



U.S. Department of Justice

*United States Trustee, Region 10 Central &
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Northern & Southern Districts of Indiana*

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MEMORANDUM

TO: All Chapter 7 Trustees in the Southern District of Indiana

FROM: Ronald J. Moore,
Assistant United States Trustee,
Indianapolis

CC: Nancy J. Gargula, United States Trustee, Region 10
All Indianapolis Field Office Staff

RE: Payments to Debtors for “Cooperation” in Litigation

DATE: January 23, 2012

Chapter 7 trustees, on occasion, seek authority to disburse estate funds to debtors in payment for the debtors’ cooperation in pending litigation. These disbursements are generally in personal injury cases where the trustee has stepped into the shoes of a debtor and the debtor’s testimony and cooperation is essential to the prosecution of the litigation. While payments to debtors are not an everyday occurrence, they do happen with some regularity. In reviewing this office’s procedures regarding these disbursements I determined that our handling of these matters has not been uniform. The purpose of this memorandum is to detail some concerns with this practice and also to supply a higher level of uniformity to the treatment of these disbursements by this office and the requests to the Court for them.

Propriety of the payments

In the past, the reasons advanced by trustees to justify disbursements to debtors generally fall into two categories: obtaining debtors’ testimony and other cooperation with the prosecution of the lawsuit. First, it should be noted that debtors have a duty to cooperate fully with a chapter 7 trustee in the performance of her duties and in the administration of the bankruptcy estate. 11 U.S.C. § 521(a)(4) and Bankruptcy Rule

4002(a)(4). In general, that duty has been interpreted broadly, subject to a reasonableness standard. See In re Stinson, 221 B.R. 726, 731 (Bankr.E.D.Mich.1998) and In re Morey, 416 B.R. 364, 366 (Bkrcty.D.Mass.2009). Debtors are enjoying benefits from a bankruptcy, usually including a discharge, and therefore their cooperation with the trustee is expected. Paying debtors to perform a duty which they are legally required to perform without compensation is therefore dubious and should be done only in rare or exceptional cases.

Second, both the Federal and Indiana court systems have witness fee statutes or rules regarding the payment of fact witnesses for their testimony and generally fact witness payments are based on a modest per diem plus mileage . See Fed.R.Civ.Pro. 45 and Ind. Trial Rule 45. Therefore the amounts of any payments by trustees to debtors to secure testimony should be modest in amount.

In order to ensure more uniformity in procedure and compliance with the authorities cited, the following guidance is issued to the Southern Indiana Chapter 7 panel trustees, effective immediately. Trustee Final Reports submitted to the Office of the United States Trustee will be reviewed for compliance with this guidance.

Authorization of Payments

Authorization for all disbursements to debtors based on their assistance with the liquidation of assets (excluding payments required by 11 U.S.C. § 726(a)(6)) should be obtained from the Court. For any disbursement to debtors in the total amount of \$1,000 or less, the request may be contained within a motion to compromise and settle if permitted by the Court. In any case where the total amount disbursed to debtors will exceed the total amount of \$1,000, the motion should be filed as a separate expense motion with appropriate notice given to all parties.

In addition, for any disbursement to debtors which will exceed the total amount of \$1,000, email notification to the assigned trial attorney and paralegal at the OUST is required at the time the motion to authorize the disbursement is filed.

Trustee Fees

Trustee fees are not permitted against any amount disbursed to debtors. 11 U.S.C. § 326(a). In that the disbursements described above are disbursements to the debtors, trustee fees are not permitted to be assessed on the amount of those disbursements. Please ensure your statutory compensation computation in your TFRs is calculated to exclude all amounts disbursed to debtors.

Disclaimer

This memorandum is issued for guidance only in the Southern District of Indiana. It may be superseded at any time by policy issued by United States Trustee for Region 10 or the Executive Office for the United States Trustees, in their discretion.