

# *The Evolving Role of the Chapter 7 and Subchapter V Bankruptcy Trustees During COVID and Beyond*

ABI Consumer Bankruptcy Committee Webinar  
December 1, 2020



Moderated by  
**Jon Lieberman**  
Sottile & Barile, Attorneys at Law  
*Loveland, OH*

## Presented by



**The Hon. Alan C. Stout**  
U.S. Bankruptcy Court Judge  
*W.D. Kentucky, Louisville*



**Richard D. Nelson**  
Cohen, Todd, Kite and Stanford  
*Cincinnati, OH*



**Hannah W. Hutman**  
Hoover Penrod PLC  
*Harrisonburg, VA*



**Keith J. Larson**  
Seiller Waterman LLC  
*Louisville, KY*

# THE BACKDROP

- Historical background of ch. 7 trustee program
  - *Pre-Code, judges (“referees”) appointed trustees*
  - *The Code bifurcated judicial and administrative functions*
- Interplay between the USTP & panel trustees
  - *USTP and the DOJ*
  - *Qualifications of panel trustees & training*

# Duties Generally

- Accountable for all property received, § 704(a)(2)
- Investigate debtor's financial affairs, § 704(a)(4)
- Examine proofs of claim and object if improper, § 704(a)(5)
- If advisable, oppose discharge, § 704(a)(6)
- Provide info. about estate to parties in interest, § 704(a)(7)
- Final report and file a final account, § 704(a)(9)
- If there is a DSO claim, provide notice, § 704(a)(10)
- Preside at section § 341 meeting

# Duties of Ch. 7 Trustees not shared by Ch. 13 Trustees

- Collect and reduce to \$\$\$ property of estate, distribute property, close estate expeditiously, §§ 704(a)(1) 725, 726
- If business of debtor is authorized to operate, file reports and summaries, § 704(a)(8)
- If debtor served as administrator of employee benefits plan, act as administrator, § 704(a)(11)
- If health care business is being closed, use reasonable and best efforts to transfer patients to an appropriate facility, § 704(a)(12)

# Setting the Stage

- Average nationwide per capita bankruptcy filing rate in October was 1.78 (total filings per 1,000 per population), slight decrease from 1.81 during Jan – Sep 2020
- Average total filings per day in October 2020 were 1,915, down 38% percent from October 2019
- Comparative data on recent chapter 7 and Subchapter V filing trends

# A PRACTITIONER'S PERSPECTIVE

- Role trustee plays to the benefit of both debtors and creditors
- Tips and strategies for debtor/creditor attorneys
- How to calculate trustee commission

# Role Trustee plays to the benefit of both Debtors and Creditors

- Informal Mediator
- Document Review and Information Gatherer
- Asset Liquidator

# Tips and strategies for debtor/creditor attorneys

- Know your Trustees and their preferences.
  - Submitting documents
  - Orders
- Tell the Trustee what's going on! Use the space on the Schedules and Statement of Financial Affairs to provide insight into the Debtor's situation.
  - Especially important if it is an unusual case or if a business is involved
  - Share information, don't make the Trustee hunt it down
- Reach out to the Trustee ahead of time. Provide extra documentation, if needed, to explain what otherwise may appear to be a fraudulent or otherwise avoidable transfer.
- Take advantage of your time with the Trustee at the 341.
  - If your goal is a "no asset" case, make sure the Trustee has all the info she needs at or before the 341. The longer the Trustee has to think about the case the more likely the case is to become an asset case.
  - Creditor attorneys-Give the Trustee a heads up if you are planning to appear. Do not treat the 341 like a 2004 exam.

# How to calculate Trustee commission

- 11 U.S.C. §326-Limitation of Compensation of Trustee
  - 25% of the first \$5,000 dispersed
  - 10% of any amount over \$5,000 but less than \$50,000
  - 5% of any amount over \$50,000 but less than \$1,000,000, and
  - reasonable compensation for amounts over \$1,000,000 not to exceed 3%.
  - *\$5,750 for the first \$50,000, then 5% up to \$1,000,000*
- Commission paid on funds paid to professionals and secured creditors
  - Cost of liquidation taken into account in determining whether to administer an asset, but not dispositive can costs and commission are negotiable
  - Courts take differing positions on how much and whether a distribution to the unsecureds is required, but it is ALWAYS the goal
- No compensation on funds returned to the Debtor
- \$60 in “no asset” cases, NOTHING if the filing fee is waived.

# TRUSTEE COMPENSATION

- Current state of chapter 7 trustee compensation
- Judge Stout's testimony before the House Judiciary Cmte
- Is compensation reform necessary?
- NCBJ's role and the role other organizations have played in seeking an increase in trustee compensation
- The new role of the Subchapter V trustee

# COVID AND BEYOND

- Continued discussion on compensation
- COVID issues (341 exams, etc.)
- Anticipated increase in future filings
- Trustee retention and recruitment
- Putting it all in context

Questions?

## **BlueStylus instructions – uploading documents to the Trustee**

If you have questions about using BlueStylus, please contact BlueStylus:

**866-878-7831 hit 1 for support**  
[support@trustesolutions.com](mailto:support@trustesolutions.com)

### **Below are instructions for creating a free account:**

1. Go to this web address: <https://apps.bluestylus.com/>
2. Click on “Don’t have an account? Click here”
3. Click on the first option for “Collaborative FREE” where it says Sign up
4. Fill out the form, for the email address, you need to use the email on pacer for the debtor atty  
(Also note, the password needs to have at least one letter, number, and symbol and a length of at least 8 characters)
5. Checkmark the I agree to the Terms of Service (if you agree)
6. Click Create Account

Note: if you want the auto-generated emails to go to a different email, then when you are logged in, click on Settings (bottom left), then click on Firm Details, then input email in Notification Email, and save. Call me if you have any questions about this part.

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2. Login (use debtor atty email that is on pacer)
3. Click on Documents
4. Double click on Trustee Name
5. Double click on the Case Number that you want to upload documents for
6. We currently have two options for uploading documents, the one I’m about to explain is the preferable option because it has a higher file size upload (if you have any issues with this feature, retry using Internet Explorer as your browser)
7. Click on “Upload” at the top left above the first checklist item
8. Click on Add files
9. Browse for the documents to attach (note you can select multiple document by holding the CTRL key down and highlighting the documents)
10. Then click Open
11. In the checklist column select the one that applies for each document
12. Click Start Upload
13. The Trustee will automatically see the documents once they have uploaded. You will also see them noted below each checklist item on the screen.
14. If you want proof that they were uploaded, you can click the Print option (next to the word upload at the top).

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3. Fill out the form: use debtor atty email that is on pacer
4. Click Submit
5. The email should come almost immediately, if you don't see it then look in your Spam or Junk folder
6. The password will be a long complicated password. It is best to copy the text (make sure no blank spaces before or after are highlighted)
7. Then go back to the website: <https://apps.bluestylus.com/Login.aspx>
8. Enter your email, and then paste the password.
9. Once you get logged in, click on Settings, then Change Password.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

IN RE:

Meeting of Creditors

Debtor(s).

Case Nos. 20-12, 20-12,  
20-12233, 20-12, 20-12,  
20-12

Chapter 7-  
Judge Jeffery P. Hopkins

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CHAPTER 7 TRUSTEE'S NOTICE OF REMOTE  
SECTION 341 MEETING OF CREDITORS

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At the direction of the United States Trustee for Regions 3 and 9 which includes the U.S. Bankruptcy Court for the Southern District of Ohio, effective immediately, all Section 341, Chapter 7, Meetings of Creditors will be conducted remotely and telephonically rather than in person. A copy of the Notice regarding this procedure is attached hereto as Exhibit A.

The Section 341 meeting will be conducted telephonically on Friday, September 18, 2020 at 8:30 AM, EST. for the following:

Wanda , Case No. 20-12;

The Section 341 meeting will be conducted telephonically on Friday, September 18, 2020 at 9:00 AM, EST. for the following:

Mic, Case No. 20-12;

Barbara , Case No. 20-12.

The Section 341 meeting will be conducted telephonically on Friday, September 18, 2020 at 9:30 AM, EST. for the following:

Brenda , Case No. 20-12;

Emily , Case No. 20-12;

Heath, Case No. 20-12.

The Conference line number will be 1-866-862-5115. The Participants (Debtors, Attorneys, Creditors. . . ) shall use this number and the ACCESS CODE 7233099 to participate in and attend the meeting at the conclusion of the Meeting, the Trustee will terminate the call.

Please forward copies of both, the Debtor's driver's license or other government issued ID containing their photo and their Social Security Card or other government issued document containing that number.

Dated: September 11, 2020  
Cincinnati, Ohio

Respectfully submitted,

/s/ Richard D. Nelson

Richard D. Nelson, Esq. (OH 0003943)  
Cohen, Todd, Kite & Stanford, LLC  
250 East Fifth Street, Suite 2350  
Cincinnati, Ohio 45202  
Phone: (513) 421-4020  
Fax: (513) 241-4490  
Email: ricknelson@ctks.com

CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of September, 2020, a true and correct copy of the foregoing *CHAPTER 7 TRUSTEE'S NOTICE OF REMOTE SECTION 341 MEETING OF CREDITORS* was sent via ECF Noticing to all parties receiving ECF Notices in these chapter 7 cases.

/s/ Richard D. Nelson

Richard D. Nelson

**NOTICE REGARDING TELEPHONIC CHAPTER 7 § 341  
MEETINGS IN THE SOUTHERN DISTRICT OF OHIO**

*(Effective March 30, 2020)*

On March 16, 2020, the United States Trustee for Regions 3 & 9 issued a notice continuing all in-person chapter 7, 12, and 13 section 341 meetings scheduled through April 10, 2020, with the exception that section 341 meetings could proceed through telephonic or other alternative means not requiring any personal appearances. The March 16, 2020 notice by the United States Trustee is hereby amended such that the continuance of in-person section 341 meetings is extended beyond April 10, 2020 until further notice.

Given the foregoing, this notice addresses the protocol for telephonic appearances for **chapter 7** section 341 meetings only. Chapter 13 debtors should refer to their standing trustee's protocol or website for additional information.

All debtor attorneys and debtors are encouraged to participate in section 341 meetings by telephone, or by such remote means as the trustee has established and noticed. Attorneys and debtors may call in from separate locations. Creditors and creditor attorneys may appear remotely and should use the information provided below or on the docket to participate.

All parties are encouraged to contact the case trustee, check the case docket, and the UST website for up-to-date information about section 341 meetings of creditors.

Unless otherwise instructed, to participate in a telephonic section 341 meeting, you should use the Call-In Number and Passcode assigned to your trustee, which will be posted to the case docket prior to the section 341 meeting date.

Unless otherwise directed by your trustee, please call-in five minutes before your assigned meeting time and mute your telephone until your case is called.

Please follow the instructions below to ensure a smooth telephonic section 341 meeting of creditors.

- You must use a touch-tone phone.
- If you have a choice, use a landline phone, instead of a cell phone.
- Dial the call-in number and then enter the passcode, which consists of 7 numbers and is followed by a # sign.
- Make the call from a quiet area where there is as little background noise as possible.
- Mute your phone and do not speak until the bankruptcy trustee calls your case. (Other meetings of creditors will likely be in session when you call in. You will still be able to hear the trustee even when your phone is muted.)
- Unmute your phone when the trustee calls your case so that the trustee can hear you.
- Wait until the trustee calls your case before speaking because more than one case may be waiting on the conference line at any given time.
- When speaking, identify yourself.

- Do not put the phone on hold at any time after the call is connected.
- Once your meeting of creditors is finished, hang up.
- If you become disconnected before your meeting of creditors is finished, call back.
- If you are calling in from another country, please see the additional information available at:  
<https://www.mymeetings.com/audioconferencing/pdf/GlobalAccessDialingInformation.pdf>

Debtor's counsel must verify on the record that they have confirmed their client's identity prior to the section 341 meeting of creditors, either via Facetime or Skype or other means.

Required documents for the section 341 meeting of creditors should be provided to the trustee **a week prior to the section 341 meeting of creditors**. These documents should include information sufficient for the trustee to verify the debtor's SSN. Debtors shall have these documents available during the section 341 meeting of creditors in the event there are questions about the information in the documents.

The section 341 meeting of creditors will be recorded by the trustee. Any other recordings are prohibited.

**TO: CHAPTER 7 DEBTORS**

**FROM:** Richard D. Nelson, Trustee  
250 East Fifth Street, Suite 2350  
Cincinnati, Ohio 45202  
(513) 421-4020

**You are hereby advised that among your duties after your 341 meeting today are the following requirements:**

1. You must notify the Trustee immediately if, within 180 days after the date your petition was filed in this case, you become entitled to receive any money or property, either:

- a. By bequest, devise, or inheritance.
- b. As a result of a property settlement agreement with your spouse, or of an interlocutory or final divorce decree; or
- c. As beneficiary of a life insurance policy or of a death benefit plan.

As to paragraphs a. and c. above, the decedent's date of death is the date you become entitled to receive money or property from an estate or a life insurance policy.

2. You must notify the Trustee immediately if after today you file tax returns for the year 2019 or any earlier year, in which you are entitled to a total combined refund from all returns for all such years (whether federal, state or city and whether separately or jointly with your spouse), of \$2,000.00 or more. In such event, furnish a copy of each of the returns filed and any W-2, 1099 or other forms related thereto to the Trustee, and do not cash any refund checks without the Trustee's approval.

3. If, after today, you discover that as of the date your petition was filed, you owned or had an interest in property or had money, or had any claim against some other person or entity, which was not disclosed in your schedules or in your answers to questions today, you must immediately notify the Trustee of the existence and details of such interest or claim.

4. If, after, today, you discover that any of your money or property was paid or transferred by you (or involuntarily, as by court order or attachment) within one year prior to the date of filing of your petition in an amount of \$1,000.00 in value or more either:

- a. To one of your creditors; or
- b. To, or for the benefit of, any of your relatives or any corporation or partnership in which you have an interest (or any person or entity affiliated with such a corporation or partnership), for any reason whatsoever, you must notify the Trustee of the existence and details of such transfer.

5. If, after today, you learn of a legal right you may have to a potential claim of any type including, but not limited to, medical conditions or medical treatment that occurred before the filing of the bankruptcy or of any rights or causes of action, including class actions, that gives you a potential claim for the recovery of damages for financial transactions or violations by of any rule or statute by financial institutions or creditors, you should contact the Trustee immediately, even if you learn of these rights later than 180 days after the filing of the bankruptcy case.

6. The foregoing obligations exist whether or not this case has been closed, the Trustee has filed a no-asset report or you have received a discharge.

If you have any questions concerning these requirements, you should consult your attorney.

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## Faculty: The Evolving Role of Chapter 7 and Subchapter V Bankruptcy Trustees During COVID and Beyond

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**Hannah W. Hutman** is a partner at Hoover Penrod, PLC in Harrisonburg, Va., where her practice focuses on representing both creditors and debtors in bankruptcy proceedings under chapters 7, 11, 12 and 13 and insolvency-related matters. In addition, she has represented national and regional banks in collection matters, including restructuring obligations, asset liquidations and dispositions, and foreclosures. Ms. Hutman is a member of the panel of Chapter 7 Trustees for the Western District of Virginia and is a frequent presenter on a wide variety of insolvency-related topics. She also co-authored a chapter in *Bankruptcy Practice in Virginia* and currently serves as a member of the Board of Governors of the Bankruptcy Law Section for the Virginia State Bar, and as a councilmember for the Bankruptcy Section of the Virginia Bar Association. Ms. Hutman is active in the Virginia network of the International Women's Insolvency & Restructuring Confederation and currently serves as the liaison for the Western District of Virginia. She is AV-rated by Martindale-Hubbell, has routinely been listed in *Super Lawyers* as a "Rising Star" and selected as a member of Virginia's "Legal Elite," and was honored as one of ABI's "40 Under 40" in 2018. She received her B.A. *summa cum laude* from Columbia Union College in Takoma Park, Md., and her J.D. from the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Va.

**Keith J. Larson** is a member of the Bankruptcy and Financial Restructuring Group of Seiller Waterman, LLC in Louisville, Ky., and he is the supervising and hiring attorney for the firm's summer associate and law clerk program. He represents debtors, secured and unsecured creditors, equity interest-holders, bankruptcy trustees, and acquirers of troubled businesses in a wide variety of bankruptcy and workout matters. Mr. Larson has briefed and argued cases in the U.S. Courts of Appeals for the Sixth, Seventh and Eighth Circuits and in the state appellate courts, including issues of first impression. He has also tried numerous bench and jury trials, and has experience litigating adversary proceedings in bankruptcy court. While attending law school, Mr. Larson served as the deputy congressional campaign manager and communications director for John Sarbanes for Congress 2006 and later as a legal extern for U.S. Senator Barbara A. Mikulski. Upon graduation, he clerked for Hon. Sean D. Wallace in Maryland. Mr. Larson writes and lectures on issues in consumer and business bankruptcy and is an associate editor of the *ABI Journal*. In 2017, he was recognized by *Louisville Business First* as one of "20 People to Know in the Law." Mr. Larson received his B.A. in government with high honors in 2003 from The College of William and Mary and his J.D. in 2008 from the University of Maryland School of Law, where he was awarded a Certificate of Concentration in Health Law.

**Jon Jay Lieberman** is senior counsel at Sottile & Barile LLC in Cincinnati and has represented consumer debtors, commercial debtors, large and small creditors, mortgage lenders and servicers, automobile creditors and student loan creditors, as well as chapter 7 and 13 trustees. He has worked for some of the largest creditor firms in the region and is licensed to practice in Ohio, Kentucky, Indiana, Michigan, Colorado, Wisconsin and the District of Columbia. He is also able to practice in front of the Sixth Circuit Court of Appeals, the U.S. Court of International Trade and the U.S. Supreme Court. Mr. Lieberman currently serves as an associate editor of the *ABI Journal* and is a member of a variety of committees and bar associations. He received his J.D. from the University of Cincinnati College of Law in 1990.

**Richard D. Nelson** is an attorney and member of the law firm of Cohen, Todd, Kite & Stanford, LLC in Cincinnati, where his practice is concentrated in the areas of business representation and reorganization, financial workouts, bankruptcy, probate administration, services as a fiduciary in state and federal courts, and in general business and corporate matters. He has been involved in a broad spectrum of financial and bankruptcy-related cases and litigation matters, and has appeared in numerous federal and state courts. He also represents a number of businesses and banks on general corporate matters. Mr. Nelson has been a chapter 7 panel trustee in the Southern District of Ohio since 1990 and has experience in the representation of debtors, creditors and creditors' committees in chapter 11 cases and in out-of-court workouts. He also has served as a chapter 11 trustee and has operated and liquidated businesses in more than 100 separate cases. Mr. Nelson has been a board member of the National Association of Bankruptcy Trustees since 2008 (including a term as its president from 2015-16), has been a member of the ABI's Central States Bankruptcy Workshop Advisory Board, and has been a previous presenter for the ABI at the National Conference of Bankruptcy Judges. He also has been listed in *Ohio Super Lawyers* annually since 2006, including recognition twice as one of the top 100 attorneys in the State of Ohio, and is a frequent speaker at a number of seminars on bankruptcy, reorganization and ethics topics. Mr. Nelson received his B.A. from Miami University of Ohio in 1971 and his J.D. in 1974 from the University of Cincinnati College of Law.

**Hon. Allan C. Stout** is Chief U.S. Bankruptcy Judge for the Western District of Kentucky in Louisville, appointed on Oct. 25, 2011. He presided over the *City of Hillview* case, which was the first municipal chapter 9 bankruptcy case filed since the City of Detroit case in 2013. Judge Stout was a practicing bankruptcy attorney in both Paducah and Marion, Ky., and has served as a chapter 7 trustee. He was admitted to practice in Kentucky in 1981 and in Illinois in 1998, and he is admitted to practice before the U.S. Supreme Court, the U.S. Sixth Circuit Court of Appeals, and the U.S. District Courts for the Western and Eastern Districts of Kentucky. Judge Stout previously served as president and on the board of directors of the National Association of Bankruptcy Trustees (NABT). While in private practice, he achieved an AV-Preeminent rating by Martindale-Hubbell. Judge Stout received his B.S. in 1978 from Murray State University and his J.D. in 1981 from Salmon P. Chase College of Law at Northern Kentucky University.