



U.S. Department of Justice

Office of the United States Trustee

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TO: Chapter 7 Trustees for the WDWI & NDIL Western Division

FROM: Mary R. Jensen
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DATE: January 28, 2020

RE: Local Supplemental Guidance for Trustees

Creditor Meetings

1. **Telephonic 341 policy for conflict cases**

Here is the procedure to be followed when a trustee hears a case by phone due to another trustee's conflict:

1. Trustee A rejects a case due to a conflict.
2. The court informs the U.S. Trustee via email.
3. We will assign the case to Trustee B.
4. On the meeting day, Trustee A will collect the Debtor's ID, begin the recording, and phone Trustee B on the speaker-phone.
5. Trustee B will call the case.
6. Trustee A will administer the oath and verify identification on the record.*
7. Trustee B will examine the Debtor and otherwise conduct the meeting.
8. At the conclusion of the meeting, Trustee A will stop the recording.
9. Call sheets
 - a. Trustee A should note on his/her call sheet that Trustee B conducted the meeting.
 - b. Trustee B should send in a separate call sheet just for his/her case(s), noting on the call sheet that the recording is on Trustee A's flash drive.

*There may be the extremely rare case where a Debtor or Creditor objects to Trustee A being involved in any way. If that happens, Trustee B should continue the case on the record, with date/time to be determined, then contact the U.S. Trustee's office, and we will work with Trustee B to make alternate arrangements.

2. Continued Meetings

When a 341 meeting is continued for production of documents or amended schedules, there are two options for concluding the meeting once the documents or amendments are received:

- a. Best practice (clearest record) is to call the case on the date continued, indicate that the documents/amendments have been provided and then conclude the meeting on the record and with a subsequent docket entry.
- b. An acceptable alternate practice is to clearly state the parameters for continuing/concluding the meeting at the initial 341 and then conclude the record with a docket entry once the documents/amendments have been provided.

Trustees need to follow one of these two practices to create a clear record. Otherwise, when USTP or staff or law enforcement listen to a recording that says the meeting is continued to some date, and then turn to that date, there's nothing to be found. There's also nothing on the docket to indicate whether documents were provided or whether any amendments made were satisfactory to the trustee. This type of ambiguity hampers prosecutions.

Regardless of which practice you choose, there should always be two docket entries for every continued meeting: an entry with the continued date and an entry showing meeting as concluded.

3. Security

The U.S. Trustee Executive Office has established a database of 341 security issues. If you have a security-related event occur at one of your meetings, please let me know as soon as possible after the event occurs, even if it is already resolved. By security event, I mean anything from weapons to an altercation between participants to a serious or extended verbal outburst or other activity that makes people in the room afraid. April Wentz can also take reports for any action that has already been resolved.

If you are in a location where we have FPS protection and the guard fails to show, please let me know this as soon after your meeting as possible.

If you have reason to foresee that there might be a problem at an upcoming meeting, please let me know as soon as you become aware of this risk, so that I can work on safety planning with you. If I'm not available, please work with one of the attorneys.

Finally, if you ever feel you are in immediate danger, call 911.

4. Translation Services

As a reminder, it's not necessary to schedule a language interpreter in advance but please contact April Wentz in our office if you want to do so. When making a call, the name and city given to CLI should be the trustee's name and the location of the §341, together with the customer code. Fill out the attached LEP Form for each call, multiple calls can be listed on the same sheet, and return to the UST with your call sheet. **Please note:** The customer code and client ID should

not be shared with debtors' attorneys or any other third party.

5. Wet signatures

Occasionally, debtors' counsel will file documents where the timing of the filing or some other factor strongly suggests that they did not obtain their clients' signature before the document was filed. It is important that all of us who share bankruptcy oversight duties respond appropriately and consistently to this abuse of the system. Please remind counsel of their responsibility to their clients and to the integrity of the system. If this communication is by email, please cc me on the email. If you become aware of a particularly egregious or habitual abuser, please let the U.S. Trustee know so that we can follow up on your response.

6. Suspected Fraud

When you suspect possible fraud in one of your chapter 7 cases, please:

- Notify our office immediately by email (doesn't have to be a formal referral at this point);
- Calendar the applicable 727 deadline;
- File motion(s) to extend the 727 deadline as necessary; and
- Include the U.S. Trustee in any 727 deadline extension.

As soon as we know about possible fraud, we can consult with you to decide whether it's more appropriate for our office or for you to take the lead in investigating, filing the complaint, etc.

Early notification is really key to making this process work. It helps us help you, and it may also allow us to bring other law enforcement resources to bear in a more timely fashion.

Reporting Reminders

7. TFR & TDR Reporting Requirements

Please remember that there is no procedure for an informal or non-traditional TFR or TDR, and those requirements may not be bypassed. In any asset case involving a distribution to creditors or payment to professionals, a TFR and TDR must be submitted to our Office. Entry of a Court order authorizing and directing a trustee to make a distribution does not excuse compliance with these reporting requirements at the appropriate time. The UST will object to motions that seek to bypass these requirements. Please continue to submit TFRs at ustp.region11.tfr@usdoj.gov and TDRs at ustp.region11.tdr@usdoj.gov.

As a point of clarification, you do not need to notify the UST prior to making ordinary course disbursements in connection with the administration of an estate. However, such disbursements should be contrasted with interim distributions to creditors or payments to professionals for fees (if not already approved by Court order), which remain subject to UST review.

8. Interim Fee Applications

When seeking a Court order approving an interim fee application (whether trustee compensation or professional fees), please email a copy of the application to your supervising Trial

Attorney at the time of filing. The UST will review the application prior to the hearing date, and will contact you to discuss if necessary. Absent such contact, or the filing of a written objection by the UST, you should proceed with the application and compliance with any resultant order in the ordinary course.

9. Interim Distributions

In accordance with Bankruptcy Rule 3009, interim distributions to creditors on account of allowed claims should be made as soon as practicable. Interim distributions must be reviewed by the UST in advance. When you seek approval of an interim distribution, please submit an interim bank statement, Form 2, and a Claims Proposed Distribution Sheet that is signed and certified by the trustee to ustp.region11.tfr@usdoj.gov. The email should have the following subject line Example: 5211612345 Jones ITR Smith. The UST will review the application and will contact you with an approval or questions.

10. Minimum Funds Cases

In cases where a trustee elects not to administer an estate after receiving funds, the Minimum Funds NDR process must be followed. *See* Section 4-35 of the Chapter 7 Trustee Handbook. This procedure is similar to the one we use for review of interim distributions.

Trustees should send an email to the TFR mailbox (USTP.Region11.TFR@usdoj.gov) with a cc to the supervising attorney using the following standardized naming convention in the subject line – case number, space, case name, space, NDR MF, space, trustee last name. (*e.g.* 5811513832 Ott NDR MF Block). The email should include

- an explanation as to why the funds are being returned versus being distributed to creditors;
- a statement that the bank statements reflect a zero balance;
- Forms I and II; and
- any bank statements and any voided checks that are not available on a portal.

The consolidation team will do the initial review and then forward the package to the supervising attorney. The supervising attorney will then communicate back to the trustee whether the NDR MF is approved. The NDR should not be filed until there is a zero bank balance, and approval from the supervising attorney has been obtained.

11. Bank Records

Please maintain your bank records for all open cases, even if those cases last longer than seven years.

12. Notifying the OUST of a Change in Banks

If you intend on moving your estate accounts to a new bank, please contact Bart von Zastrow in advance to confirm that the prospective bank is an authorized depository and is properly collateralized.

13. Billing Attorney Time for Trustee Duties

Please be mindful that trustee duties should not be delegated to attorneys, and absent unique circumstances, should not be billed by attorneys.

Liquidating Secured Property

14. Third Party Offers

When reviewing offers from third parties to assist with liquidation of secured property, here are some of the factors to consider in reviewing these offers:

- Would this provide a certain and meaningful return for unsecured creditors, above the trustee's commission and administrative claims?
- Is the proposed action practicable?
- Are there tax ramifications for the estate?
- Are there exemption issues?
- Would you be exposed to possible liability? (e.g., slip-and-fall liability while a property is being sold)
- Is the proposed action unfair or potentially harmful to the debtors or other parties-in-interest? (e.g., in the case of a mortgage on the homestead, has the debtor defaulted?)
- Could you, as trustee, locate and administer the asset in question without the aid of the third party?

15. Section 506(c) Carve-outs

Section 506(c) carve-outs are estate property and are intended to benefit unsecured creditors. Section 506 is not a compensation statute and should not be cited as authority to allow either trustee compensation under Sections 326 or professional fees under Sections 328 or 330. When a trustee files a motion for approval of a Section 506(c) carve-out, the trustee should not seek approval of trustee compensation or professional fees at that time. Instead, approval should be limited to approving a carve-out for the benefit of the estate, subject to distribution in accordance with the Bankruptcy Code's priority scheme. Trustee compensation and professional fees would be fixed by subsequent Court order on the appropriate applications. Further, carve-outs *solely* for the benefit of professional fees are objectionable.

Miscellaneous

16. Payment of Exemption Claims

Please pay exemption claims as soon as the funds are on hand. Exempt funds do not constitute property of the estate and should not be retained until the end of a case.

17. Motions to Reopen

As a reminder, proposed orders granting Motions to Reopen should not include a provision reappointing a particular trustee. Rather, such orders should simply include a provision authorizing the U.S. Trustee to appoint a trustee. Once the order has been entered, the U.S. Trustee will appoint a trustee.

18. Administering Mass Tort Cases

While there may always be specific cases where other actions should be taken, general best practices for these cases:

Q: Should trustees file motions to employ the mass tort firms in the bankruptcy?

A: Yes – whether the firm is acting as attorney – 327(e) – or in more of an administrative/financial capacity – 327(a) – they still need to be employed if they want to receive compensation.

Q: If the mass tort firms are employed, does an application to employ need to be filed or can employment merely be included as one of the proposed settlement terms?

A: An employment application should be filed, pursuant to Rule 2014. Filing an application also lets the trustee address any issues raised by hiring an attorney who was already retained by the debtor (such as - Which one is the client? What happens if the debtor wants the settlement money paid as comp for injury (exempt) but the trustee wants it classified as punitive or other non-exempt category?).

Q: May trustees claim trustee compensation on the amount of money distributed to the mass tort firm even though that money doesn't pass through the hands of the trustee?

A: Absent some other objectionable factor, the U.S. Trustee will not object to this.

Because this is always a fact-based determination, I still plan to file motions to reopen when we are made aware of these PI cases, leaving it to the individual trustee to decide whether to attempt to administrate or abandon any particular asset.