

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

**In re:
DORIS PITTMAN NASH,
Debtor.**

**Case No. 05-40061whb
Chapter 13**

**OPINION AND ORDER DENYING
DEBTOR'S MOTION TO EXTEND TIME TO COMPLETE CREDIT BRIEFING
WITHOUT PREJUDICE TO AMENDED CERTIFICATION**

The debtor in this Chapter 13 case filed her motion to extend the time for her to complete credit briefing, and the motion only says that the debtor requests an additional thirty days to obtain the briefing. No substantive reason is given. Unfortunately, the relevant statute does not provide for the mere request of an extension to be the basis for the Court to extend the time, and the Court must deny the debtor's motion without prejudice to the debtor amending her pleading. For purposes of this opinion, the Court adopts the rationale and decision of the bankruptcy court in *In re Hubbard*, 332 B.R. 285 (Bankr. S.D. Tex. 2005).

As explained by the *Hubbard* court, a part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 added § 109(h) to the requirements for all individual debtors. Those debtors must obtain, within 180 days preceding the bankruptcy filing, a credit "briefing" from "an approved nonprofit budget and credit counseling

agency.” 11 U.S.C. § 109(h)(1). The United States trustee has approved such agencies in this district, therefore, the exclusion from this requirement found in § 109(h)(2) does not apply. Debtors in this district may, however, seek temporary relief from § 109(h)(1)’s requirement by certifying in the bankruptcy petition “exigent circumstances that merit a waiver of the requirements of paragraph (1).” 11 U.S.C. § 109(h)(3)(A)(i). Unfortunately, a pattern has developed since the effective date of this requirement, October 17, 2005, that sees many consumer debtors failing to obtain the briefing prior to filing their petitions and then filing a motion that seeks at least a 30-day extension under § 109(h)(3). The motion in this case is similar to those being seen in many cases where the debtor files only a simple motion that says very little.

As the *Hubbard* court pointed out, when a debtor is relying on the “exigent circumstance” exception to the prebankruptcy briefing, the statute is very clear on what the debtor must do:

1. Submit a certification.
2. The certification must state that the debtor requested the briefing services from an approved agency but was unable to obtain those services within 5 days from the request.
3. The certification must describe the exigent circumstances that merit a waiver of the prebankruptcy requirement.
4. The certification must be “satisfactory to the court.”

See *In re Hubbard*, 332 B.R. at 288-89. Assuming the above minimal requirements are met, the court may only grant 30 days after the filing of the bankruptcy petition, or a maximum of 45 days “for cause.” 11 U.S.C. § 109(h)(3)(B).

This Court started out thinking that such motions for an extension could be granted rather routinely, but the *Hubbard* decision has persuaded this Court that its initial procedure is not correct, and the present motion provides an example of why a more rigid procedure is necessary.

As the *Hubbard* decision points out, the statute uses the term “certification,” a term which implies evidentiary value. 332 B.R. at 289. Although this opinion will not express the minimal requirements for a “certification,” the *Hubbard* court opined that it would require an affidavit or another form of verification. The bankruptcy petition itself

has a choice of two boxes under the term “certification” as it relates to whether the prebankruptcy briefing has been obtained. Official Form 1. If a debtor checks the exigent circumstance box, it calls for an additional “certification” about that circumstance. As a result, this court concludes, as did the *Hubbard* court, that a mere motion, at least one that is not signed by the debtor, is insufficient. The debtor who seeks a waiver of the prebankruptcy briefing requirement must file a certification that meets the statutory elements. “Without a certification, the motion is fatally defective.” *In re Hubbard*, 332 B.R. at 289.

Next, it will be insufficient for a debtor to merely say “I want an extension,” or “I didn’t get the briefing prior to filing because I had a pending foreclosure.” The statute does not provide for those alone as reasons for an extension. The debtor must certify that he or she requested the briefing but that it was not available within the 5-day period, and in addition the debtor must certify the exigent circumstance upon which reliance is placed. The latter might include a pending creditor action, but each of the requirements of § 109(h)(3)(A) must be found in the certification. As the *Hubbard* court correctly stated, those requirements are “conjunctive.”

CONCLUSION

Based upon the literal language of the statute, the Court concludes that this debtor’s motion must be denied but without prejudice to the debtor filing an amended certification. In order to expedite this matter, the Court is resetting the original motion for a hearing on December 17, 2005. The Court notes that under any circumstance, the debtor should be proceeding to obtain the required credit briefing.

Cc: Debtor
Debtor’s attorney
Chapter 13 trustees
U.S. trustee