

Who Are You: Bankruptcy Trustees

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Trustees serve many important roles in a bankruptcy case and their role must be considered when analyzing where a case is headed. The purpose of this article is to provide an overview of the structure of the trustee system and to generally describe the responsibilities at each level. For a more detailed review of trustees, visit the source materials cited herein.¹

The United States Trustee Program is a component of the Department of Justice. Its mission is “to promote integrity and efficiency in the nation’s bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence.”² The U.S. Trustees supervise the administration of cases under Chapters 7, 11, 12 and 13 of the Bankruptcy Code.³ The specific responsibilities of the program are:

1. Appointing and supervising private trustees who administer Chapter 7, 12, and 13 bankruptcy estates (and serving as trustees in such cases where private trustees are unable or unwilling to serve);
2. Taking legal action to enforce the requirements of the Bankruptcy Code and to prevent fraud and abuse;
3. Referring matters for investigation and criminal prosecution when appropriate;
4. Ensuring that bankruptcy estates are administered promptly and efficiently, and that professional fees are reasonable;
5. Appointing and convening creditors' committees in Chapter 11 business reorganization cases;
6. Reviewing disclosure statements and applications for the retention of professionals; and
7. Advocating matters relating to the Bankruptcy Code and rules of procedure in court.⁴

The U.S. Trustee program is divided into twenty-one regions.^{5 6} Florida is part of Region 21 which also includes Georgia, Puerto Rico and the U.S. Virgin Islands.⁷ The Attorney General appoints a United States Trustee for each region pursuant to 28 U.S.C. § 581. The current U.S. Trustee for the Middle District of Florida is Donald F. Walton. The Middle District of Florida is further divided into two field offices, Tampa and Orlando. The Assistant United States Trustee appointed to the Tampa field office is Cynthia A. Barnett and Kenneth C. Meeker is the Assistant United States Trustee for the Orlando field office.^{8 9 10}

Since the 2005 amendments to the Bankruptcy Code, a noticeable change at the U.S. Trustee’s Office is the increased activity in reviewing Chapter 7 cases for abuse or denial of discharge. The amendments were allegedly directed toward uncovering a significant number of debtors who could afford to repay a portion of their debts through Chapter 13, but were filing Chapter 7 cases and paying nothing or almost nothing to creditors. In addition, the perception was that some debtors were abusing the bankruptcy process. Certainly the activity at the U.S. Trustees Office has increased, however it is debatable whether the revised Code has lived up to the hype in discovering the alleged abuses by debtors.

Unlike most bankruptcy cases under Chapter 7 and 13, the U.S. trustee is substantially involved Chapter 11 cases. The U.S. trustee’s office conducts the Meeting of Creditors under 11

U.S.C. § 341 (“341 Meeting”) where the U.S. trustee and creditors are given their first opportunity to question the debtor about the schedules, acts, business, property, etc. Thereafter, the U.S. trustee continues to be involved in the case in a number of areas. As summarized by the Administrative Office of the U.S. Courts, “The U.S. trustee is responsible for monitoring the debtor in possession's operation of the business and the submission of operating reports and fees. Additionally, the U.S. trustee monitors applications for compensation and reimbursement by professionals, plans and disclosure statements filed with the court, and creditors' committees. The U.S. trustee also imposes certain requirements on the debtor in possession concerning matters such as reporting its monthly income and operating expenses, establishing new bank accounts, and paying current employee withholding and other taxes. By law, the debtor in possession must pay a quarterly fee to the U.S. trustee for each quarter of a year until the case is converted or dismissed. 28 U.S.C. § 1930(a)(6). The amount of the fee, which may range from \$250 to \$10,000, depends on the amount of the debtor's disbursements during each quarter. Should a debtor in possession fail to comply with the reporting requirements of the U.S. trustee or orders of the bankruptcy court, or fail to take the appropriate steps to bring the case to confirmation, the U.S. trustee may file a motion with the court to have the debtor's chapter 11 case converted to another chapter of the Bankruptcy Code or to have the case dismissed.”¹¹

In contrast, in Chapters 7 and 13, most, if not all, of the trustee contact is with the private trustee appointed to administer the debtor's bankruptcy estate. Currently, there are thirty Chapter 7 Trustees and four Chapter 13 Trustees appointed in the Middle District of Florida.¹² The eligibility and qualification requirements of a trustee are set forth in 11 U.S.C. §§ 321 and 322. The role of the trustee is to represent the estate and he/she has the right to sue and can be sued.¹³ The duties of the trustee depend on the type of bankruptcy. In all cases, the trustee conducts the 341 Meeting.

In a Chapter 7 case, the trustee investigates the case to determine whether there are assets to liquidate; reviews the debtor's claim of exemptions and entitlement to a discharge. The Chapter 7 trustee also may also pursue other claims on behalf of the estate such as setting aside certain transfers of property or money, operate a business owned by the debtor until it is liquidated or sold and otherwise takes such action as is necessary to maximize the recovery for creditors.^{14 15}

The Chapter 13 trustee serves a similar role as a Chapter 7 trustee.¹⁶ Generally speaking, the Chapter 13 trustee reviews a debtor's schedules to investigate the veracity of the schedules. The Chapter 13 trustee reviews the debtor's plan to make sure it proposes to pay all of the debtor's disposable income into the plan over the appropriate length of time. At the 341 Meeting, the debtor will also be required to answer questions concerning terms of the proposed plan.¹⁷ The trustee collects the payments made by debtors and disburses these payments to creditors after receipt of a fixed percentage of the funds.¹⁸

In sum, if you find yourself involved in a bankruptcy case, take the time to remind yourself of the role of the trustee. Sometimes the trustee's efforts may directly benefit your client, such as collecting assets to ultimately pay your client's claim or working to have a bad faith filing dismissed which will allow your client to continue an action against the debtor once the order of dismissal is entered. If you have information that would assist the trustee, we

recommend that you attend the 341 Meeting to, at a minimum, give the trustee a “heads up” on what you know. In a Chapter 11 case, you may be able to the U.S. Trustee’s office in advance of the 341 Meeting.

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¹ This article is limited to the discussion of the main bankruptcy chapter filings - 7, 11 and 13

² See http://www.justice.gov/ust/eo/ust_org/StrategicPlanFY2005-2010.pdf

³ See http://www.justice.gov/ust/eo/ust_org/about_ustp.htm

⁴ *Id.*

⁵ http://www.justice.gov/ust/eo/ust_org/region_websites.htm

⁶ Alabama and North Carolina are not under the jurisdiction of the U.S. Trustee Program. Bankruptcy cases in those states are overseen by a Bankruptcy Administrator. See

<http://www.uscourts.gov/bankruptcycourts/administrators.html>

⁷ <http://www.justice.gov/ust/r21/index.htm>

⁸ <http://www.justice.gov/ust/r21/tampa/index.htm>

⁹ <http://www.justice.gov/ust/r21/orlando/index.htm>

¹⁰ Region 21 maintains a separate website (www.justice.gov/ust/r21/index.htm). The Tampa and Orlando field offices also have their own websites, www.justice.gov/ust/r21/tampa/index.htm and www.justice.gov/ust/r21/orlando/index.htm, respectively

¹¹ See <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter11.html#trustee>

¹² See http://www.justice.gov/ust/eo/private_trustee/locator/7.htm#FL

¹³ 11 U.S.C. § 323

¹⁴ See e.g. 11 U.S.C. § § 544-550.

¹⁵ See also <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter7.html#trustee>

¹⁶ Each of the Chapter 13 Trustees in the Middle District of Florida maintains their own website: Douglas Neway (<http://www.13network.com/trustees/jvl/jvlhome.asp>); Terry Smith (<http://www.ch13tampa.com>); Jon Waage (<http://www.tampa13.com>); Laurie Weatherford (<http://www.c13orl.com>)

¹⁷ See 11 U.S.C. § 343

¹⁸ See 11 U.S.C. § 1302(b)