

USTP Fee Guidelines

From: Brendan Best <BBest@schaferandweiner.com>
Sent: Friday, January 27, 2012 4:09 PM
To: USTP Fee Guidelines
Subject: comments to new proposed guidelines

1. **General** : the guidelines are very lengthy and dense, totaling 18 pages and 6 detailed exhibits. The simpler and easier to follow the better, and the more it will be followed and the more it will be able to be enforced by the trial attorneys.
2. **the Budgets and Staffing Plans:** this will increase attorney time and fees in their preparation, and will also likely be loaded with caveats and uncertainties. It is hard to predict whether this will be effective or not – it may be better to have a couple of pilot cases to see how this process works before making it a part of the guidelines for larger cases.
3. **Rates.** The proposed guidelines spend considerable time requesting information designed to compare billing practices in bankruptcy cases to billing practices in other matters, as well as to compare bankruptcy attorney rates to the rates of attorneys practicing in other areas of the law. See sections (B)(2)(a), (B)(3)(f), (B)(4)(a), (B)(5)(c), (C)(3)(l), (C)(7)(b), (C)(8)(c) and (E)(2). The proposed guidelines also include provisions targeted at the practice of increasing rates to match the forum of a particular Chapter 11 case. See sections (B)(4)(k), (C)(7)(e) and (E)(1)(f). While it is clear what concerns these requirements are targeted to address, they requests will require firms to undergo a time-consuming reporting process that may or may not be helpful to the UST. I am not aware of empirical studies that show that firms intentionally increase their rates to charge more to Chapter 11 estates. I do know that in general restructuring / bankruptcy attorneys' rates are higher than commercial litigators or some other practice areas. However this is because of the niche aspect of the field, similar to environmental attorneys, tax attorneys, etc. in other words, this could likely be the result of market forces, not the result of intentional over-billing or gouging of an estate, and if so, then these increased reporting burdens may be inappropriate.
4. **Special Fee Review Committees.** The proposed guidelines include detailed recommendations regarding the appointment of fee review committees and independent fee examiners in larger Chapter 11 cases. See section F. Section F states that the USTP will, in its discretion, appoint a fee review committee or a fee examiner in "larger chapter 11 cases where a number of professionals will be retained and the normal fee application and review process would be unduly burdensome" Because this description may arguably apply to most or all larger Chapter 11 cases, the impact of this section could be a substantial increase in the appointments of fee review committees and independent fee examiners. If that is not the intention, then the language should be changed. If that is the intention, query whether having a committee in every single larger case is the right approach.
5. **Electronic Records.** Section (C)(2) of the proposed guidelines would require applicants to provide to the USTP (and upon request to the court and "any other party") their billing records data in an "open electronic data format that is searchable." One impact of this section could be that some firms will have to change or modify their billing software, or incur significant expense to reformat their software's current reports, to be able to provide their billing records to the USTP in an "open electronic data format." Also, the "any other party" language is far too broad. It is unclear why "any other party" should be allowed access to the data – the data will be available in hard copy via PACER – if a party has cause to need more than the hard copy and

wants the electronic data, they should at least be required to make a request to the UST, who could decide whether the request is proper or whether the party should instead be required to petition the court for the access. It would also go beyond the already very broad "party in interest" standard in Chapter 11 cases.

Sincerely,

Brendan G. Best
40950 Woodward Ave., Ste. 100
Bloomfield Hills, MI 48304

Office (248) 540-3340
Direct Line (248) 971-1534
Mobile (248) 730-9799
Direct Fax (248) 282-2100
Email bbest@schaferandweiner.com
www.schaferandweiner.com

CONFIDENTIALITY: This communication may contain confidential or privileged information which counsel attempted to send only to the intended recipient(s). If you received this by mistake, please destroy it and notify us of the error immediately.

TREASURY CIRCULAR 230: This communication is not intended for, and cannot be used, to (i) avoid Federal tax-related penalties, or (ii) promote, market or recommend anything that is tax-related.

SIGNATURE: Nothing in this communication is intended to constitute an electronic signature unless a statement to the contrary is included.