BANKRUPTCY LAW NEWSLETTER

Published By Federal Bar Association
Western District of Michigan Chapter

Vol. I, No. 1 **September, 1988**

Professionals and the Bankruptcy Code

by
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The Appointment Process[1]

There is no area of the law where the compensation of an attorney or other professional is subjected to more scrutiny than the field of bankruptcy. Any professional who wishes to be paid from a bankruptcy estate must be appointed by the bankruptcy court and must file detailed fee petitions which can be approved only after notice and an opportunity to be heard has been given to all creditors and other parties in interest of the estate. With the expansion of the U.S. Trustee system, one can expect not only that critical reviews of fees petitions will become more frequent but also that the standards for approving and disapproving appointments and fees among districts will become more consistent (and probably more stringent).

As such, compensation for professionals in a bankruptcy proceeding will become even more of a trap for the unwary. However, the risk of being caught with a substantial bill and no one to pay it can be substantially reduced with an understanding of the rules under which the bankruptcy system operates.

Section 327[2] of the Bankruptcy Code authorizes a trustee, whether appointed under Chapters 7, 11, 12 or 13, and a debtor-in-possession in a Chapter 11 proceeding, to employ attorneys, accountants, appraisers, auctioneers and other professionals to represent or assist the trustee in carrying out the trustee's duties. A Chapter 11 creditors committee, but not a creditors committee appointed under Chapter 7 nor an examiner appointed under a Chapter 11, is also authorized to appoint professionals. Sections 1103, 705. The Bankruptcy Code defines an attorney as any entity which is authorized under applicable law to practice law and defines an accountant as any entity authorized to practice public accounting under applicable law. Sections 101(1), (3). However, the Bankruptcy Code does not define an auctioneer or an appraiser nor does it give any direction as to who else might be deemed a professional person.

Obviously, whether a person employed by a trustee, debtor-in-possession or creditors committee is a professional person or not for purposes of Section 327 is important because if that person is deemed to be a professional, then he can not be paid from the estate unless his employment has been approved by the bankruptcy court. Sections 327, 1103. There have been many instances where a debtor or trustee has been embarrassed when he has secured the services of a person to assist the estate only to later find that the bankruptcy court will not allow that person to be compensated for his services from the estate because the attorney or trustee had failed to secure the bankruptcy court's prior approval. More than once a trustee has had to tell a realtor after closing the sale of debtor's real property that the bankruptcy court will not allow him to receive a commission because he had not been appointed. Similarly, experts retained by the attorney of a Chapter 12 debtor to assist in reorganizing a farm have been denied be paid under the Chapter 12 plan, much to the chagrin of not only the experts but also the debtors.

The courts have given some guidance as to who, apart from attorneys, accountants, appraisers and auctioneers, might be deemed a professional for purposes of Sections 327 and 1103. In In re Johns-Manville, 60 BR 612 (Bankr. SD NY 1986), the bankruptcy court held that "professional persons", as used in Section 327, is not intended to include all persons who, because of their degree of expertise in a particular area, are commonly considered to be a professional; rather, it is a term of art reserved for those persons who play an intimate role in the reorganization of a debtor's estate. Using this test, the court then concluded that lobbyists employed by the debtor need not receive prior court approval. See also, In re Seatrain Lines, Inc., 13 BR 980 (Bankr. SD NY 1981) (maritime engineers are not professional persons).

The intimate role test has some appeal because, as the court in Johns-Manville pointed out, everyone from the plant doctor to the Orkin man could become subject to the Section 327 pitfall if "professional persons" was given its common meaning. However, in fashioning this test, the Johns-Manville court seemed to ignore the specific reference in Section 327 to appraisers and auctioneers, both of whose roles may only be on the periphery of the bankruptcy proceedings. Furthermore, other courts have apparently ignored the intimate role test--or at least have diluted its limiting effect--by including real estate brokers, In re Beecher, 8 BR 444 (Bankr. CD CA 1981), a collection agency, In re Windsor Communications Group, Inc., 13 BCD 978 (Bankr. ED PA 1985), a management consultant, In re Carolina Sales Corp., 43 BR 596 (Bankr. ED NC 1985) and an oil executive employed to manage oil properties, In re Aladdin Petroleum Co., 17 BCD 771 (Bankr. WD TX 1988) as professional persons subject to Section 327(a). Perhaps a better rule of thumb in deciding whether a person is a professional is to seek approval of any person who has professional

1 This is part one of a three-part series. The next two parts will discuss the process of applying for fees and miscellaneous problems which attorneys for a debtor, secured creditor or unsecured creditor may face.

2 USC 327. Hereinafter, all references to the Bankruptcy Code, 11 USC 101 et seq., will be made only to the section number. Similarly, all references to the Bankruptcy Rules of Procedure will reference only the rule number.

qualifications or is otherwise viewed by the community as a professional whose employment would be outside of the ordinary course of business if the debtor itself were to employ this person.

The one exception to the court approval requirement of Sections 327 and 1103 is the employment of professionals as expert witnesses. In re Babcock Dairy Co. of Ohio, Inc., 70 BR 691 (Bankr. ND OH 1987). However, a substantial gray area remains even with this exception because of the specific reference in Section 327 to accountants and appraisers, who are often used as expert witnesses. Furthermore, there is always the possibility that a professional's services will expand, often without anyone noticing, from assisting the debtor or trustee in connection with specific litigation to assisting the debtor or trustee in the general administration of the estate. Therefore, prudence dictates that an appointment be secured for professionals who will be used as experts. In many instances, that appointment can be sought at the same time that expert testifies although one must take into consideration the problem of nunc pro tunc appointments if there will be a substantial period of time between the initial employment of that person and the actual trial or contested hearing.

Section 327 prohibits the trustee or debtor-in-possession from employing any professional person who holds or represents an interest adverse to the estate or who is not a disinterested person. There is no similar restriction for professionals employed by a committee, for Section 1103(b) impairs the no adverse interest requirement only upon accountants and attorneys and imposes no disinterested person requirement at all. However, it is unlikely that a court would recognize this difference between the two sections in considering the employment of professionals by the committee, particularly in light of Rule 2014(a).

Rule 2014(a) dictates what must be included in an application for a professional's employment. It requires that an order approving the employment of any professional pursuant to either Section 327 or Section 1103 shall be made only upon application of the trustee, debtor-in-possession, or committee which states specific facts showing:

> [T]he necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.

The application must be accompanied by a verified statement by the professional who is to be employed which sets forth that person's connections with the debtor, creditors and other parties in interest and their respective attorneys and accountants. Rule 2014(a). While the application for employment need not be served upon all creditors, Rule X-1008 nonetheless requires that the U.S. Trustee be served a copy of the application and verified statement and that it be given an opportunity to be heard on the same.

The no adverse interest and the disinterested person requirements for representation are not unique to bankruptcy proceedings. Many of the same issues arise in the ethical considerations which face attorneys and other professionals every day. However, the fee process required by the Bankruptcy Code provides a convenient forum for a wide variety of persons to challenge a professional's qualifications to represent one of these entities, often for reasons which have nothing to do with maintaining the integrity of the bankruptcy system.

A person cannot be a "disinterested person" if that person is:

> (A) A creditor, an equity security holder, or an insider of the debtor;
>
> (B) Is an investment banker for any outstanding security of the debtor;
>
> (C) Has been, within three years before debtor's bankruptcy petition, an investment banker for a security of the debtor, or an attorney for an investment banker in connection with the offer, sale, or issuance of a security of the debtor; and
>
> (D) Was within two Years before the date of debtor's bankruptcy petition, a director, officer or employee of the debtor or of an investment banker in paragraphs (B) or (C) or holds an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relation to, connection with, or interest in, the debtor or an investment banker classified in paragraphs (B) or (C), or for any other reason. Section 101(13).

In evaluating the person's relationship with the debtor, creditors or other parties in interest, the court will also take into consideration the relationship of that person's attorneys and accountants to those groups. Rule.2014(a).

Additional Restrictions Imposed

Rule 5002 imposes additional restrictions upon who may be deemed a disinterested person. Subpart (a) automatically excludes an individual who is a relative of the bankruptcy judge who is making the appointment or approving the employment of that individual's firm and all members and employees of that firm. Subpart (b) also excludes any person who is or has been so connected with a bankruptcy judge so as to render that person's appointment improper. This latter exclusion is at the discretion of the bankruptcy court and only applies to that person. That is, the interested person's firm and its other members are not also excluded because of that person's association with the bankruptcy judge. This exclusion is primarily for the benefit of bankruptcy court law clerks who often seek employment with firms who frequently appear in bankruptcy court.

Because a creditor of the debtor cannot be a disinterested person, an attorney who represents that person cannot be employed by the trustee, debtor-in-possession or committee. However, an attorney's prior representation of a creditor, even if related to the creditor's claim against the estate, will not disqualify that person from being a disinterested person in of itself. Sections 327(c), 1103(b). This exception is particularly important in connection with persons who wish to represent creditors committees, for those persons are often the attorneys for one or more of the largest creditors of the estate. In any event, it is inevitable that a law firm of any

abstantial size will represent one or more of the creditors of the estate and therefore this exception eliminates a potential barrier to committee representation by large firms.

However, the "prior but no current representation" exception is only a presumption, and, if a creditor or the U.S. Trustee objects, the court may still disapprove of that attorney's employment if the court finds an actual conflict of interest. Section 327(b). While disclosure of this "adverse" representation is essential, it may not be enough[3]. In many instances, it may be prudent to actually notify all of the creditors on the debtor's matrix of the prior representation and give them an opportunity to object. Otherwise, the attorney may be later faced with such an objection when compensation is sought for its services, perhaps well into the chapter proceeding. If the court should then determine that there is in fact an actual conflict, not only will the professional's fees be disallowed, but any prior fees awarded will also be required to be returned. See e.g., In re Georgetown of Kattering Ltd., 750 F.2d 536 (6th Cir. 1984).

Section 327(b) illustrates an even greater problem facing the professional who is uncertain whether he is or is not a disinterested person who does not hold an adverse interest to the estate. That is, while representation of a creditor may not disqualify that person provided it does not constitute an actual conflict, other factors outlined in Sections 101(13), 327 and 1103 constitute per se defects which cannot be overlooked even if there is no actual conflict. Nor can these defects be waived. In re Combustion Equipment Associates, Inc., 8 B.R. 566 (Bankr. SD NY 1981). Therefore, a creditor may at any time during the case cause the disqualification of that professional, with all of the attendant financial consequences, merely by pointing out the defect to the court. While the professional may argue prior disclosure and estoppel, these arguments give little comfort.

Instances where an attorney or another professional person may be found not to be a disinterested person are more frequent than one would expect. It is not unusual for one law firm to represent both a closely held corporation and its shareholder. Indeed, as most corporate attorneys will attest, it is practically an impossibility to distinguish between the two. However, if the corporation files a Chapter 11 proceeding, the attorney may have to do exactly that if he wishes to represent the corporation as debtor-in-possession in that proceeding. This requirement is often overlooked by both the attorney and the client.

Another common oversight is where the professional serves as an officer of the corporation. A corporate client often desires that its attorney serve as a director or officer of the corporation so that he may attend its board meetings. If so, the attorney's firm will be disqualified from representing the corporation as debtor-in-possession in a Chapter 11 proceeding if that person held that position within two years preceding the corporation's bankruptcy petition. See 101(13); In re Leisure Dynamics, Inc., 33 BR 121 (D MN 1983).

Nor are the courts adverse to disqualifying counsel even though the offending relationship is attenuated. For example, in In re Cropper Co., Inc., 35 BR 625 (Bankr. MD GA 1983), the court disqualified a law firm from representing a debtor-in-possession because one of its associates owned a 35 percent interest in a company which was doing post-petition business with the debtor. Another example is in In re Ochoa, 74 BR 191 (Bankr. ND NY 1987), where the court found that the law firm representing the debtor was disqualified because a partner of that firm was a partner of a creditor which held a judgment against the debtor. It is interesting to note that the disqualification of the law firm in In re Cropper came in connection with a motion by the debtor to use cash collateral. By successfully disqualifying debtor's counsel, the secured creditor was able to further disrupt debtor's transition to an operating debtor-in-possession.

Because of the per se nature of these defects, there is little the professional can do to protect himself other than to carefully examine all of the ways he may be deemed not to be a disinterested person in deciding whether to accept the representation or not. The only comfort is the knowledge that other parties in interest will in all likelihood not be as diligent as the professional seeking employment in considering the possible conflicts. However, with the advent of the U.S. Trustee system, one can expect application for appointments to be considered much more closely. On the other hand, the U.S. Trustee system, by challenging the defect at the outset, may foil a creditor's attempt to use such a defect as a weapon at some later date in the proceeding.

A professional's representation of a debtor as debtor-in-possession in a Chapter 11 proceeding may also be denied if the professional itself is a creditor of the estate.[4] Section 327(a), 101(13), e.g., In re Boro Recycling, Inc., 67 BR 3 (Bankr. ED NY 1986); In re Jensen-Farley Pictures, Inc., 47 BR 557 (Bankr. D UT 1985). The only way which these courts have given to the professional to cure this defect is to waive its prepetition claim as a condition to its appointment as counsel.[5]

Decisions Are Overly Technical and Counterproductive

It is the author's opinion that these decisions are overly technical and counterproductive. While disqualifying

3 On the other hand, failure to disclose a prior adverse representation may be fatal regardless of whether it constitutes an actual conflict. In re Automend, Inc., 17 BCD 798 (Bankr. ND GA 1988); In re Pacific Express, Inc., 56 BR 859 (Bankr. ED CA 1985).

4 Attorneys representing Chapter 7, Chapter 12 or Chapter 13 debtors are not faced with this issue because their employment is not required to be approved pursuant to Section 327. However, the compensation which these attorneys are entitled to in connection with the bankruptcy proceeding is subject to the bankruptcy court's review. This topic will be addressed in a subsequent part of this article.

5 It is not clear whether the professional can cure this defect other than at the outset of the case. By leaving the issue open for further hearing, the court in Jensen-Farley Pictures suggests that there is at least an argument that it cannot.

a law firm which is a prepetition creditor may avoid the "appearance of impropriety", an undefinable concept to say the least, it deprives the debtor of the benefits and cost savings realized from maintaining counsel which is familiar with its legal affairs. Indeed, if taken to its logical conclusion, even new counsel which is retained by the debtor prepetition specifically for the bankruptcy filing would be disqualified under this rule from representing the debtor-in-possession in the chapter proceeding unless the new attorney was so fortunate as to secure a large enough retainer to cover all prepetition fees and expenses. Therefore, the debtor may be denied effective bankruptcy counsel during the critical days immediately following the filing of the Chapter 11 petition. As illustrated in In re Cropper, supra, creditors may use this argument for less lofty purposes than the avoidance of any appearance of impropriety.

Conflict

Nor is the conflict that apparent, at least where the professional's claim is unsecured.[6] This conflict, if it is a conflict at all, constantly exists in an attorney's representation of his client outside of a bankruptcy proceeding unless, of course, he operates C.O.D. The same conflict also exists for whoever ultimately is appointed counsel for the debtor-in-possession in the Chapter 11 proceeding unless that person was again fortunate enough to receive a retainer sufficient to cover all of his fees incurred in connection with that case. Why then, is the prepetition attorney, who is probably most qualified to represent the debtor-in-possession, singled out for attention?

While recognizing a court's reluctance to rewrite the Bankruptcy Code, most courts nonetheless show little compunction in giving liberal constructions to other sections of the Bankruptcy Code when equity or logic so requires. Section 327(b) may be of some assistance to the courts in addressing this problem. That subsection permits a trustee (i.e., debtor-in-possession) to retain professional persons who had been regularly employed by the debtor prepetition. Obviously, the authority to use prior professional persons given in Section 327(b) conflicts with Section 101(13) which excludes an employee of the debtor from the definition of a "disinterested person." However, this conflict is resolved if Section 327(b)'s authority to use prior professional persons is read as an exception to the Section 327(b) disinterested person requirement. If this analysis is correct, and if "employed" as used in Section 327(b) can be read to include the employment of outside counsel, then this exception should apply to a creditor professional as well.

Another recognized exception to the disinterested person and no adverse interest requirements for employment as a professional is the employment of an interested person for a special purpose. Section 327(e). This exception, which is limited to attorneys, permits the trustee or debtor-in-possession to retain an attorney who would otherwise not qualify for employment for a special purpose if that representation is in the best interests of the estate and that attorney does not hold an interest adverse to either the debtor or the estate in connection with the specific matter for which he has been retained. This exception is particularly useful in cases involving ongoing, complicated litigation such as environmental or antitrust suits.

Good practice mandates that the attorney or trustee secure the bankruptcy court's approval of the employment of a professional on or before that professional actually begins his employment. However, if this preapproval is not secured, it would seem reasonable that the court would ratify that professional's employment at some later date, either by separate application or in connection with a fees petition. Equitable considerations certainly favor such ratification provided that the professional was a disinterested person with no adverse interest at the time of the initiation of his employment and at all times thereafter. Certainly, a court's refusal to compensate an otherwise nondisqualified professional for services which clearly have benefited the estate for the technical reason that his appointment was not preapproved by the bankruptcy cou seems to be a harsh result.

However, the courts have interpreted Section 326(a) as requiring the professional's preapproval by the bankruptcy court as a necessary condition to his subsequent ability to be compensated from the estate. Nonetheless, the courts have created an exception to this general rule by allowing an order appointing a professional to be entered nunc pro tunc under extraordinary circumstances. The courts have established various standards under which a nunc pro tunc order is appropriate. Perhaps the most detailed set of requirements is set forth in In re Mahoney, Trocki & Associates, Inc., 54 BR 823 (Bankr. SD CA 1985). In Mahoney, the court held that:

Henceforth, all applications for issuance of nunc pro tunc approving employment must demonstrate by clear and convincing evidence:

1. That there was an express employment agreement between the debtor, the trustee or creditors committee and the professional person who performed the services;

2. That notice of the application for entry of a nunc pro tunc order and opportunity for objection has been provided under Bankruptcy Rule 2002;

3. That the professional presently meets and, at all times during the period for which approval of employment is sought, has met the standards of 11 U.S.C. Section 327;

4. That the professional has made the threshold showing justifying his/her employment as required by Bankruptcy Rule 2014;

5. That the application exhibits no pattern of inattention or negligence in soliciting prior judicial approval of his/her employment in cases before this court;

6. That the applicant's failure to seek preemployment approval is satisfactorily explained;

6 One court has disqualified a professional where it took a pre-petition mortgage to secure its fees, both pre-and post-petition. In re Martin, 62 BR 943 (D ME 1986). In that a secured creditor often is a potential adversary of the debtor and other unsecured creditors, there is some logic to a per se disqualification under these circumstances.

7. That neither the estate nor any other party in interest will be actually or potentially prejudiced by entry of the nunc pro tunc order; and

8. That the work performed prior to the nunc pro tunc application has been of high quality and performed properly and efficiently, although such determination will have no presumptive affect on the amount of compensation actually awarded when approval of compensation is sought under 11 U.S.C. Section 330.

In re Mahoney, Trocki & Associates, Inc., supra at 826.

In In re Benton Harbor Malleable Industries, Inc., 2 BCD 1521 (Bankr. WD MI 1976), Judge Nims set out the standards for a nunc pro tunc order which have been followed in the Western District of Michigan, they being:

(1) There is no other attorney representing the trustee or estate;

(2) The court was at all times aware of the efforts being performed by the attorney and assumed that an order approving his appointment had been entered;

(3) Proceedings were in the bankruptcy court and that court recognized the attorney as the legal representative of the trustee;

(4) Fees were limited in amount; and

(5) No objections were made to the fees.

In re Benton Harbor Malleable Industries, Inc., supra at 1524. See also, Bill & Paul's Sporthaus, Inc., 31 BR 345 (Bankr. WD MI 1983).

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Recent Bankruptcy Decisions

The following are summaries of recent decisions rendered by the Sixth Circuit Court of Appeals and bankruptcy courts in Michigan that address important issues of bankruptcy law. These summaries were prepared by Patrick Mears, Larry VerMerris and Ingrid Jensen:

In re DuCharmes & Co., Case No. 87-1715 (6th Cir. July 26, 1988). In an as-yet unreported decision, the Sixth Circuit Court of Appeals reversed the district court's order confirming a Chapter 11 plan that allocated payments made thereunder to "trust fund" and "non-trust fund" tax liabilities. The Internal Revenue Service and the State of Michigan had objected to confirmation, arguing that payments made under a plan are "involuntary" and, hence, the debtor could not designate which taxes those payments could be applied against. The bankruptcy court sustained the taxing authority's objections, but the district court reversed. In re DuCharmes & Co., 75 Bankr. 71 (E.D. Mich. 1987). On appeal, the Sixth Circuit adopted the governments' contention, reversed the district court and remanded the case.

In re Doersam, 849 F.2d 237 (6th Cir. 1988). In this case, the Sixth Circuit held that a Chapter 13 plan was not proposed in "good faith" as required by 11 U.S.C. 1325(a)(3) when the bulk of the unsecured debt treated in the plan were student loans otherwise nondischargeable in a Chapter 7 case. The Sixth Circuit noted that the debtor had made no effort to repay these long-term debts even though the loans aided her in obtaining employment. In addition, none of these loans had become due as of the date of the bankruptcy filing. In its decision, the Sixth Circuit applied the "totality of circumstances" test of good faith it developed earlier this year in In re Okoreeh-Baah, 836 F.2d 1030 (6th Cir. 1988).

In re Delbridge, Case No. 86-CV-40441-FL (E.D. Mich., May 25, 1988). In an unreported decision, District Judge Stewart Newblatt affirmed Bankruptcy Judge Arthur Spector's decision reported at 61 Bankr. 484 (Bankr. E.D. Mich. 1988). In that decision, Judge Spector fashioned a complicated formula under 11 U.S.C. 552(b) to determine the extent of a secured creditor's interest in milk produced by cows owned by dairy farmers after they commenced a Chapter 11 case.

In re North American Cattle Corp., No. G 87-904 (W.D. Mich. 1988). In another unreported decision, the District Court affirmed Bankruptcy Judge Laurence Howard's judgment that a secured creditor's liens in cattle located on farms not owned by the debtor were not perfected under Article 9 of the Uniform Commercial Code when that creditor failed to file financing statements with the office of the Secretary of State. The court classified the livestock on these farms as inventory which requires a secured creditor to make a central filing. In his decision, District Judge Douglas Hillman discussed and applied the standards for determining whether a payment made by debtor within the preference period is immune from attack under the "ordinary course of business" defense contained in 11 U.S.C. Section 547(c)(2).

In re Casteel, 85 Bankr. 741 (Bankr. W.D. Mich. 1988). In two Chapter 13 cases and one Chapter 12 case, Bankruptcy Judge James D. Gregg, acting sua sponte, issued orders to show cause why these cases should not be dismissed because the debtors failed to file their Chapter 12 and 13 Statements and Chapter 13 Plan on a timely basis. Bankruptcy Rule 1007 requires that these documents be filed within fifteen days after the case is commenced, and provides for an extension of time only on motion for cause shown. Because the documents were filed prior to the show cause hearings, these three cases were not dismissed. Judge Gregg stated, however, that the Bankruptcy Rules would be strictly applied in the future, and that absent extraordinary and justifiable circumstances beyond a debtor's control, the court would dismiss a Chapter 12 or 13 case in which the required statement is not timely filed unless a motion for extension of time is filed within the prescribed period.

In re Mayes, Case No. SG 85-01847 (Bankr. W.D. Mich., August 24, 1988). In a very important recent decision, Bankruptcy Judge JoAnn C. Stevenson, acting sua sponte, reduced attorneys' fees requested by counsel to a Chapter 7 trustee. Judge Stevenson noted first that certain "ministerial tasks" that "fall within the ambit of secretarial or support work" should not be performed by attorneys and, if done nonetheless, that work will not be compensated from the bankruptcy estate. Examples of ministerial tasks are drafting proofs of service and organizing office files. Next, Judge Stevenson criticized counsel's "bunching" of its time entries. When two or three items of work are performed by counsel on one day, the time spent for

each item must be separately described on counsel's time sheets. In connection with this bunching, Judge Stevenson then commented upon proper compensation to be awarded for intra-office conferences conducted by attorneys. Judge Stevenson suggested that the reason for these conferences should be described in counsel's fee application and that, unless the conference saved the client monies by "circumventing the need to do research," not all participants in the conference should be allowed to bill their services. Finally, Judge Stevenson reduced the request for compensation of work spent by counsel in deciding to pursue a cause of action that, if successfully prosecuted, would have resulted in a minimal benefit to the estate when compared to the time spent by counsel on the matter.

It should be noted that Judge Stevenson's decision differs markedly in many respects from the approach adopted last year by Bankruptcy Judge David E. Nims in In re Zwagerman, Case No. NG 85-02901 (Bankr. W.D. Mich., July 29, 1987). In that case, a creditor had objected to the fee request made by co-counsel to a Chapter 7 trustee, arguing that the fees requested substantially exceeded any material benefit rendered to the estate by those services. Judge Nims noted that much of the work performed by trustee's counsel did not produce any monies for the estate and that time entries were "bunched." Nevertheless, Judge Nims granted the fee request in its entirety since there was no evidence presented to him that the work should not have been done or that the time spent by counsel was excessive.

Steering Committee Actions

On August 12, 1988, the Steering Committee of the Bankruptcy Section met for the first time. The members of this committee are: Brett Rodgers, James Engbers, Timothy Curtin, Robert Sawdey, Thomas Schouten, Peter Teholiz, Colleen Olsen and Patrick Mears. This group voted to create two new committees of the Bankruptcy Section to which the following members were appointed:

Newsletter and Seminar Committees established

1. Newsletter Committee: Patrick Mears was appointed chairman of this committee. The other members are Robert Sawdey, Timothy Curtin, Thomas Schouten, Brett Rodgers and Colleen Olsen. This group is charged with the responsibility of publishing a newsletter focusing upon bankruptcy law and local practice and procedure. Any persons that wish to submit articles for publication are encouraged to contact any one of the members on this new committee.

2. Seminar Committee: Jeffrey Hughes was appointed chairman of this committee. The other members are Colleen Olsen and Brett Rodgers. It was tentatively decided to conduct a two-day, workshop-type seminar in Traverse City sometime next year.

Also at the meeting of the Steering Committee, Brett Rodgers mentioned that Bankruptcy Judge Lloyd George who sits in Las Vegas, Nevada, is chairman of the National Bankruptcy Rules Committee. This committee is in the process of revising the Rules of Bankruptcy Procedure that govern practice in all United States Bankruptcy Courts. Judge George invited the National Association of Chapter 13 Trustees to form a rules committee to act as liaison to the National Bankruptcy Rules Committee. This liaison committee has been created and Brett Rodgers is a member of that committee. This liaison committee plans to meet with Judge George sometime this fall. Anyone who has suggestions on changes to these rules should contact Brett at (616) 957-3550.

Editor's Notebook

This is the inaugural issue of the Bankruptcy Law Newsletter that is published under the auspices of the Federal Bar Association, Western District of Michigan Chapter. It is hoped that this Newsletter will appear on a monthly basis and will consist of a lead article, recent case summaries and other items of interest to the bankruptcy community here in Western Michigan. If anyone desires to author a lead article or to contribute other items of interest for publication, those items should be sent to me at Warner, Norcross & Judd, 900 Old Kent Building, Grand Rapids, Michigan 49503.

Bankruptcy Judges Host Conference

Beginning on October 2, 1988, the National Conference of Bankruptcy Judges will host its yearly conference in San Diego, California. The conference lasts until October 5th and includes seminars, dinners and other events for attendees. Anyone interested in attending should call the General Meeting Chairman, Victor A. Vilaplana, at (619) 239-3669. A number of attorneys and judges from our district will attend this year.

Finally, for those of you who occasionally practice in the Eastern District of Michigan, please be aware that the District Court there has just adopted new Local Rule 33 which contains certain requirements of pleading and practice in the bankruptcy courts. Copies of this new rule may be obtained from the Clerk of the District Court for the Eastern District of Michigan.

Patrick E. Mears

THE CHAPTER 13 TRUSTEES
FOR THE WESTERN DISTRICT OF MICHIGAN

John L. Bolenbaugh
Joseph A. Chrystler
Raymond B. Johnson
Brett N. Rodgers

August 24, 1988

TO: Chapter 13 Filing Attorneys and
Other Interested Parties

RE: Policy Change on Post-Petition Principal Residence Payments

You are no doubt aware that Michigan and Ohio were certified under the United States Trustee Program effect May 5, 1988.

The United States Trustee now sets our fees, instead of the Bankruptcy Judges. The Judges allowed us to reduce Trustee fees to one percent (1%) on post-petition payments on the principal residence of the debtors and certain other payments. The United States Trustee will not allow this. At present, we must charge the eight percent (8%) fee on all disbursements.

There is good news however; the United States Trustee will allow a reduced fee overall as circumstances warrant. With everyones' cooperation in seeing to it that all plan payments are disbursed by the Trustee, the Trustee fees should be no higher than the average blended fees prior to the implementation of the United States Trustee System. This practice should be of benefit to all inasmuch as Lift of Stay hearings should be kept to a minimum with this practice.

Your comments and inquiries are welcome. As usual, your past and continued support is most appreciated.

Respectfully Submitted,

John L. Bolenbaugh, Trustee

Joseph A. Chrystler, Trustee

Raymond B. Johnson, Trustee

Brett N. Rodgers, Trustee

LOCAL BANKRUPTCY STATISTICS

The following is a summary of the number of bankruptcy cases commenced in the United States Bankruptcy Court for the Western District of Michigan during the period from January 1, 1988, to August 31, 1988. These filings are compared to those made during that same period one year ago.

	January 1, 1988 to August 31, 1988	January 1, 1987 to August 31, 1987
Chapter 7	1871	1644
Chapter 11	61	62
Chapter 12	25	70
Chapter 13	790	855