

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA



CHARLES L. NAIL, JR.  
BANKRUPTCY JUDGE

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March 30, 2010

Bruce J. Gering  
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Attorney for Debtors  
Post Office Box 18  
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Subject: ***In re Edward Gene Meng, Sr. and Tammy Lynn Meng***  
Chapter 7; Bankr. No. 10-40116

Dear Mr. Gering and Ms. Howey-Fox:

The matter before the Court is the United States Trustee's Motion to Dismiss. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As discussed below, the United States Trustee's motion will be granted.<sup>1</sup>

**Facts.** Tammy Lynn Meng completed credit counseling on September 1, 2009. She and her husband, Edward Gene Meng, Sr., filed a petition for relief under chapter 7 of title 11 on March 1, 2010.

**Discussion.** An individual may not be a debtor under title 11 unless she receives credit counseling within the 180-day period preceding the date of the filing of her petition for relief. 11 U.S.C. § 109(h)(1). Section 109(h)(1) is clear and unambiguous. The event that triggers the 180-day period is the filing of a petition for relief, not the completion of credit counseling, and the Court must count backward from the petition date, not forward from the date credit counseling is received.<sup>2</sup>

To compute the relevant 180-day period, the Court must exclude the petition date, Fed.R.Bankr.P. 9006(a)(1)(A), count every day, including intermediate Saturdays, Sundays, and any legal holidays, Fed.R.Bankr.P. 9006(a)(1)(B), and include the 180<sup>th</sup> day, unless the 180<sup>th</sup> day is a Saturday, Sunday, or legal holiday. Fed.R.Bankr.P.

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<sup>1</sup> The material facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

<sup>2</sup> Had Congress intended otherwise, it could have required a debtor to file her petition within 180 days of completing credit counseling.

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9006(a)(1)(C).<sup>3</sup> In this case, the 180<sup>th</sup> day was Wednesday, September 2, 2009, and it was not a legal holiday.

Ms. Meng did not receive credit counseling within the 180-day period preceding the date of the filing of her petition for relief. Consequently, she may not be a debtor in this case. The Court will enter an appropriate order.

Sincerely,



Charles L. Nail, Jr.  
Bankruptcy Judge

CLN:sh

cc: case file (docket original; serve letter decision on parties in interest; serve order on all creditors and other parties in interest)

NOTICE OF ENTRY  
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered  
on the date shown above.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

On the above date, a copy of this document  
was mailed or faxed to the parties shown on the  
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not receive electronic notice.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

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<sup>3</sup> If the 180<sup>th</sup> day is a Saturday, Sunday, or legal holiday, the 180-day period would be extended backward to the next preceding day that was not a Saturday, Sunday, or legal holiday. Fed.R.Bankr.P. 9006(a)(1)(C) and (5).