

7/13/UST: Working in Partnership

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When was the last time that, as a chapter 7 trustee, you met with a chapter 13 trustee and talked about common interests in the administration of bankruptcy cases? Do you attend joint education sessions to address common legal issues? Do you correspond or email with each other on converted cases? Do you coordinate efforts to address such issues as petition preparers, attorney misconduct, frequent filers, or electronic case filing? Does the United States Trustee participate in your discussions and coordinate communication on these issues?

Nascent efforts to open a dialogue (call it a triologue?) among the parties principally involved in administering cases point to the need and advantages for each of us—the panel trustee, the standing trustee, and the U.S. Trustee—to communicate better on case administration and other matters of common concern.

The Founding Fathers reserved to the federal government the formulation of uniform bankruptcy laws. We have all struggled for a long time with the notion of uniformity in the interpretation and application of law. But only recently have we begun to work more closely with trustees on case administration issues in order to unify the system and make it more coherent and effective for debtors, creditors, other parties, and, indeed, for us.

The following is a brief report on three distinct efforts to build better communication and to coordinate the administration of cases. Each in its own way shows both the need and the potential for better coordination and communication.

NABT/NACTT/UST Liaison Group

At the urging of EOUST Director Lawrence Friedman, a trilateral liaison group consisting of chapter 7 trustees, chapter 13 trustees, and U.S. Trustee representatives held its first meeting on August 23, 2002, in conjunction with the NABT meeting in Vail. Sam Crocker, a chapter 7 trustee from Nashville who serves as NABT Secretary, heads a delegation of panel trustees. Andrea Celli, a chapter 13 trustee from Albany, N.Y., who is Vice President of the NACTT, chairs the standing trustee group. Martha Davis, EOUST Principal Deputy Director, is the point person for the U.S. Trustee Program.

The group established as its goal: “To educate chapter 7 and 13 trustees on matters of mutual concern so as to facilitate the coordination of their efforts to protect their estates and the bankruptcy system as a whole.”

¹The views expressed in this article are those of the authors and do not necessarily represent, and should not be attributed to, the Executive Office for United States Trustees, the United States Trustee Program, or the Department of Justice.

After polling some of her colleagues, Andrea Celli compiled a list of possible topics for the 7/13/UST Working Group to consider. The list includes the following:

- What types of cases prompt the local and regional offices of the U.S. Trustee to pursue 707(b) actions, and what are their guidelines for disposable income and allowable expenses?
- What avoidance actions should a chapter 13 trustee pursue and when should a chapter 13 trustee preserve the avoidance actions for a chapter 7 trustee?
- When should a chapter 13 trustee object to exemptions or preserve the right to object?
- What is the best way for chapter 7 and chapter 13 trustees to communicate on problem cases and parties such as repeat filers, converted chapter 7 cases with potential assets, and petition preparers?
- What changes in the Bankruptcy Rules would facilitate case administration?

The U.S. Trustees have keen interest in seeing that the 7/13/UST Working Group succeeds in its undertaking. Civil enforcement efforts can only be enhanced by better coordination. For example, as suggested above, shouldn't the chapter 7 trustees who are screening for 707(b) issues understand the standards applied by the chapter 13 trustees as to what constitutes disposable income? Conversely, shouldn't the chapter 13 trustees understand the standards applied by the U.S. Trustee's office in its review for 707(b) substantial abuse? And in all instances, shouldn't the debtors' attorneys know those standards and shouldn't the standards be somewhat consistent?

We will be hearing more from this group. Again at Director Friedman's suggestion, the group will present joint training on some of the foregoing topics at upcoming conventions of the NABT and the NACTT. A panel of chapter 13 trustees and chapter 7 trustees is preparing presentations on compensation issues, avoidance actions, preserving value in the estate, and exemptions. The panel will make its first presentation at the NACTT meeting scheduled for January 30-31, 2003, in Washington, D.C., and will make another presentation at the NABT meeting scheduled for March 28-29, 2003, in Miami.

Electronic Case Filing

Joint challenges and interests have also spawned an ad hoc liaison group to address ECF issues. At the initiative of Martha Davis, an ECF Working Group held its first meeting by conference call on June 28, 2002, followed by an in-person meeting on August 31, 2002, in conjunction with the NABT convention. The ECF Working Group consists of five chapter 7 trustees, five chapter 13 trustees, and various staff from the U.S. Trustee Program. These three groups must have quick, easy access to bankruptcy filings in order to carry out their statutory

responsibilities. The ability to retrieve and review debtors' petitions, schedules, and statements is absolutely essential to proper case administration including, in particular, the conduct of effective section 341 meetings.

The ECF Working Group is collecting and disseminating information on the following issues:

- CM/ECF is being implemented in different ways throughout the country. What are the range of operations? What works well, and what doesn't? How can we assist our courts in moving to CM/ECF?
- The automation of data exchange between the courts and the trustees holds great promise for all of us in making bankruptcy administration more efficient. Courts in Spokane, San Diego, and San Antonio have implemented data exchange programs that allow panel and standing trustees to "pull" dockets and document data from the courts and to "push" daily batch filings to the court. The "pulling" of dockets and data is of great interest to the chapter 7 trustees, who otherwise must laboriously download ECF-filed petitions. The "pushing" of batch filings is of great interest to chapter 13 trustees, who otherwise must individually file numerous motions.
- The working group reports that, from the trustee's perspective, the section 341 meeting is most efficiently conducted by downloading petitions to a CD and using a laptop to display the petition and schedules. The group is exploring other proposals to make the conduct of the meetings in an ECF environment more effective. The group decided that the ability to access the court docket in the section 341 meeting is not critical since it is generally limited to dial-up modems, which are too slow to be practical.
- Most trustees in the working group report that "going cold turkey" and dispensing with all paper in the long run is far preferable to maintaining both paper and electronic files.
- The group is monitoring different approaches to the preservation of paper and wet signatures, a critical issue in assuring that prosecutions are not compromised by ECF.
- Noticing may be a problem for certain trustees utilizing ECF because of timing issues. In some districts, trustees are exploring private noticing services.
- A manual on trustee "best practices," including a checklist on "getting started," is contemplated. The manual would address basic issues such as security and how to review petitions, which are significant issues for all of us.

The dozen or so members of the ECF Working Group have already benefitted from one another's ideas, experiences, and exchanges. Eventually, all panel trustees, standing trustees, and U.S. Trustees will enjoy the benefit of this group's work. More significantly, however, the group

is demonstrating the need and potential for better communication and coordination among the panel trustees, standing trustees, and U.S. Trustees.

Debtor Identification

While the new 7/13/UST Liaison Group is confronting substantive issues and the ECF Working Group is sharing ideas on technology, the Debtor I.D. project illustrates how coordination can benefit the system as a whole. The requirement that each debtor show proof of identity and Social Security number started in the Northern District of Illinois and Wisconsin as the brainchild of Ira Bodenstein, U.S. Trustee for Region 11. He started the program after discovering a substantial number of instances of incorrect Social Security numbers on bankruptcy petitions. It turned out that some trustees in other districts around the country were also checking debtors' identification on a more informal basis.

Building on Region 11's efforts, the Program launched a six-month pilot project in 18 judicial districts starting in January 2001. The pilot project showed that in roughly 1 percent of the filings there was some error in either the Social Security number or the name of the filer. While the majority of the errors were typographical, those errors could harm individuals whose credit reports falsely reflected a bankruptcy filing.

Given the overwhelmingly positive response to the pilot project, the Program extended the debtor identification requirement nationwide. After almost a year of operation it is working across all chapters in all regions to detect and redress an abuse that previously went unaddressed. The new requirement includes efforts to help victims whose credit reports might be adversely affected by incorrect Social Security numbers in bankruptcy filings.

The cooperation of both panel trustees and standing trustees in working with the U.S. Trustee Program has been critical in implementing the Debtor ID requirement. The requirement's uniformity and universality enhance its fairness and effectiveness.

While this is a relatively discrete area of abuse that is being remedied by simple procedures, it shows the potential that increased coordination and consistency holds for improving the administration of cases. Consider for a moment the possibility of a national, uniform standard for reviewing petitions for accuracy and completeness. If that is too ambitious, consider a uniform standard for the way in which Schedules I and J are completed. Consider the amount of time that accuracy and consistency in this one area would save each of us in carrying out our duties, whether it be in reviewing for 707(b) substantial abuse or in reviewing for the feasibility of a chapter 13 plan. Admittedly, these are long-term issues, but the current efforts underscore the need and potential for this type of coordination.

Director Friedman has said that he views the relationship between the U.S. Trustees and the chapter 7 and chapter 13 trustees as a partnership. That view, in itself, creates enormous potential for positive cooperation. He believes that our combined efforts can further our objective

of ferreting out fraud and abuse and thus maintain the integrity of the bankruptcy system. Further, our joint efforts will add transparency and thus instill confidence in the system.

Clearly, this partnership must include everyone charged with administering cases. We believe that the partnership of NABT, NACTT, and the U.S. Trustee Program sets forth the vehicle for weaving everyone into the fabric of the system. With each new effort, more thread is added to the fabric. The result will be a bankruptcy system that will be stronger and more unified, and that will weather the test of time.