

To: Chapter 7 ED Pa. Panel of Trustees

From: AUST Baker

Date: March 31, 2015

Re: Appearance or Contract Attorneys

In 2013 we asked you to look at instances where “appearance” attorneys (attorneys who appear at §341 meetings on behalf of debtor’s counsel and who are not a member, partner, or regular associate of the debtor’s counsel’s firm) regularly come to §341 meetings and to note if they were prepared and if debtors were aware that the appearance attorney would be representing them at the §341 meeting. This issue is addressed by one of the items appearing on the Checklist which we have requested you to complete (“Not the attorney of record”).

I have attached a case from a bankruptcy court in Texas which discusses this issue and the evils that can occur when appearance attorneys are routinely employed. While this judge has determined that appearance attorneys can no longer practice in his court, I am not presently advocating this approach nor am I aware that our courts have addressed this issue. Rather, I am trying to determine whether bankruptcy attorneys are complying with their obligations under the Bankruptcy Code and Rules and whether the clients are receiving appropriate representation which includes the retained lawyer obtaining the client’s consent for using an appearance attorney.

Going forward, in instances where an appearance attorney comes to the §341 meeting, please **explore with the debtor** the following: (1) how and when the debtor was informed that an appearance attorney would be coming to the §341 meeting; (2) whether the debtor was being charged any additional monies for the appearance attorney; and (3) whether (and when) the debtor discussed the facts of the bankruptcy with the appearance attorney. I would also request that you **explore on the record with the appearance attorney** the following: (1) whether she is being paid and how much; (2) whether she or the “retained” lawyer has filed an amended Rule 2016 Statement; and (3) when she received the file on the debtor. Of course, you may ask any other questions that you think are appropriate on this subject. **We would ask that you explore this information at the beginning of the record so that we can find it easily.**

After you obtain this information, please note on the Checklist (which you should send to your reviewer) whether the appearance attorney was prepared. We will listen to the recording after receiving your Checklist with the information.