

UNLV | WILLIAM S. BOYD  
SCHOOL OF LAW

NANCY B. RAPOPORT  
INTERIM DEAN &  
GORDON SILVER PROFESSOR OF LAW

DIRECT DIAL: (702) 895-5831  
CELL: (713) 202-1881  
E-MAIL: [nancy.rapoport@unlv.edu](mailto:nancy.rapoport@unlv.edu)

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VIA EMAIL ([USTP.Fee.Guidelines@usdoj.gov](mailto:USTP.Fee.Guidelines@usdoj.gov)) AND REGULAR MAIL

Executive Office of the United States Trustee  
20 Massachusetts Ave., N.W., 8th Floor  
Washington, D.C. 20530

Re: Comments on the Updated Proposed Guidelines for Reviewing Applications for Compensation & Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases; Summary of Revisions; and Analysis of Comments (the "Revised Guidelines")

Having reviewed the Revised Guidelines posted on November 2, 2012, I have only two additional comments. First, I applaud the USTP's approach to "conflicts counsel" and "efficiency counsel." Since 1993, I have suggested that conflicts in bankruptcy cases may be trickier to resolve than those in other types of cases. Bankruptcy cases can involve a series of shifting alliances that are issue-specific. Conflicts relating to certain issues can lie dormant for most (and sometimes all) of a case. If and when those dormant conflicts actually crop up, they fall into two categories: they can be temporary or permanent. Permanent conflicts can be disqualifying, but temporary conflicts lend themselves to a carve-out of representation that conflicts counsel can handle.\* These Revised Guidelines address the issue of conflicts counsel in a rational way that is designed to minimize unnecessary fees. Second, the Revised Guidelines provide a useful template for any court that wishes to systematize a law firm's explanation of its fees and expenses in those larger chapter 11 cases. To the extent that a court wished to adopt these Revised Guidelines as part of a local rule for larger chapter 11 cases, that court would create a single set of expectations for what belongs in fee applications in such cases. Even absent such a local rule, though, the fact that these Revised Guidelines give attorneys a clear indication of what may trigger an objection to fees and expenses should contribute to the overall goal: providing the bankruptcy court with sufficient information to review fee applications in larger chapter 11 cases.



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\* Nancy B. Rapoport, *The Intractable Problem of Bankruptcy Ethics: Square Peg, Round Hole*, 30 HOFSTRA L. REV. 977 (2002), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=936235](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936235); Nancy B. Rapoport, *The Need For New Bankruptcy Ethics Rules: How Can "One Size Fits All" Fit Anybody?*, 10 PROFESSIONAL LAWYER 20 (1998), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=939448](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=939448); Nancy B. Rapoport, *Our House, Our Rules: The Need for a Uniform Code of Bankruptcy Ethics*, 6 AM. BANKR. INST. L. REV. 45 (1998), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=936343](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936343); Nancy B. Rapoport, *Turning and Turning in the Widening Gyre: The Problem of Potential Conflicts of Interest in Bankruptcy*, 26 CONN. L. REV. 913 (1994), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=936337](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936337).