

## TRUSTEE POLICY FOR BUSINESS CASES

9-1-10

### I.     **BANKRUPTCY CODE DEFINITION OF BUSINESS CASE AND RELATED DUTIES OF TRUSTEE, AND PROVISIONS OF GENERAL ORDER**

- A. Bankruptcy Code §1304(a) provides that “A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business.”
- B. Bankruptcy Code §1304(c) provides that “If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.”
- C. Bankruptcy Code §1106(a)(3) provides that “Except to the extent that the court orders otherwise (the trustee shall) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor’s business, and the desirability of the continuance of such business and any other matter relevant to the case or to the formulation of a plan.”
- D. Bankruptcy Code §1106(a)(4) provides that “As soon as practical (the trustee) shall (A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any facts ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement of the affairs of the debtor, or to a cause of action available to the estate; and (B) transmit a copy or a summary of any such statement to any creditors’ committee or equity security holders’ committee, to any indenture trustee and to such other entity as the court designates.”

(NOTE: In chapter 13, there are no provisions for a creditors’ committee or equity security holders’ committee, and unlikely to involve an indenture trustee. Therefore, the provisions of subparagraph “(D)” will rarely apply.)

- E. General Order 2010-01 ¶10.h. provides: “In a Level 2 business case, the Court deems \$3,500 as reasonable compensation and reimbursement of expenses for an attorney under 11 U.S.C. § 330(a)(3)(B) (the “Business Standard Fee”). The Court will therefore allow the Business Standard Fee, plus bankruptcy clerk filing fees, in a Level 2 business case without the requirement of an application for compensation under 11 U.S.C. § 330 and Rule 2016(a). A Level 2 business case is when (1) the debtor’s **monthly** gross receipts (or the monthly gross receipts of any corporation, partnership, LLC, etc. controlled by the debtor) are \$10,000.00 or more, (2) the debtor incurs trade credit in the production of income that is not paid in full every month, (3) the business has any employees other than family, (4) the business has a liquor license, or (5) any other reason that in the opinion of

the trustee justifies a more thorough investigation than is possible at a 341 docket.”

## **II. TRUSTEE’S PROCEDURE FOR IDENTIFYING AND CLASSIFYING CHAPTER 13 BUSINESS CASES**

- A. The Trustee or Presiding Officer will determine if a case is a Level 2 business case and whether to refer the case to the Business Case Analyst.
- B. The Staff Attorney may prepare and file a Trustee’s Objection to Confirmation – Unable to Determine Feasibility, and schedule an interview with the Business Case Analyst, for approximately 2 weeks out.
- C. The 341 Meetings should be concluded prior to scheduling the interview therefore Creditors should not attend. The Staff Attorney or Presiding Officer will prepare a letter with the date and time of the meeting as well as a list of any paperwork that is needed and the date by which the paperwork is due. If additional paperwork is needed, the Debtor/Debtor Attorney will have at least one week to get the paperwork in. This letter will be either handed to the Debtor and Debtor Attorney following the conclusion of the 341 Meeting or will be mailed shortly thereafter.
- D. The Business Case Analyst will conduct the interview and prepare the Trustee’s “1302(c) Statement” for filing.
- E. Notes for Legal:
  - Only schedule interviews with Business Case Analyst on Concluded 341 cases.
  - Do not schedule interview for the next week unless Business Case Analyst approves it.
  - Fill out scheduling letter, give to Debtor/Debtor Attorney and give New Case Manager a copy of the letter for imaging to the file (if not previously auto-imaged to the case).
  - Request a 6 months (prior to filing case) P & L if we don’t already have one. (P & L for 6 months prior to filing should have been prepared by Debtor for use in preparing their B22C). Request also IRS Form 1120 for Corporations, Form 1065 for Partnerships and Form 1040 for individuals for the calendar year prior to petition date.
  - Request any other documents that may be needed, according to the Presiding Officer.
- F. The Trustee will review, modify as needed, sign, and file with the Bankruptcy Court the 1302(c) Statement prepared by the Business Case Analyst.

- G. Level 1 cases will be handled at the regular 341 docket. The 341 Report and the notes thereon will be filed with the Court and will serve as § 1106(a)(4) Statement.

**III. CRITERIA AND REVIEW PROCEDURES FOR LEVEL 1 AND LEVEL 2 BUSINESS CASES**

**A. LEVEL 1 CRITERIA:**

- No employees and no contract labor other than family.
- Gross income less than \$10,000.00/month (per Schedule “I” and/or Business Budget)
- No liquor sales
- No trade credit (not paid off at end of each month)

**B. LEVEL 2 CRITERIA:** All other business cases.

**C. REVIEW PROCEDURES FOR LEVEL 1 AND LEVEL 2 BUSINESS CASES:**

**1. BEST INTEREST**

- a. Review Schedules A, B, C & D and determine dollar amount of any equity in any non-exempt assets.
- b. If Level 1 case, fill in blank on 341 Report to reflect dollar amount. If Level 2, note on 1302(c) Statement or Exhibit thereto.

**2. DISPOSABLE INCOME**

- a. Review the following and compare to Schedules “I” and “J”; adjourn meeting if necessary:
  - (1) Income Tax Returns
    - (a) 2 years 1040’s for individuals
    - (b) 2 years K-1’s and Partnership Returns for General and Limited Partners
    - (c) Any Sales Tax Returns (12 months) – compare Gross Sales to Gross Income on “I,” Tax Returns and P & L’s
- b. Consider income of spouse that works outside the business.
  - (1) Review W-2’s attached to latest Tax Return
  - (2) Review last 3 months’ pay stubs
- c. Calculate Minimum Base (Projected Monthly Disposable Income X ACP and if Level 1 case fill in blank on 341 Report with dollar amount. If Level 2 case, note on 1302(c) Statement or Exhibit thereto.

3. Investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of debtor’s business, the desirability of continuance of such business and any other matters relevant to the case, and note all facts ascertained pertaining to fraud, dishonesty, incompetence, misconduct or mismanagement of the affairs of the debtor or to a cause of action available to

the estate. If Level 1 case, note in Miscellaneous Section of 341 Report. If Level 2 case, note on 1302(c) Statement or Exhibit thereto.

4. The Report/Statement should contain a recommendation to confirm or not confirm debtor's plan, and, in the latter case, why confirmation is not recommended and what would be required to obtain the Trustee's favorable recommendation.
5. The Report/Statement should state what type of pre- and post-confirmation reporting should be made to the Trustee (e.g., monthly P & L's Annual Income Tax Returns, etc.).
6. The Report/Statement will be filed in the case with the Bankruptcy Clerk. If confirmation is not recommended, a copy of the Report/Statement will be served by fax and/or mail by the Pre-Confirmation Department on the debtor's attorney and debtor, and a copy delivered to the Legal Department.
7. If necessary, the Legal Department will prepare and file a Trustee's Amended Objection to Confirmation.