

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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RALPH J. RYAN and SHIRLEY A. RYAN  
Debtors.

Bankruptcy No. 96-30077XF  
Chapter 7

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### **ORDER RE: SUFFICIENCY OF PETITION, STATEMENT OF AFFAIRS, SCHEDULES, AND STATEMENT OF INTENTION**

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The matter before the court is the joint voluntary petition filed by Ralph J. Ryan and Shirley A. Ryan, husband and wife. Debtors initially submitted their chapter 7 petition on or about January 4, 1996, accompanied by other required documents. The petition was signed by Charles A. Walker as attorney and by Ralph J. Ryan. Shirley A. Ryan signed none of the following documents: petition, statement of affairs, schedules, statement of intention, and acknowledgments of notices to consumer debtors. In each place where her signature was to appear, her name was typed with an explanation: "Disabled - Unable to Sign."

The petition and accompanying documents were rejected by the clerk upon my direction on the ground that there was nothing filed sufficient to satisfy the court that the filing by Shirley A. Ryan was her voluntary act and that the submission of the documents under the foregoing explanation was a satisfactory substitute for the requirements that debtors voluntarily and knowingly sign their petitions and other documents and that certain of the executions be done under penalty of perjury.

Attorney Walker resubmitted the petition and other documents on January 12, 1996, with an affidavit signed by the Ryans' daughter, Mary C. Ryan. It states:

1. I am the daughter of Ralph J. Ryan and Shirley A. Ryan, the debtors in a bankruptcy petition being filed herewith.
2. I am the constant caregiver of Shirley A. Ryan who is disabled, suffering both from blindness and severe arthritis.
3. Because of her condition she is unable to sign her name.
4. My mother is aware of the bankruptcy filing for her and my father, the contents of the petition, and consents to the filing of said petition.

I authorized the filing of the petition and other documents although the affidavit was insufficient to satisfy my concerns. The affidavit is insufficient because it is not an adequate substitute for Shirley A. Ryan's signature as to all a signature purports to accomplish in a filing by a debtor.

The execution of a petition by a debtor indicates it is the individual's voluntary act of filing a bankruptcy case under the chapter chosen. The petition provides certain information to the court. When a debtor signs, he or she represents under penalty of perjury that the information provided is true and correct. The petition (Official Form 1) also states that the executing debtor is "aware that [he or she] may proceed under chapter 7, 11, or 12, or 13 of title 11, United States Code," understands the relief available under each chapter, and chooses to proceed under chapter 7.

A debtor executes a statement of affairs, answering a series of questions, and stating that the debtor has read the answers and that they are true and correct. The debtor signs under penalty of perjury (Official Form 7).

An individual debtor signs also a Statement of Intention on consumer debts secured by property of the estate. In signing,

a debtor states his or her intent and that he or she understands the performance required by the Bankruptcy Code.

A debtor's schedules of assets, liabilities, exemptions, executory contracts and unexpired leases, codebtors, and income and expenses are signed under penalty of perjury, with debtor stating that he or she has read the schedules and that they are true and correct.

In this case, debtors filed a Notice to Individual Consumer Debtors of their rights to proceed under various chapters of the Code. Mr. Ryan, not Mrs. Ryan, acknowledged receipt of this Notice as well as a more comprehensive notice of debtor's options for filing bankruptcy under different chapters. Last, debtors filed a Statement of Information Required by 11 U.S.C. 341. This filing is apparently the required proof that a debtor is aware of the effects and consequences of filing. 11 U.S.C. 341(d). Only Mr. Ryan signed this document as a verification that it was read by debtor.

The affidavit filed by Mary C. Ryan is an adequate explanation of why Shirley A. Ryan was physically unable to execute the documents which must be executed to file a chapter 7 case. The critical part of the affidavit is paragraph 4: "My mother is aware of the bankruptcy filing for her and my father, the contents of the petition, and consents to the filing of the petition."

This is not an adequate substitute for the debtor's execution of the previously specified documents and what the execution is intended to accomplish. The affidavit indicates that she "consents" to the filing, not that it was her voluntary act. Although the affidavit states that Shirley Ryan is aware of the contents of the petition, this is insufficient to show she has knowledge of her right to proceed under various chapters and chooses to proceed under chapter 7. Moreover, paragraph 4 is insufficient to show that Mrs. Ryan adopts the information provided in the petition and in all other documents and that she states that her answers and information are true and correct under penalty of perjury. Her daughter cannot verify the petition, statement of affairs, or schedules or other documents for her. In re Harrison, 158 B.R. 246, 248 (Bankr. M.D. Fla. 1993). Paragraph 4 is insufficient to show that Mrs. Ryan understands her duty of performance under her Statement of Intention, or that she understands the effects and consequences of filing bankruptcy.

I understand the debtor's great difficulty, and I am sympathetic with her inability to sign the documents. Her required execution, however, is not only for the court or her creditors. A debtor's signature protects the debtor in that it assures that debtor has been properly advised about bankruptcy and its effects. Based on her daughter's affidavit, there is no certainty that debtor fully understands her assets, liabilities, the types of bankruptcy or the effects and consequences of her choices. Her incapacity makes her provision of information under oath more difficult, but not impossible.

The attorney for the debtor could have provided the needed assurances with an affidavit of his own, showing the court, in each of the above particulars, that Mrs. Ryan's bankruptcy filing specifically satisfies all the requirements of executed documents. For example, he could have indicated under oath that he had read to her all the questions and answers provided in the statement of affairs and that he had ascertained that she confirmed the answers and that she swore that the information was true.

Debtor, through her attorney, can still remedy these deficiencies. Debtor and attorney Walker shall be given 14 days to submit to the court a satisfactory affidavit. If this is not done, Shirley A. Ryan's case will be dismissed.

IT IS ORDERED that attorney Charles A. Walker shall have 14 days to file on behalf of Shirley A. Ryan an affidavit which shows that her bankruptcy filing meets the requirements of a filing as though the debtor had executed all required documents.

SO ORDERED THIS 18th DAY OF JANUARY 1996.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on \_\_\_\_\_ I mailed a copy of this order by U.S. mail to: Debtors, Charles Walker, David Sergeant and U.S.Trustee.

