

Blaine F. Bates
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE DUSTIN L. WILCOX,
Debtor.

BAP No. UT-10-083

DUSTIN L. WILCOX,
Appellant,

Bankr. No. 10-32828
Chapter 13

v.

OPINION*

KEVIN R. ANDERSON, Trustee,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Utah

Before CORNISH, Chief Judge, BROWN, and KARLIN, Bankruptcy Judges.

CORNISH, Chief Judge.

Debtor, Dustin Wilcox (“Debtor”), appeals a bankruptcy court order denying his motion to vacate the dismissal of his Chapter 13 case pursuant to 11 U.S.C. § 521(i)(1).¹ We affirm.

I. BACKGROUND

Debtor filed a voluntary petition for Chapter 13 relief on September 17,

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

¹ Unless otherwise noted, all further statutory references contained in this decision are to the Bankruptcy Code, which is Title 11 of the United States Code. Similarly, rule references are to the Federal Rules of Bankruptcy Procedure, unless noted otherwise.

2010. On September 20, 2010, the bankruptcy court's clerk's office issued a Deficiency Notice to Debtor, advising him of his failure to file several required documents, including a Statement of Affairs and his schedules. Debtor was directed to file the required documents by October 1, 2010.

On September 28, 2010, the following message was noted on the case docket:

Clerk's Notice of Mailed 341 Without Matrix. The Notice of Meeting of Creditors has been sent to the BNC for mailing. A list of creditors (matrix) has not been filed in this case. Creditors will not receive notice of the meeting of creditors. See Fed. R. Bankr. P. 2002(a)(2). To avoid possible dismissal of the case, a matrix should be filed forthwith. Notify all creditors by mail of the meeting of creditors and a certificate of service of the notice must be filed with the Court certifying that creditors have been sent timely and proper notice of Meeting of Creditors. Please see 11 U.S.C. 521, Fed. R. Bankr. P. 1007, 2002, 9006, and Local Rule 1007-1.²

Debtor filed his Statement of Affairs and schedules, among other things, with the bankruptcy court on October 1, 2010. He did not file a separate creditor list, but did include the names and addresses of his creditors within the schedules that were filed. The § 341 Meeting of Creditors, which had been scheduled by the bankruptcy court on September 18, 2010, was to be held on October 22, 2010.

On November 1, 2010, the Chapter 13 trustee filed a motion to dismiss Debtor's case because he had failed to file a "Creditor Matrix . . . as required by 521(a)(1)(A) and Local Rule 1007-1" and that, as a result, Debtor's creditors had not received notice of the § 341 meeting.³ On November 2, 2010, the bankruptcy court clerk issued a Notice of Dismissal of Debtor's case pursuant to § 521(i)(1). On November 3, 2010, Debtor filed an "Amended Matrix," listing his creditors'

² Docket Sheet at 4, *in* Appendix (Appellant's Opening Brief) ("App.") at 52. Such docket notices are sent to all registered CM/ECF users, which include Debtor's counsel in this case, via email.

³ Trustee's Motion to Dismiss, *in* App. at 42.

names and addresses, using the bankruptcy court's form.⁴

On November 8, 2010, Debtor filed a motion to vacate the clerk's dismissal of his case. Trustee objected to Debtor's motion to vacate on November 24, 2010, and the court denied the motion at a hearing on December 8, 2010. The order denying Debtor's motion was entered on December 16, 2010.⁵ Debtor filed his notice of appeal on December 29, 2010.

II. APPELLATE JURISDICTION

Debtor appeals the bankruptcy court's denial of his motion to vacate dismissal of his Chapter 13 petition pursuant to 11 U.S.C. § 521(i)(1), which is a final order. His notice of appeal was timely filed within 14 days of entry of the December 16, 2010 order, and neither party has elected to have this appeal heard by the Utah District Court. Therefore, the BAP has appellate jurisdiction over this case.

III. ISSUE AND STANDARD OF REVIEW

The only issue on appeal is whether the Debtor's motion to vacate the dismissal of his petition, for failure to file a creditor list that complied with § 521(a)(1)(A), Federal Rule of Bankruptcy Procedure 1007(a)(1) and Local Rule 1007-1(a)(2), was properly denied. Debtor's motion to vacate did not specify a rule upon which it was based, but post-judgment motions are typically construed as either Rule 59 or Rule 60 motions,⁶ depending on the date the motion was

⁴ Although it bore the designation "amended," this document was actually Debtor's first filing of a separate creditor list.

⁵ The denial order consists of the judge's signature at the top of Debtor's proposed order granting the motion, immediately preceded by the sentence, "The below described is DENIED." Order, *in App.* at 45-46.

⁶ Rules 59 and 60 of the Federal Rules of Civil Procedure are made applicable to bankruptcy cases by Federal Rules of Bankruptcy Procedure 9023 and 9024, respectively.

filed. Both such motions are reviewed for abuse of discretion.⁷ However, a bankruptcy court's interpretation and application of a statute is reviewed *de novo*.⁸ Thus, a decision that Debtor did not file a "list of creditors" that satisfied the requirements of § 521(a)(1)(A) and/or Rule 1007 and Local Rule 1007-1 is reviewed *de novo*.

IV. DISCUSSION

The facts are not in dispute. On November 1, 2010, the 45th day after Debtor filed his petition, the Chapter 13 trustee requested dismissal of Debtor's case pursuant to § 1307,⁹ asserting that Debtor had failed to file a list of creditors, as is required by § 521(a)(1), and his creditors therefore had not received notice of the § 341 meeting of creditors held on October 22, 2010.¹⁰ The next day, November 2, 2010, the bankruptcy court clerk notified the parties that the case was dismissed pursuant to § 521(i).¹¹

Section 521(a)(1) provides, in part, that:

- (a) The debtor shall—
 - (1) file—
 - (A) a list of creditors; *and*
 - (B) *unless the court orders otherwise*—
 - (i) a schedule of assets and liabilities;
 - (ii) a schedule of current income and current expenditures;
 - (iii) a statement of the debtor's financial affairs[.]¹²

⁷ *Hernandez v. Musgrave (In re Musgrave)*, CO-10-049, 2011 WL 312883, at *16 (10th Cir. BAP Feb. 2, 2011).

⁸ *In re Sun 'N Fun Waterpark LLC*, 408 B.R. 361, 366 (10th Cir. BAP 2009).

⁹ Section 1307(c)(1) allows a "party in interest" to request dismissal of a case for "cause," which includes "unreasonable delay by the debtor that is prejudicial to creditors." Dismissal pursuant to § 1307 requires notice and a hearing, whereas § 521(i)(1) dismissal does not.

¹⁰ Trustee's Motion to Dismiss, *in App.* at 40.

¹¹ Notice of Dismissal, *in App.* at 1. No Order of Dismissal was entered.

¹² 11 U.S.C. § 521(a)(1) (emphasis added). Section 521(a)(1)(B) enumerates
(continued...)

The enforcement provision of § 521, subparagraph (i), provides that failure to file the information required by § 521(a)(1) will result in automatic dismissal of the debtor's case:

[I]f an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.¹³

At oral argument, Debtor's counsel asserted that automatic dismissal under § 521(i)(1) was not triggered in this case because that provision requires only that the "information" required by § 521(a)(1) be provided, as opposed to the documents themselves, and that Debtor's creditor "information" was provided in his schedules. Applying this novel interpretation would virtually eliminate all form and formatting requirements for the most fundamental bankruptcy filings. We do not read § 521(i)(1) as eviscerating the form requirements of the documents required by § 521(a)(1), nor are we aware of any other court that has done so.¹⁴

¹² (...continued)
a total of six required filings.

¹³ 11 U.S.C. § 521(i)(1). Section 521(i)(2) further provides that, "with respect to a case described in [521(i)(1)], any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 7 days after such request."

¹⁴ It appears that only one court has relied on subparagraph (i)(1)'s use of the word "information," as opposed to "documents" or "filings," to reach its decision. *Community Bank, N.A. v. Riffle*, 617 F.3d 171 (2d Cir. 2010) (per curiam). However, that case dealt with the payment advice requirement set forth in § 521(a)(1)(B)(iv), which requires debtors to file "copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor" (emphasis added). The debtor in that case had filed his most recent payment advice, along with a chart prepared by his employer that showed his gross earnings for each pay period for the preceding eight months. The court interpreted § 521(a)(1)(B)(iv) to require *either* payment advices or other evidence of payment received, and noted that its interpretation of that provision was supported by use of the word "information" in § 521(i)(1). However, § 521(a)(1)(A)'s "list of creditors" requirement contains no similar "or other evidence" loophole.

Debtor also contends that nothing in § 521(a)(1) can be read to require a “separate” creditor list. We disagree. A § 521(a)(1)(A) creditor list, unlike § 521(a)(1)(B) filings, must be filed in every case. Section 521(a)(1)(B) filings, which include a debtor’s schedules, need not be filed if the bankruptcy court “orders otherwise.” A provision that requires one category of documents to be filed in every case, while allowing another category to be excepted from filing, suggests that the two types of documents must be separately filed. A debtor’s schedules cannot satisfy the debtor’s duty to file a list of creditors if the bankruptcy court waives their filing, and there is no provision for waiver of the creditor list requirement. As such, particularly when a bankruptcy court allows a debtor to forego filing § 521(a)(1)(B) documents, the creditor list would necessarily be a “separate” document. This supports our conclusion that the creditor list is always intended to be separately filed.

While Bankruptcy Code provisions are enacted by Congress, the Supreme Court is authorized to implement Bankruptcy Rules: “The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right.”¹⁵ Thus, so long as rules do not “abridge, enlarge, or modify any substantive right,” they may dictate the form of filings required by the Bankruptcy Code.

Debtor contends, without much support, that Bankruptcy Rule 1007 impermissibly rewrites § 521(a)(1)(A). A similar claim was made with respect to Bankruptcy Rule 3001(a), as it applied to § 501(a), in *In re Kirkland*.¹⁶ Section 501(a) allows a creditor to file a proof of claim. As § 521(a)(1)(A) does not specifically define “list of creditors,” § 501(a) similarly does not define the term

¹⁵ 28 U.S.C. § 2075.

¹⁶ 572 F.3d 838 (10th Cir. 2009).

“proof of claim.”¹⁷ Noting that “we look to the Federal Rules of Bankruptcy Procedure”¹⁸ when the Bankruptcy Code does not define a term, the Court of Appeals for the Tenth Circuit considered whether Bankruptcy Rule 3001(a) impermissibly modified § 501(a) by specifying requirements for a proof of claim. Rule 3001(a) defines a “proof of claim” as “a written statement setting forth a creditor’s claim,” and requires that it “conform substantially to the appropriate Official Form.” Official Form 10 requires claimants to attach documents supportive of their claim to their proof of claim or, if no such documents are available, to explain why not. Nothing in § 501, itself, however, suggests that documents need to be attached. Because the creditor in *Kirkland* had not complied with the documentary support requirement of Official Form 10, the bankruptcy court had denied its claim. The Tenth Circuit affirmed that decision, holding that denial of the undocumented claim was supported by “[t]he plain language of the Bankruptcy Code and its associated procedural rules.”¹⁹

Likewise, the term “list of creditors” is also not defined within the Bankruptcy Code. However, Bankruptcy Rule 1007(a)(1) specifies that, “[i]n a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H as prescribed by the Official Forms.” Likewise, the Utah Bankruptcy Court’s local rule in effect when Debtor filed his petition, L.R. 1007-1(b), further provided: “DEBTOR’S DUTY TO PROVIDE LIST OF ADDRESSES FOR

¹⁷ Section 502(a) further provides that a proof of claim “filed under [§ 501] is deemed allowed, unless a party in interest . . . objects.” Section 502(b) directs a bankruptcy court to allow a claim, over an objection, subject to certain exceptions. Because failure to comply with Rule 3001 was not a listed exception, the BAP held that a claim could not be disallowed on that basis. The Circuit disagreed. 572 F.3d at 840-41.

¹⁸ *Kirkland*, 572 F.3d at 840.

¹⁹ *Id.*

NOTICE. The debtor must file with the petition, or present electronically within 2 days thereafter, a list containing the name and address, including zip code, of each creditor and party in interest in a format designated by the clerk.”²⁰ Both of these rules, in conformity with § 521(a)(1), clearly contemplate that debtors must file a “list of creditors” that is separate and distinct from their filed schedules. Requiring that the list include an address for each entity included in the debtor’s schedules comports with the § 521(a)(1) requirement that debtors file both a list of creditors and their schedules.²¹

²⁰ We take judicial notice of the bankruptcy court’s website, <http://www.utb.uscourts.gov>, which contains links to several internal memoranda, addressed to Bankruptcy Practitioners and Pro Se Debtors, that are intended to assist with the filing requirements of the creditor list, which it sometimes describes as a “creditor matrix.” See *New Mexico v. Bureau of Land Mgmt.*, 565 F.3d 683, 702 (10th Cir. 2009) (courts may take judicial notice of government websites). One of these memoranda, which lists as its subject “Chapter 13 Checklist,” includes an original mailing matrix among the “Minimum Requirements at Time of Filing.” See <http://www.utb.uscourts.gov/index.html>. Another memo, “Mailing Matrixes,” notes that the “preferred method” for registered CM/ECF users to file a creditors matrix is “directly through the CM/ECF Creditor Maintenance category,” whereas the preferred method for pro se debtors is by email. See http://www.utb.uscourts.gov/clerks_office/mailmtrx_030111.pdf. Yet another memo describes the required format for the “list of creditors,” which is intended to “ensure that the list of creditors . . . can be properly read by the [court’s] optical scanner.” The requirements include specified fonts, margins, and line and character limitations. See http://www.utb.uscourts.gov/clerks_office/forms/matrixformt.pdf. Printed copies of these, and all other webpages cited herein, are provided as an attachment located at the end of this decision. The Court accepts no responsibility for, and does not endorse, any product, organization, or content that appears at any hyperlinked site, or at any site to which that site might be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the Opinion of the Court.

²¹ Debtor contends that Rule 1007 requires debtors to list entities that are not “creditors,” which means that the Rule 1007 list is a different thing than the “list of creditors” required by § 521(a)(1)(A). However, Rule 1007, which is entitled “Lists, Schedules, Statements, and Other Documents; Time Limits,” is clearly intended to, among other things, provide parameters for the § 521 “list of creditors.” Moreover, the 2005 advisory committee note to Rule 1007, after first acknowledging the importance of notice to the bankruptcy system, states that the reference in the Rule to the schedules, rather than “to creditors or persons holding claims ensures that persons such as codebtors or nondebtor parties to

(continued...)

Debtor does not contend that his inclusion of a list of creditors in his schedules complies with the requirements of Rule 1007 or Local Rule 1007-1. Instead, he argues that his case was dismissed pursuant only to § 521(i), rather than either of the rules, and that the creditor list included in his schedules fully satisfies § 521(a)'s "list of creditors" requirement. Asserting that the meaning of § 521(a) is "plain," Debtor contends that this Court's reliance on both rules' elaboration of the term "list of creditors" would require it to "rewrite the Bankruptcy Code."²² This argument ignores the long-standing precedent that rules supplement statutes.²³

This Court is aware of only one published case that has dealt with the precise issue raised in this appeal. In *In re Young*,²⁴ the debtor's case was also dismissed for failure to file a "creditor matrix," and the debtor filed a motion to vacate the dismissal. Young made precisely the same argument as the Debtor does here: the plain language of § 521(a)(1) does not require a separate listing of

²¹ (...continued)
executory contracts and unexpired leases will receive appropriate notices."

²² Appellant's Reply Brief, at 14. Debtor also asserts that neither the "creditors list" nor the "creditors matrix" set forth in the rules is the same as the "list of creditors" referenced in § 521(a). However, the "Mailing Matrixes" memo on the bankruptcy court's website specifies that "[t]he filing of the matrix satisfies Local Rule 2002-1(d) (e) [service of notice to creditors], Local Rule 1007-1(b), and 11 U.S.C. Section 521."
http://www.utb.uscourts.gov/clerks_office/mailmtrx_030111.pdf. Likewise, the entry on the case docket on September 28, 2010, noting Debtor's failure to file a "list of creditors (matrix)," also referenced § 521(a). Docket Sheet at 4, *in App.* at 52.

²³ See, e.g., *Schwab v. Reilly*, 130 S.Ct. 2652, 2662 (2010) ("we may look to dictionaries and the Bankruptcy Rules to determine the meaning of words the Code does not define"). See also, Congressional Record Statements (Reform Act of 1978), with respect to § 521, noting that the "Rules of Bankruptcy Procedure should provide where the list of creditors is to be filed." 124 Cong. Rec. H 32383 (daily ed. Sept. 28, 1978) (statement of Sen. Edwards).

²⁴ 06-80397, 2006 WL 3524482 (Bankr. S.D. Tex. Dec. 6, 2006).

creditors, and the required list was included in her schedules.²⁵ As does the Debtor here, Young acknowledged that a separate creditor mailing list was required by the local rules, but asserted that violation of the local rule did not mandate automatic dismissal.

The *Young* court rejected the debtor's arguments, finding that the "plain language" of § 521(a)(1) required a separate list:

Here, the Code distinctly states that "The debtor shall ... file ... a list of creditors." 11 U.S.C. § 521(a)(1)(A).

Adding to this requirement's distinction is the fact that it is subject to different rules from the other required filings. According to § 521(a)(1)(B), the Court may "order[] otherwise" with respect to the filing of schedules, a statement of financial affairs, payment advices, means test, and forecasted income increase. However, no discretion to order otherwise is contained within § 521(a)(1)(A). The requirement to file a list of creditors is distinctly enumerated and specially treated. It must be separately submitted.²⁶

The *Young* court also noted that Rule 1007 "reiterates the fact that a list of creditors must be provided separately from a debtor's schedules," and that it clarifies that addresses must be included.²⁷ Debtor argues that *Young* is not binding precedent,²⁸ which is valid. However, his contentions that *Young* "contains no actual law to back up"²⁹ its conclusions, and that its conclusions are "without any logical basis"³⁰ are not. This is a matter of statutory interpretation, which has only been directly addressed by one other court. That court's conclusions should be considered, whether or not they are adopted.

²⁵ One significant difference between *Young* and the present case is that Young did not include her creditors' addresses in her schedules, as the Debtor did here. However, the *Young* decision did not turn on that omission.

²⁶ *Young*, 2006 WL 3524482, at *2.

²⁷ *Id.* at *3.

²⁸ Appellant's Reply Brief at 14.

²⁹ *Id.*

³⁰ *Id.* at 15.

We conclude that § 521(a)(1), together with Rule 1007 and Local Rule 1007-1, required the Debtor to file a separate list of creditors in conformance with the “mailing matrix” specifications provided by the Utah bankruptcy court clerk, and that this filing was required to be made within two days of the filing of Debtor’s petition.³¹ His failure to do so until only after he was notified of the dismissal was fatal to his case.³²

Our decision in this case is not based on a hyper-technicality. A “mailing matrix” is a critical part of the functioning of the bankruptcy court system, ensuring that notice of the bankruptcy proceedings is given to all interested parties. At oral argument, even Debtor’s counsel admitted the importance of filing a mailing matrix to the bankruptcy process. Likewise, the drafters of Rule 1007 recognized the essential role of the mailing matrix, stating:

Notice to creditors and other parties in interest is essential to the operation of the bankruptcy system. Sending notice requires a convenient listing of the names and addresses of the entities to whom notice must be sent, and virtually all of the bankruptcy courts have adopted a local rule requiring the submission of a list of these

³¹ Debtor asserts that the 2-day requirement for a mailing matrix distinguishes it from the § 521(a)(1)(A) list of creditors, because that list is subject only to § 521(i)(1)’s 45-day automatic dismissal. We disagree. Automatic dismissal of a case if a creditor list is not filed within 45 days does not preclude a requirement that the list be filed sooner. Nor does it preclude a different method of enforcement, such as that provided in § 1307(c)(9), which allows bankruptcy courts, upon application by the United States Trustee and after notice and a hearing, to dismiss or convert a Chapter 13 case based on a debtor’s failure to file information required by § 521(a)(1) within 15 days of the filing of the petition. There is no indication in either the Bankruptcy Code or the Rules that these provisions should be considered mutually exclusive, nor do we see any reason why they should be so interpreted.

³² There is no court order dismissing Debtor’s case pursuant to § 521(i)(1) in the bankruptcy court’s docket and, according to the Debtor, this is why he appealed only the order denying his motion to vacate and not the dismissal itself. Because § 521(i)(1) uses the phrase “automatically dismissed,” but does not provide a procedure for dismissal, many courts have struggled with the issue of whether an order is required to effect an “automatic” dismissal. *See, e.g., CFCU Cmty. Credit Union v. Pierce*, 06-CV-6595, 2009 WL 2163107 (W.D.N.Y. July 17, 2009), discussing the problem of “automatic” dismissal. However, this Court need not determine the necessity of an order in this case since the Debtor timely appealed an order that effectively enforced the dismissal.

entities with the petition and in a particular format. These lists are commonly called the “mailing matrix.”

Given the universal adoption of these local rules, the need for such lists in all cases is apparent.³³

Shifting the burden of entering names and addresses of all creditors and other parties of interest into the court’s CM/ECF system in each case to bankruptcy court clerks would both seriously tax the bankruptcy courts’ already limited resources and, more importantly, would significantly delay the receipt of notice of bankruptcy filings by parties in interest. When one considers that each bankruptcy district receives literally thousands of bankruptcy petitions each year, the possibility of a system breakdown under such circumstances is real. Therefore, placing the minimal burden of performing this function in their own case on debtors is both reasonable and necessary. The burden on debtors is especially minimal because, as the system now works, after the debtor creates one scannable creditor list at the beginning of his bankruptcy case, many filings and notices are then sent for him by the CM/ECF system.

Finally, Debtor asserts in this appeal that the bankruptcy court denied his motion to vacate “based on the court’s legal conclusion that it lacked jurisdiction to vacate the dismissal.”³⁴ However, there is nothing in the appellate record to support this contention. The bankruptcy court’s docket includes a minute entry on December 8, 2010, which states only that the motion was “denied.” The bankruptcy court order from which Debtor appeals is a similar summary denial of the motion. Although a hearing was apparently held on December 8, 2010, no transcript of that hearing was provided in the appellate record. Therefore, the appellate record is devoid of the bankruptcy court’s reasoning with respect to the

³³ Fed. R. Bankr. P. 1007 advisory committee’s note (2005).

³⁴ Appellant’s Opening Brief at 6-7.

motion to vacate.³⁵ Without an adequate record for review, this Court must affirm the bankruptcy court's decision.³⁶ Moreover, since we have determined that Debtor's objection to the dismissal was without merit, we may affirm on that basis as well.³⁷

V. CONCLUSION

The Debtor's case was dismissed because he failed to file a list of creditors as required by § 521(a)(1), Rule 1007, and Local Rule 1007-1. Because we agree that Debtor did fail to comply with those provisions, we AFFIRM.

³⁵ Some courts have held that § 521(i)(1)'s automatic dismissal language leaves bankruptcy courts "with no discretion to fashion any reasonable or equitable solution" for failure to comply with § 521(a)(1). *In re Lovato*, 343 B.R. 268, 270 (Bankr. D.N.M. 2006); *In re Wilkinson*, 346 B.R. 539, 545 (Bankr. D. Utah 2006) ("Debtor's statutory duty under § 521(a)(1) to file certain documents is both clear and unforgiving," and is not subject to equitable relief such as might be provided pursuant to Rule 60(b)). However, this Court cannot assume that such was the reasoning behind the bankruptcy court's denial of the motion in this case (especially since *Wilkinson* was decided by a different Utah bankruptcy judge), and we do not have an appellate record that so indicates.

³⁶ *Scott v. Hern*, 216 F.3d 897, 912 (10th Cir. 2000); *Lopez v. Long (In re Long)*, 255 B.R. 241, 245 (10th Cir. BAP 2000) (appellate court cannot rule on an issue without adequate appellate record).

³⁷ *Griess v. Colorado*, 841 F.2d 1042, 1047 (10th Cir. 1988) (appellate court may affirm on any valid ground, whether or not that ground was relied on by the trial court); *Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014, 1017 (10th Cir. 2004) (may even affirm when lower court reached its conclusions through erroneous reasoning).

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

MEMORANDUM

TO: Bankruptcy Practitioners
Pro Se Debtors

FROM: United States Bankruptcy Court Clerk

SUBJECT: Chapter 13 Checklist

NOTICE TO DEBTORS FILING A PETITION UNDER CHAPTER 13
WITHOUT THE CHAPTER 13 PLAN

The Court's policy regarding mailing of a Chapter 13 Plan with the 11 U.S.C. § 341 notice is:

Any plan that is docketed and imaged prior to the processing of the 11 U.S.C. § 341 Notice to the Bankruptcy Noticing Center will be included with the 11 U.S.C. § 341 Notice of Meeting of Creditors. The debtor is responsible for sending a copy of the Plan to the Trustee and to each creditor if the Plan was not mailed by the Court. If a Plan is not filed within 14 days of the filing of the case, your case may be dismissed.

CHECKLIST FOR CHAPTER 13

Minimum Requirements at Time of Filing

- cashier's check/cash/money order/credit card payment/check drawn on the account of the filing attorney for \$274.00 (**Checks from debtors will not be accepted**) See Local Rule 5080-1

Original only of the following:

- Mailing matrix - original only:
 - creditor listing in alphabetical order with correct addresses not to exceed 4 lines in Courier 10, Prestige Elite or Letter Gothic font. See Local Rule 1007-1(b)
 - NOTE: Please e-mail matrix; instructions on Court's website www.utb.uscourts.gov
- Mailing matrix of domestic support creditors, if any, as defined in 11 U.S.C. § 507(a)(1)(A) and (B), formatted as described above
- Petition (Official Form 1 Revised 12/07) signed by debtor(s) and/or attorney/petition preparer (with 11 U.S.C. § 342(b) certification)
- Official Form 1, Exhibit D
 1. Certification on Exhibit D attached to the petition that debtor received pre-filing budget and credit counseling during the 180-day period before the petition was filed, AND a certificate from the counseling agency describing the services provided to the debtor and copy of the debt repayment plan, if any, developed through the agency as required by 11 U.S.C. § 521(b) OR
 2. A request for waiver under 11 U.S.C. § 109(h)(3)(A) on the petition, AND file a separate application for exemption and a pending order granting the application, OR
 3. A request for determination under 11 U.S.C. § 109(h)(4) See Local Rule 1007-1(d)
- If individual with primarily consumer debts, Notice to Individual Consumer Debtor
- Statement of Social Security Number (Official Form 21)

Original only of the following:

- Schedules A through J, Summary of Schedules, Statistical Summary of Certain Liabilities and Perjury Statements for Schedules signed by debtors (Official Form 6 revised 12/07)
- Statement of Financial Affairs (Official Form 7 revised 12/07)
- Payment advices certification and copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor, or a statement under penalty of perjury concerning payment advices
- Chapter 13 Plan
- Statement disclosing compensation paid or promised to be paid to the attorney for the debtor
- Statement of Current Monthly Income and Means Test Calculation (Official Form 22C)
- Notice to Debtor by **Non-Attorney** Bankruptcy Petition Preparer and Declaration and Signature of **Non-Attorney** Bankruptcy Petition Preparer (Official Forms 19A/19B)(if applicable)
- Record of any interest that debtor has in an education individual retirement account or a qualified State tuition program as set forth 11 U.S.C. § 521(c)

Refer to Local Rule 1007-1, 2083-1 and 5005-1 for Filing Papers-Requirements.

The debtor must also provide to the trustee not later than 7 days before the date first set for the first meeting of creditors, a copy of the Federal income tax return for the most recent tax year ending immediately before the commencement of the case. FED. R.CIV.P.4002(b)

The debtor must also provide to the trustee at or before the meeting of creditors:

- Proof of all charitable contributions made within 60 days before the date of the filing of the petition;
- A copy of the most recent county property tax assessment for all real property listed on Schedule A;
- A profit and loss statement if a debtor had self-employment income for the 60 days prior to filing, including income reported on an IRS Form 1099; AND
- A business questionnaire for each business operated by the debtor 60 days prior to filing. *See* Local Rule 2083-1

Not later than the day before the date on which the meeting of creditors is first scheduled to be held, the debtor must file and serve on the Trustee a declaration regarding tax returns. *See* Local Rule 6070-1(c).

Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management (Official Form 23) must be filed before a discharge order can be issued. A certificate from the Personal Financial Management providers alone will not suffice. *See* Fed. R. Bankr. P. 1007(b)(7).

Official forms are available on the Court's website www.utb.uscourts.gov or the U.S. Courts' website www.uscourts.gov/bkforms/index.html.

United States Bankruptcy Court
District of Utah

To: Bankruptcy Petitioners & Pro Se Debtor(s)
From: Bankruptcy Clerk's Office
Re: Mailing Matrixes

Matrixes can be filed via the bankruptcy clerk's email. Attached is a step-by- step instruction guide that will allow the converting of matrixes to a **.txt** format and submitting them to the clerk's office.

Please recall that the preferred method to file a matrix for registered CM/ECF users is still directly through the CM/ECF Creditor Maintenance category. Filing a matrix via email is the preferred method for pro se debtor(s) to complete this obligation. A debtor can also verify that a matrix has been received and properly loaded via an automatic "Creditors Uploaded" entry that appears on the docket.

The clerk's office would like to also mention this is intended **FOR ORIGINAL MATRIXES ONLY**, not amended matrixes. Please remember that in order for creditors to be noticed properly of the meeting of creditors, the matrix must be filed within 2 days after the case is filed. The filing of the matrix satisfies Local Rule 2002-1(d) (e), Local Rule 1007-1(b), and 11 U.S.C. Section 521.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF UTAH

MEMORANDUM

TO: Bankruptcy Petitioners & Pro Se Debtors

FROM: United States Bankruptcy Clerk's Office

SUBJECT: Format For List of Creditors

To ensure that the list of creditors you file can be properly read by the optical scanner, we ask that you observe the following guidelines:

1. Lists must be typed in one of the following standard typefaces or print styles: Courier 10 Pitch, Prestige Elite, Letter Gothic.
2. Lists of creditors with addresses are to be typed on a single sheet of paper in a single column centered on the page.
3. A one (1) inch margin is required on the top and bottom of the list.
4. Each name/address must consist of no more than four (4) total lines, with at least one (1) blank line between each of the name/address blocks.
5. Each line must not exceed 40 characters in length.
6. DO NOT include the following people; they will be retrieved automatically by the computer for noticing: debtor, joint debtor, attorney for the debtor(s), U.S. Trustee. If debtor's mailing address is different than residence address, please include.
7. When submitting more than 100 creditors, submit your listing on a computer disc, following the same procedures as outlined above.

THINGS TO AVOID

The following problems can prevent your lists from being read by the OCR (optical scanner), requiring you to resubmit your creditor list in an acceptable form:

1. Extra marks on the list such as letterhead, dates, debtor(s) names, page numbers, coffee stains, handwritten marks.
2. Nonstandard paper, such as onion skin, half-sized paper, or colored paper.
3. Poor quality type caused by submitting a photocopy or carbon, using an exhausted typewriter ribbon, using a typewriter with a fabric ribbon (they produce letters which are too fuzzy to be properly scanned) or using a DOS computer print.
4. Unreadable typefaces or print styles such as proportionally-spaced fonts, dot-matrix printing or exotic fonts (such as Old English or script). Use only Courier 10, Prestige Elite or Letter Gothic.
5. Misaligned lists caused by removing the paper from the typewriter before completing the list, or inserting the paper into the typewriter crooked.
6. Incorrect typewriter settings will cause unreadable lists. Make certain that your typewriter is set for 10 pitch, if you are using a 10 pitch type style.
7. Zip codes must be used on the city/state line. Nine-digit zip codes should be typed with a hyphen separating the two groups of digits. Type "attention" lines on the second line of the name/address if needed. Avoid using "c/o" or "o/o."
8. Do not put account numbers in address.
9. Do not put out name of state. Use abbreviations (e.g. UT).

Rev. 2/00

EXAMPLE CREDITOR LIST: Courier 10 Pitch

First City National Bank of Beaumont
P.O. Box 3391
Beaumont, TX 77704

Flex Northwest
Attn: Willard Richards
1540 NW 46th Street
Seattle, WA 20984

General Welding Supply Co.
P.O. Box 3517
Baltimore, MD 20984

Tremonton Feed and Grain
State Route 89
Tremonton, UT 84756