoid a §707(b)(2) dismissal, either by not giving rise to presumptive abuse, or successfully rebutting that presumption, the debtor will still be subject to scrutiny under §707(b)(3). This section mandates that in a case where abuse is not presumed, or is successfully rebutted, the Court must still dismiss the case where the debtor has "filed the petition in bad faith", or where a "totality of the circumstances" demonstrates abuse.

Section 707(b)(3) is a more subjective assessment of the debtor's circumstances. Much of the assessment is based on a review of Schedules I and J of the debtor's petition. Essentially, §707(b)(3) makes it clear that "passing" the means test under §707(b)(2) does not prohibit the Court from taking a subjective and realistic look at the debtor's financials. Unlike the objective, mechanical approach of §707(b)(2), under §707(b)(3), the Court will look to the debtor's ongoing financial condition and his ability to pay his debts.

Because §707(b)(3) relates back to §707(b)(1) in authorizing dismissal for abuse, it is also bound by the language of that section, and the Court is prohibited from taking into consideration whether or not the debtor has or continues to make charitable contributions, as defined in §548(d)(3) of the Code.

Much of the case law that arose prior to BAPCPA in determining whether abuse existed under then §707(b), which consisted only of what is now §707(b)(1), is applicable to arguments made under current §707(b)(3). Since 2005, the standard, however, has been mere "abuse," as opposed to the "substantial abuse," which §707(b) had required before. The circuits have varying opinions on the significance of that change, but much of the pre-BAPCPA case law is still relied upon.

The Bankruptcy Court in In re Mitchell, 357 B.R. 142 (Bankr.C.D.Cal. 2006) found that the pre-BAPCPA §707(b) test for "substantial abuse" remained relevant, and relying on the Ninth

Circuit's decision in Price v. United States Trustee (In re Price), 353 F.3d 1135 (9th Cir. 2004), set forth the following factors in determining whether to dismiss a case for filing a petition in bad faith:

> First, the Court must evaluate whether, in light of all the relevant facts and circumstances, it appears that the debtor's intention in filing a bankruptcy petition is inconsistent with the Chapter 7 goals of providing a "fresh start" to debtors and maximizing the return to creditors. In making this determination, the Court will consider the following factors: (1) whether the debtor has a likelihood of sufficient future income to fund a Chapter 11, 12, or 13 plan which would pay a substantial portion of the unsecured claims; (2) whether the debtor's petition was filed as a consequence of illness, disability, unemployment, or some other calamity; (3) whether the schedules suggest the debtor obtained cash advancements and consumer goods on credit exceeding his or her ability to repay them; (4) whether the debtor's proposed family budget is excessive or extravagant; (5) whether the debtor's statement of income and expenses is misrepresentative of the debtor's financial condition; (6) whether the debtor has engaged in eve-of-bankruptcy purchases; (7) whether the debtor has a history of bankruptcy petition filings and case dismissals; (8) whether the debtor intended to invoke the automatic stay for improper purposes, such as for the sole objective of defeating state court litigation; and (9) whether egregious behavior is present.[1]

The Mitchell Court reiterated "that neither malice nor fraudulent intent by the debtor is required for a finding of bad faith under §707(b)(3)."[2]

In In re Travis, 353 B.R. 520, 529 (Bankr.E.D.Mich. 2006), the Bankruptcy Court found no difference in the standards of evaluating "substantial abuse" of the former §707(b) and "abuse" in the current §707(b)(3). This naturally led the Travis Court to rely on the Sixth Circuit's application of §707(b) in In re Krohn, 886 F.2d 123 (6th Cir. 1989). In Krohn, the Sixth Circuit held that:

> [A] court should ascertain from the totality of the circumstances whether [the debtor] is merely seeking an advantage over his creditors, or instead is "honest," in the sense that his relationship with his creditors has been marked by essentially honorable and undeceptive dealings, and whether he is "needy" in the sense that his financial predicament warrants the discharge of his debts in exchange for liquidation of his assets.

Id. at 126. The "totality of the circumstances" promulgated by the Krohn Court listed nonexclusive factors to evaluate the debtor's honesty: whether the debtor demonstrated "good faith and candor in filing schedules and other documents", whether the debtor made "eve of bankruptcy purchases," and whether the debtor encountered unforeseen circumstances or a catastrophic event which led to the Chapter 7 filing. Id. Factors demonstrating that the debtor is

[1] Mitchell at 154-55 (internal citations omitted).

[2] Id. at 155.

"needy" include (1) an inability to repay his debts from future earnings, (2) the lack of a stable source of income, (3) conversion to a Chapter 13 case is not viable, (4) the lack of state law remedies with the potential to ease financial problems, (5) the inability to obtain relief through private negotiations, and (6) an inability to significantly reduce expenses without depriving the debtor of adequate food, clothing, shelter and other necessities. Id. at 126-127.

Dismissal for a lack of good faith under §707(a)

Even though §707(b) does not authorize the dismissal of a case filed by an individual debtor whose debts are NOT primarily consumer debts, courts have found that the lack of good faith may constitute "cause" for dismissal under §707(a). Section 707(a) provides:

> The court may dismiss a case…for cause, including—
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
> (3) failure of the debtor in a voluntary case to file, within 15 days…the information required by paragraph (1) of section 521….

The lack of good faith doesn't seem to fit the "procedural-type" causes listed in §707(a), but it is agreed that use of the word "including" indicates that the list is nonexhaustive.

The Sixth Circuit, in Zick v. Industrial Insurance Services, Inc. (In re Zick), 931 F.2d 1124 (6th Cir. 1991), determined that §707(a) is an appropriate authority for a dismissal based on a lack of good faith since good faith is an implicit jurisdictional requirement.[3] The Zick Court approved the following factors relied on by the lower court to determine that the debtor's Chapter 7 case was filed in bad faith:

> (1) the debtor's manipulations which reduced the creditors in this case to one; (2) the debtor's failure to make significant lifestyle adjustments or efforts to repay; (3) the fact that the petition was filed clearly in response to IIS' obtaining a mediation award, and (4) the unfairness of the debtor's use of chapter 7 under the facts in this case.

Id. at 1128.

The Zick Court also expressed the following standard for a §707(a) dismissal based on a lack of good faith:

> Dismissal based on lack of good faith must be undertaken on an *ad hoc* basis. It should be confined carefully and is generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, and excessive and continued expenditures, lavish life-style, and intention to avoid a large single debt based on conduct akin to fraud, misconduct, or gross negligence.

[3] Zick, at 1129.

Id. at 1129.

The Ninth Circuit has taken a contrary view, rejecting Zick. In Neary v. Padilla (In re Padilla), 222 F.3d 1184 (9th Cir. 2000), the Court found that bad faith is not a cause for dismissal under §707(a). Padilla relied on the availability of other alternatives for a creditor to obtain a similar result, i.e.; non-dischargeability under §523, or the denial of discharge under §727.

Unintended consequences: dismissal in asset cases

It is well established that a debtor does not have an absolute right to dismiss a chapter 7 case.[4] A debtor's motion to dismiss his or her own case may be granted only after notice and a hearing and only for cause.[5] The Bankruptcy Appellate Panel for the Sixth Circuit reviewed cause for a voluntary dismissal in Sicherman v. Cohara (In re Cohara), 324 BR 24 (6th Cir. BAP 2005):

> "If dismissal would prejudice the creditors, then it will ordinarily be denied." Peterson v. Atlas Supply Corp. (In re Atlas Supply Corp.), 857 F.2d 1061, 1063 (5th Cir. 1988). *See also* In re Harker, 181 B.R. 326, 328 (Bankr.E.D.Tenn. 1995) ("If creditors are prejudiced in any respect by the dismissal or if the trustee has acquired funds for distribution, a request by the debtor for dismissal will be denied."). "Prejudice exists where assets which would be available for distribution are lost as a result of the dismissal." In re Byam, 2002 Bankr. LEXIS 914, No. 02-80538, 2002 WL 32123991, at *1 (Bankr.C.D.Ill. Aug. 14, 2002) (citing In re McCullough, 229 B.R. 374, 376 (Bankr.E.D.Va. 1999)).

Id. at 27-28.

It seems quite possible, in an asset case, that a debtor's motion to voluntarily dismiss his or her case may be denied, but a creditor's motion to dismiss the debtor's case may be granted. A creditor may have various reasons for seeking the dismissal of a debtor's case, but the Bankruptcy Code offers protection to debtors and creditors. The fair and orderly liquidation of assets is one of the protections provided to creditors. A dismissal based on bad faith may be the remedy obtained by a creditor and at the same time, a "gift" for the unscrupulous debtor. Upon dismissal, the Bankruptcy Code no longer protects the debtor--the debtor may not receive the discharge he or she was seeking, but the debtor nevertheless retains all of his or her assets and may not have the same concerns surrounding the recovery of preferences and transfers. Should the court engage in a balancing of equities before dismissing a case for bad faith? An individual creditor may obtain a similar result if it pursues an objection to discharge under §727 or objects to the dischargeability

[4] Sicherman v. Cohara (In re Cohara), 324 B.R. 24, 27 (6th Cir. BAP 2005).
[5] 11 U.S.C. §707(a).

of a debt under §523. It seems as if the better result for a creditor is to object to discharge or dischargeability and allow the orderly liquidation of the debtor's assets. The Padilla Court may have the better reasoned opinion under the circumstances: "[A] debtor's misconduct should be analyzed under the most specific Code provision that addresses that type of misconduct."[6]

Is Good Faith in Chapter 7 Different from Good Faith in Chapter 13

The Sixth Circuit found merit in the "smell test" for determining a lack of good faith.[7] Does good faith "smell" different in Chapter 7 cases than it does in Chapter 13 cases? Chapter 13 cases are very different from chapter 7 cases, so maybe good faith is different as well.

The Padilla Court believed that good faith is different in Chapter 7 cases than Chapter 13 cases due to the different nature of the cases themselves:[8]

> What distinguishes Chapters 11 and 13 from Chapter 7 is the language of the Bankruptcy Code itself and the post-filing relationship between the debtor and his creditors. … Also, the post-filing debtor-creditor relationship is markedly different in liquidation and reorganization bankruptcies. Chapters 11 and 13, both reorganization chapters, permit the debtor to "retain its assets and reorder its contractual obligations to its creditors. In return for these benefits, … the debtor [must] approach its new relationship with the creditors in good faith…" Chapter 7, a liquidation chapter, "requires no ongoing relationship between the debtor and its creditors" and should be available to any debtor willing to surrender all of its nonexempt assets, "regardless of whether the debtor's motive in seeking such a remedy was grounded in good faith." In Eisen, we linked the good faith requirement implicit in a Chapter 13 bankruptcy with the good faith requirement for proposing a payment plan when we stated that "to determine if a petition has been filed in bad faith courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith." The Bankruptcy Code's language and the protracted relationship between reorganization debtors and their creditors lead us to conclude that bad faith per se can properly constitute "cause" for dismissal of a Chapter 11 or Chapter 13 petition but not of a Chapter 7 petition under § 707(a).[9]

However, at least one Bankruptcy Court judge believes that the standards for a dismissal based on bad faith should be the same regardless of which chapter the debtor chooses:

> [T]he standards for bad faith dismissal used in Chapter 11 and Chapter 13 cases should, to the extent possible, also apply in Chapter 7 cases via § 707(b)(3)(A).

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[6] Padilla, 222 F.3d at 1192.
[7] Zick, at 1127.
[8] As a pre-BAPCPA case, dismissal for filing a petition in bad faith under §707(b)(3)(A) was not available to Padilla. Padilla is still good law with respect to its holding that bad faith does not give rise to cause for dismissal under §707(a), and its analysis of the differences between Chapters 11 and 13 and Chapter 7 remains relevant.
[9] Padilla, 222 F.3d at 1192-1193, internal citations and footnotes omitted.

> This is true for several reasons. First, the harm of filing a voluntary petition in bad faith is essentially the same no matter what chapter of the Bankruptcy Code a debtor chooses to file under -- creditors will be unjustly deprived of their rights and the integrity of the bankruptcy system and of the courts will be weakened. Second, creating a variety of bad faith standards for the filing of bankruptcy petitions would be unnecessarily confusing and would only encourage potential bad-faith filers to choose the chapter of the Code that appears to have the most favorable bad faith test. Finally, as things currently stand, the bad faith tests in Chapter 11 and Chapter 13 are, at their core, basically the same. Each requires courts to evaluate all of the relevant facts and circumstances in a case to determine whether a debtor's intention in filing a bankruptcy petition is consistent with the purposes of the Bankruptcy Code. This Court sees no reason why "bad faith" in Chapter 7 should diverge from this standard.[10]

Standing to Raise a Good Faith Issue in Chapter 7

A motion to dismiss a case based on the lack of good faith as cause under §707(a) may be brought by any party in interest. There is no median income distinction for filing a motion to dismiss for cause under §707(a). The Federal Rules of Bankruptcy Procedure do not establish a deadline for filing a motion to dismiss under §707(a).

Equal to or less than median income debtors

No one, not even the Court or the United States Trustee, may bring a motion to dismiss for presumed abuse under §707(b)(2) if the debtor's income is equal to or less than the applicable median family income.[11]

Section 707(b)(6) mandates that if the debtor's income is equal to or less than the median family income for the applicable state, only the Court or the United States Trustee may bring a motion to dismiss for abuse under §707(b)(1) or (3). The United States Trustee's motion to dismiss must be filed within 60 days after the first date set for the meeting of creditors under §341(a). The Court, on its own motion, must serve notice of the hearing no later than 60 days after the first date set for the meeting of creditors under §341.

Above median income debtors

Motions to dismiss for abuse under §707(b)(1) and (3) may be brought by any party in interest or on the Court's own motion. Federal Rule of Bankruptcy Procedure 1017(e)(1)

[10] Mitchell, 357 B.R. at 153-154, internal citations and footnote omitted.
[11] Section 707(b)(7).

establishes the deadline for filing such motions: within 60 days after the first date set for the meeting of creditors under §341(a).

If the United States Trustee files a motion to dismiss for presumed abuse under §707(b)(2), §704(b)(1) requires the Trustee to file a statement of presumed abuse within 10 days of the meeting of creditors. The deadline for the United States Trustee to file a motion to dismiss for presumed abuse under §707(b)(2) is 30 (thirty) days after the statement is filed.[12]

For all other parties in interest, a motion to dismiss for presumed abuse under §707(b)(2) must be filed within 60 days after the first date set for the meeting of creditors under §341(a). Likewise, if a hearing is set on the Court's own motion to dismiss for abuse, the notice of hearing must be served no later than 60 days after the first date set for the meeting of creditors under §341. Only the United States Trustee is required to file a statement of presumed abuse.

[12] Section 704(b)(2).