

To: Chapter 7 ED Pa. Panel Trustees

From: AUST Baker

Date: January 25, 2007

Re: Unpaid Balance in Chapter 7 Cases

Over the last year we have made an effort to inform debtors' counsel that if there is an unpaid balance on their Rule 2016(b) Statement that this unpaid balance is a dischargeable debt. See *In re Hessinger & Assoc.*, 165 BR 657 (Bankr. ND Cal. 1994) (court holding that it is beyond question that the debt is dischargeable and not collectible). Notwithstanding, we continue to see that attorneys are attempting to collect on their client's unpaid balance.

In justifying their action, attorneys raise the issue that the costs of filing bankruptcy have increased and that they are only benefiting their clients. Continuing, they assert that without the ability to pay the chapter 7 fee over time, the client would be denied adequate representation in a chapter 7 filing. Unfortunately, this assertion does not satisfy the requirement of law and is not legally defensible.

I am sure each of you reviews carefully the Rule 2016(b) Statement for reasonableness. If not currently included in your review, please begin looking to see if counsel is seeking payment of an unpaid balance. If so, please inform counsel and the debtor that the unpaid balance will be dischargeable if the debtor obtains a discharge under the provisions of chapter 7. Accordingly, the debtor should not pay it and counsel cannot collect it. If the debtor has already paid the disclosed unpaid balance to the attorney (post-petition payment prior to the § 341 meeting), that payment is recoverable by you for the estate. If administration of the estate would not return a meaningful distribution to creditors even with the refund, you should not seek recovery of the monies but should inform our office immediately of this so that we may take action.