

Meet Bob Gebhard

Robert S. Gebhard became the Assistant Director for Oversight within the Executive Office for United States Trustees in Washington last June. Bob recently sat down with NABT to talk about his job, his vision for the Office of Oversight, the COVID-19 public health crisis, legislation and his long career in the bankruptcy field.

You have had an eventful 11 months in office. Before we talk about COVID-19 and other issues, how would you describe the oversight role of the Executive Office for United States Trustees?

The U.S. Trustee Program's mission is to promote the integrity and efficiency of the bankruptcy system by, among other things, enforcing the bankruptcy laws, as written, and supervising the private trustees who administer bankruptcy cases. In the area of trustee oversight, the Program's core functions are the recruitment, training and supervision of trustees. At the Executive Office, we work with the U.S. Trustees and their field offices to promote uniformity in the application of bankruptcy laws and consistency in trustee performance, while keeping in mind the regional differences that can exist in terms of applicable case law and local practice. We focus on the big picture and strive to improve the bankruptcy system through our outreach and collaboration with the courts, bankruptcy judges and trustee organizations, including NABT.

What have your priorities been since becoming Assistant Director for Oversight?

Putting aside COVID-19 for the moment, upon my arrival last June, my first priority was to learn the job and the various oversight responsibilities. I am a long-time bankruptcy practitioner and previously served as an Assistant U.S. Trustee in a field office, but that prior tour of duty was many years ago and before the passage of BAPCPA. Within a short period after my arrival at the Executive Office, the Small Business Reorganization Act (SBRA) was enacted and I necessarily turned my efforts to preparing for its implementation. Most of my early days were devoted to working with our internal working group to recruit SBRA trustees, develop practices and procedures, and put together comprehensive training programs for both staff and the subchapter V trustees selected for the SBRA pools that were put in place. The law became effective on February 19 and was recently expanded with the passage of the CARES Act [discussed below], which increased the debt limit for SBRA eligibility for a one-year period. Now, with two months of SBRA under our belts, my focus is on fostering and supporting the success of the SBRA.

Of course, while SBRA preparations were ongoing, our important work in the areas of trustee oversight, credit counseling and debtor education continued. These efforts included devoting

significant time to recruiting new panel trustees, with 34 new trustees coming on board since I arrived.

What impact has COVID-19 had on the Office of Oversight?

It has been dramatic, with the challenge of ensuring the health and safety of the general public and all individuals involved in the bankruptcy process while keeping the system functioning for businesses and consumers who need financial relief. As you know, we took a number of steps. We mandated that section 341 meetings be conducted by telephone or other means not requiring in-person attendance, rescheduled section 341 meetings in about 60,000 cases and, in cooperation with the courts, sent an estimated one million notices to the parties associated with the rescheduled meetings. We issued best practices for telephonic meetings and purchased and distributed to trustees about 1,200 conference lines and 600 digital recording devices. We also issued best practices for maintaining evidentiary standards like administering oaths, debtor identification and taking testimony. We are continuing to monitor the situation closely and appreciate all the assistance and support we have received from the chapter 7 community.

Were there any chapter 7 issues surrounding the Coronavirus Aid, Relief, and Economic Security (CARES) Act?

As I am sure your readers know, the CARES Act calls for the issuance of “recovery rebates”—more commonly referred to as direct payments to taxpayers—of up to \$1,200 per qualified individual or \$2,400 for a qualified married couple filing jointly, with an additional \$500 for each qualifying child. We issued a notice on April 7 to all chapter 7 and 13 trustees about two issues regarding the recovery rebates: first, whether the rebates should be included in the calculation of current monthly income or projected disposable income; and second, whether the rebates are property of the bankruptcy estate. Under the explicit terms of the Act, the answer to the first question is “no.” With regard to the second question, the Act is silent, but we expect that it is highly unlikely that trustees would administer the payment after consideration of all relevant circumstances. We expect that trustees will notify their U.S. Trustee in the unlikely event they plan to take any action to recover a rebate or object to a chapter 13 plan based on the treatment of the rebate.

While we’re on the subject of legislation, your short tenure has been a busy time for new bankruptcy laws, right?

You can say that again. In addition to SBRA and CARES, last summer Congress passed the HAVEN (Honoring American Veterans in Extreme Need) Act, The Family Farmer Relief Act, and The National Guard and Reservists Debt Relief Extension Act. The HAVEN Act excludes certain military disability or death-related benefits received by veterans and survivors from the Bankruptcy Code’s definition of “current monthly income” or CMI. The change in the CMI definition necessarily affects the determination of presumed abuse in chapter 7 cases, as well as the calculation of disposable income in individual chapter 11 and 13 cases. The Family Farmer Relief Act of 2019 enlarges the debt limit for an individual or entity to be eligible for chapter 12 relief as a “family farmer” from \$4,411,400 to \$10 million by amending the definition of a

family farmer at section 101(18) of the Code. The National Guard and Reservists Debt Relief Extension Act extends for an additional four years the existing exemption from the means test for qualifying reservists and National Guard debtors who are called to active duty or to perform a homeland defense activity for not less than 90 days. On the day of their enactment, we disseminated a brief summary of these new laws to give private trustees a heads-up and to let them know how we intended to enforce them. For example, with regard to the HAVEN Act, we stated our intention of working to ensure that our approach is faithful to the language of the statute and, if ambiguities arise, we would generally resolve them in favor of the recipients of benefits covered by the Act.

Is there any training planned for chapter 7 trustees?

Before the COVID-19 crisis, plans were underway for a three-day course in March 2020 for panel trustees appointed in the preceding five years at the Program's National Bankruptcy Training Institute in Columbia, South Carolina. Obviously, we needed to postpone this course, but our work on the course agenda continues. We will reschedule the training when it is safe and responsible to do so.

What do you enjoy most about chapter 7 trustee oversight?

I think primarily it is the chance to work with chapter 7 trustees and be engaged in interesting and challenging work that has an important impact on business and consumer cases. I have represented trustees in liquidating businesses in both chapter 7 and chapter 11 cases, and I know first-hand the challenges trustees face in exercising their business judgment to administer cases in an expeditious and cost-effective manner. As for consumer cases, one lesson I have learned over the years is that they are every bit as complicated as business cases. The dollar amounts might be smaller, but the cases are just as challenging and complex, and the outcomes often have a greater impact on people's daily lives.

You served as Assistant U.S. Trustee in San Jose, California, from 1995 to 2002. What was that experience like, and did it help prepare you for your current position?

It was challenging and it definitely helped to prepare me to serve as the Assistant Director for Oversight. The San Jose division covers several counties that are very diverse economically—from Silicon Valley to farming and beach communities—which makes the cases equally as diverse. The dot-com bubble happened during that time, and there was a steady stream of high-tech bankruptcies, which often resulted in sales of entire companies in accelerated time frames. Overall, serving as an Assistant U.S. Trustee was a personally rewarding experience and a real eye opener for me. I had clerked for bankruptcy judges, but this was my first time playing the watch dog and it was in the field, so I saw what it was like on the front lines.

You started in the bankruptcy field straight out of law school and never looked back. Why bankruptcy?

I was a summer associate at a law firm in 1986. One of my first assignments was a bankruptcy case. The Bankruptcy Code was pretty new back then and I could see that bankruptcy law was going to develop over time and it was a great opportunity for me to jump in. Bankruptcy also just struck me as the perfect combination of court practice, problem solving and negotiation. There simply isn't time to fight to the death in a bankruptcy case.

You have spent most of your thirty-three-year career at well-known law firms in Northern California. Why return to government service now?

Law firms are about client service, which can be very rewarding. Government, on the other hand, is about service to the system and all its stakeholders, which is just as rewarding but has a greater impact. At law firms, the impact is case-by-case, but in government, the impact is often macro. That is primarily what drew me back.

What were some of your most challenging cases in private practice?

One case really stands out. It was a statutory construction case. The issue was whether a proof of claim is deemed allowed as filed in a chapter 7 no-asset case for purposes of enforcing a judgment on the purportedly allowed claim in subsequent litigation. We won all the way up to and including the Fifth Circuit. Appeals are always very challenging and very rewarding. I like to say that my record on appeals is 4-0-1, including two bankruptcy court decision reversals. The tie was a case where we won on one issue and lost on the other.

Bio:

Robert S. Gebhard has spent his entire career in the bankruptcy field. Before becoming Assistant Director for Oversight for the U.S. Trustee Program in Washington, he was a partner, counsel or associate at multiple well-known law firms in Northern California, including the former Bronson, Gray Cary and Sedgwick firms, and Clyde & Co., representing debtors, trustees, creditors, creditor committees and other parties in interest in bankruptcy cases. He has also served as Assistant U.S. Trustee in San Jose and law clerk for two bankruptcy judges. Bob received his juris doctor degree *cum laude* from Indiana University School of Law and graduated with high distinction from Indiana University with a Bachelor of Arts degree in history and Spanish.