

## McAlpin, Ronald (USTP)

---

**From:** McAlpin, Ronald (USTP)  
**Sent:** Friday, November 21, 2014 4:51 PM  
**To:**

**Cc:**

**Subject:** Trustee Duties

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

A judge recently questioned whether communications between the attorney for the trustee who was also the case trustee and the trustee's special counsel were "professional services" compensable under 11 U.S.C. § 330 or trustee duties compensable under 11 U.S.C. § 326.

As a reminder, fee applications must describe the service and the complexity of the matter in sufficient detail so that the court can determine on the face of the fee application that the task required the use of a professional. This is especially true when the trustee also serves as the attorney for the trustee under 11 U.S.C. § 327(d). While the purpose behind § 327(d) is to reduce costs, it also creates the potential for circumventing the limitations on trustee compensation set by 11 U.S.C. § 326. The trustee-attorney must clearly demonstrate to the Court that the services for which attorney's fees are sought are not duties generally performed without the assistance of counsel. The demarcation between trustee services and attorney services should be clear and distinct in the attorney's application, and that the specific subject matter and nature of the problem that required legal services be apparent from the records.

I have attached a copy of *In re Lexington Hearth Lamp and Leisure, LLC*, 420 B.R. 135 (Bankr. M.D. N.C. 2009) which contains an excellent discussion as to the delineation between trustee duties and legal services including communications between the attorney for the trustee/trustee and the trustee's special counsel.

Please advise if you have any questions.

Ronald H. McAlpin  
Assistant U. S. Trustee  
United States Department of Justice  
501 East Court Street, Suite 6-430  
Jackson, MS 39201  
Telephone: (601) 965-5247  
Fax: (601) 965-5226  
Email: [ronald.mcalpin@usdoj.gov](mailto:ronald.mcalpin@usdoj.gov)

This message and any attachments are intended only for the use of the addressee and may contain privileged and/or "Limited Official Use" (LOU) information. If the reader of the message is not the intended recipient(s) or an authorized representative of the intended recipient(s), you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to this e-mail message or by telephone at (601) 965-5241 (EXT. 123), and delete the message and any attachments from your system. Thank you.