

From: [Gaudrault, Amy \(USTP\)](#)
To: [Gaudrault, Amy \(USTP\)](#)
Cc: [Donahue, Gary \(USTP\)](#); [Fitzgerald, John \(USTP\)](#); [Harrington, William \(USTP\)](#); [Juliano, Maureen \(USTP\)](#); [King, Richard \(USTP\)](#); [Morrell, Stephen G. \(USTP\)](#); [Patterson, Beverly \(USTP\)](#)
Subject: Administrative Expenses and Trustee Professional Fees
Date: Wednesday, June 5, 2019 3:11:06 PM

This e-mail is sent on behalf of William Harrington

All,

It has come to my attention that the Bankruptcy Courts throughout the Region recently have entered a number of orders, *sua sponte*, reducing professional fees for legal work performed by Trustees or their firms and requiring the filing of amended trustee final reports (“TFRs”) to reflect such changes. Substantively, it appears that such orders have been entered primarily in cases wherein either: (1) the Bankruptcy Court has determined that the professional fees sought were unreasonable for the tasks performed and disproportionate to the benefits conferred upon the estate; or (2) the Bankruptcy Court has determined that the professional fee applications included time for performing trustee duties.

As noted by Director White at last year’s NABT Annual Conference, it is incumbent upon all of us to be vigilant in ensuring that estates are only being administered for the benefit of the creditors and not primarily for the benefit of the Trustee or his or her professionals. Indeed, Director White went on to opine that such activity would represent a “clear breach of fiduciary duty and a clear violation of the principles that gave rise to the modern Bankruptcy Code.” While I am sure none of the cases mentioned above fall into that category, these cases did provide a reminder for me that we collectively need to be vigilant in making sure we are appropriately evaluating cases to be administered.

Additionally, we all are aware that, under 11 U.S.C. § 327(d), with court approval, a trustee may act as attorney for the estate, provided such employment is in the best interest of the estate. However, as we all are also aware, professional fee applications should not include time spent performing regular trustee duties. 11 U.S.C. §328(b). Absent sufficient documentation of special circumstances, the following is a non-exhaustive listing of services considered to fall within the duties of a trustee:

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. In appropriate cases, filing applications for employment of professionals and supervising those professionals.

Handbook for Chapter 7 Trustees, page 4-21

Procedurally, it is imperative that our local field offices and Amy Gaudrault be notified of such orders so we can be sure that the Amended TFRs are processed in a timely manner. Once done, please submit the amended TFR package electronically to the address used for submitting TFRs (i.e. USTP.Region01.TFR@usdoj.gov), with signed originals sent to the specific TFR reviewer (i.e. Maureen Juliano or Beverly Patterson). When submitting the same, please include a brief explanation as to why the Amended TFR is being submitted.

Thank you in advance for your continued attention to these important matters.

Regards,

William K. Harrington
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