



U.S. Department of Justice

United States Trustees, Region 10
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Northern and Southern Districts of Indiana

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BY EMAIL

MEMORANDUM

TO: Chapter 7 Panel Trustees, Region 10

FROM: Nancy J. Gargula
United States Trustee, Regions 10 and 13

DATE: November 4, 2014

SUBJECT: Chapter 7 Trustee Responsibilities and Hiring of Trustee as Attorney for Trustee

A recent review of professional fee applications filed by trustees in the Region has identified a high incidence of statutory trustee duties being requested to be compensated as attorney fees. In many instances, the case trustee has hired themselves or their firm as attorney for the estate. The purpose of this Memorandum is to serve as a follow up to our discussions during the Region 10 Chapter 7 Trustee Training conducted in Indianapolis on September 3 and 4, 2014, and to remind trustees of those matters that are considered a trustee duty and for which the attorney for trustee, where hired in appropriate cases, may not seek compensation.

The trustee's primary statutory duties are set forth in section 704 of the Bankruptcy Code and are detailed throughout the *Handbook for Chapter 7 Trustees*, October 1, 2012 ("Handbook"). Attorneys may not be compensated for performing the statutory duties of the trustee. 11 U.S.C. § 704, Fed. R. Bankr. P. 2015(a).

Page 4-21 of the Handbook states, “Attorneys and accountants shall not be compensated for performing the statutory duties of the trustee.” 11 U.S.C § 704, Fed. R. Bankr. P. 2015(a).” Examples of those trustee duties include the following:

- 1) Preparing for and examining the debtor at the meeting of creditors in order to verify factual matters;
- 2) Examining proofs of claim and filing routine objections to the allowance of any claim that is improper;
- 3) Investigating the financial affairs of the debtor;

- 4) Furnishing information to parties in interest on factual matters;
- 5) Collecting and liquidating assets of the estate by employing auctioneers or other agents and soliciting offers;
- 6) Preparing required reports;
- 7) Performing banking functions; and
- 8) Where appropriate to do so in a case, filing applications for employment of professionals and supervising those professionals.

The noted trustee duties are not compensable as legal or accounting services unless sufficiently documented to show that special circumstances exist. Recall that during our Region 10 Chapter 7 Trustee Training, I specifically mentioned that absent extraordinary circumstances, the administration of a tax refund by a trustee would not require the trustee to hire an attorney or an accountant. We specifically discussed the procedures that have long been in place with the IRS for trustees to have tax refund checks sent directly to the trustee as one tool available to trustees when administering tax refunds.

We also discussed at our training that the goal in case administration is to strive for a meaningful distribution to unsecured creditors in each asset case. Prior to administering a case as an asset case, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors. 11 U.S.C § 704. Handbook, page 4-3. At our training, we also discussed some of the anomalies that trustees sometimes face in cases where a trustee thought an asset had more value than it turned out to have, liquidating the asset turned out to involve unanticipated protracted litigation or have no resale market and where unusual facts are present in the case. Recall that in those cases when you find yourself at the end of the case and your trustee fee and attorney fees for trustee – and other professionals – total more than the funds you have in the estate, we have asked you to reach out to Rick Rader before you file your fee applications and/or TFR to discuss the case and try to resolve the situation.

As we continue to work together to strive for meaningful distributions to the unsecured creditors in your asset cases, it is worth mentioning several other applicable sections of the Handbook that we have discussed:

- The threshold question for the employment of any professional is the necessity of employment. The trustee must determine whether the services of a professional are needed and whether the cost is warranted. 11 U.S.C §§ 330 and 704(a). Further, the trustee needs to determine at the outset the level of professional work required and the estimated costs and benefits associated with the work. Handbook, page 4-19.
- A trustee shall not administer an estate or an asset in an estate where the process of liquidation will primarily benefit the trustee or the professionals, or unduly delay the

resolution of the case. The trustee must be guided by this fundamental principle when acting as trustee. Accordingly, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case. 28 U.S.C. § 586. Handbook, page 4-1.

- A trustee must be sensitive to the best interest of each individual estate and any conflict of interest problems that may be posed by acting as an attorney or accountant for the estate. 11 U.S.C § 327. The trustee may not be employed as counsel or accountant to provide services that a trustee could perform without professional assistance. The trustee shall not submit boilerplate applications to employ the trustee as a professional in every case without specifying the necessity for the services.
- A trustee acting as attorney or accountant under section 327(d) may receive compensation only for services performed in that capacity and not for the performance of regular trustee duties. 11 U.S.C. § 328(b). Handbook, 4-21.

We very much appreciate the important work that each of you do in helping us protect and preserve the integrity of the bankruptcy system, in bringing your expertise and efficiency to the administration of your cases and in providing meaningful distributions to the unsecured creditors. We are considering offering further trustee training in this area as has already been suggested. Please let us know if you would find this helpful.

cc: Region 10 Staff