

U. S. BANKRUPTCY COURT CM/ECF BEST PRACTICES SEMINAR

A. Role of U.S. Trustee Program

1. Bankruptcy watchdog – investigate fraud, abuse.
2. Consumer protection, including mortgage servicer abuse (robo signing, dual tracking, mishandling of escrow accounts). Instrumental part of \$25 billion settlement entered two years ago with 5 largest banks. We continue to monitor compliance with more than 300 servicing standards that are part of that settlement. Please let us know about any issues you observe.

B. Means Test and Presumed Abuse

1. BAPCPA became effective in October, 2005 and expanded role of USTP in determining whether or not debtors can afford to pay creditors, particularly debtors above the median income for the state.
2. Means Test Form is 22A for Chapter 7 and 22C for Chapter 13. Information regarding data needed to complete forms available on USTP web site, www.justice.gov/ust
3. Three most frequent mistakes on 22A and 22C
 - a. Deducting for transportation ownership/lease expense when there is no lien on vehicle or no lease. Not allowed per *Ransom v. FIA Card Services, N.A., fka MBNA America Bank, N.A.*, 131 S.Ct. 716, 178 L.Ed.2d 603 (2011).
 - b. Deducting contributions for a 401k or other voluntary pension as an involuntary deduction for employment, which deduction is not allowed. See *In re Maura*, 491

B.R. 493, 507 (Bankr. D. Mich. 2013); *In re Egebjerg*, 574 F.3d 1045, 1050 (9th Cir. 2009); *In re Lenton*, 358 B.R. 651, 656 (Bankr. E.D. Pa. 2006).

- c. Deducting taxes withheld, rather than actual taxes paid. If large tax refunds, then debtor is likely over-withholding and you must dig deeper, looking at tax liability on most recent tax returns. *See In re Woodruff*, 416 B.R. 369, 374 (Bankr. D. Mass. 2009); *In re Bernard*, 397 B.R. 605, 608 (Bankr. D. Mass. 2008)(it is reasonable to use the income tax amounts and rates set forth in the Debtor's filed tax returns to determine the proper deduction for taxes); *In re Lawson*, 361 B.R. 215, 222 (Bankr. D. Utah 2007);

C. Accuracy of Schedules

1. Rule 9011 can apply. *In re Kersner*, 412 B.R. 733, 743 (Bankr. D. Md. 2009) (Catliota, J.)(Rule 9011 sanctions imposed on attorney who failed to verify § 109's requirements and joint debtors' factual eligibility for chapter 13, by filing chapter 13 petition with debts in excess of statutory limits).
2. Of particular concern are bank account balances on Schedule B. Get copy of supporting documentation and state on Schedule B that amount is as of date of documentation. Recognize that trustee will ask for proof as of filing date—be prepared to deal with discrepancy, particularly if balance on filing date is significantly more than scheduled. May affect exemptions.
3. If there is a delay between debtor's signing of Schedules and filing, make sure to check with debtor as to whether there have been any changes in assets, job situation, etc.

4. Make sure you have wet signature of debtor on all relevant pages of Petition, Schedules, SOFA, Means Test, Chapter 13 Plan, etc.
5. If there are issues created by attorney regarding either Means Test accuracy or accuracy of Schedules, UST may pursue action under Section 329, seeking disgorgement of fees. Such issues show debtor may not have paid reasonable value for services rendered.

D. Credit Counseling Must be Completed Prior to Filing

** These materials represent the work of the author and do not necessarily reflect the views of the U.S. Trustee Program or the U.S. Department of Justice.