HAMMER AND NAILS – CONSTRUCTING THE USE OF APPEARANCE COUNSEL IN BANKRUPTCY CASES

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HAMMER AND NAILS – CONSTRUCTING THE USE OF APPEARANCE COUNSEL IN BANKRUPTCY CASES[1]

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For various reasons, lead counsel for a debtor in a bankruptcy case may be unable to participate in certain hearings, the meeting of creditors and/or other matters. In such instances, lead counsel may arrange for an attorney unaffiliated with his or her law firm to appear on behalf of the debtor. Such attorneys are often referred to as "appearance counsel," also known in some districts as *per diem* attorneys, substitute counsel, temporary attorneys, and associate counsel.[2] One court has described appearance counsel as follows:

> "Appearance attorneys" are attorneys who, at the request of the debtors' chosen attorney, appear and attempt to represent debtors at meetings of creditors and hearings on behalf of the debtors' attorney. An appearance attorney is neither a partner nor an associate at the law firm retained by the debtor. Rather, appearance attorneys are solo practitioners who generate income typically by contracting with multiple firms to represent their clients at proceedings at the courthouse. These lawyers are almost never disclosed to the court prior to their appearance, and debtors are often unaware that an appearance attorney will be representing them until they meet the attorney – usually mere minutes before a hearing or a meeting of creditors begins.

In re Bradley, 495 B.R. 747, 757 n.1 (Bankr. S.D. Tex. 2013).

Notwithstanding some valid concerns expressed by courts, the use of appearance counsel can, under the right circumstances, provide much needed flexibility to attorneys, and solo

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[1] These materials were previously prepared for use in connection with the Hon. Steven W. Rhodes Consumer Bankruptcy Conference sponsored by the American Bankruptcy Institute on November 12, 2018. They have been updated.

[2] Several "providers" arrange for appearance counsel in consumer and commercial bankruptcy cases on a national level. Based on a review of these providers' websites, appearance counsel is becoming "big business" in the legal profession.

practitioners in particular. It is extremely important, however, for lead counsel and appearance counsel to comply with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the local bankruptcy rules and the Michigan Rules of Professional Conduct. Absent careful adherence to these directives, lead counsel and appearance counsel put themselves at risk of fee disgorgement, sanctions, and possibly even disciplinary proceedings.

These materials are intended to briefly discuss some of the requirements that accompany the use of appearance counsel, including disclosure, advanced and informed consent from clients, and fee sharing restrictions.[3]

A. *Appearance Counsel in General*

A common misconception is that appearance counsel only appears for, and takes actions on behalf of, lead counsel. The role of appearance counsel is not, however, limited to simply appearing at a matter to request an adjournment, standing on a motion, or otherwise "covering" for lead counsel. Rather, even when serving in a limited capacity, appearance counsel has a duty to the client, not lead counsel. *See, e.g.*, *In re D'Arata*, 587 B.R. 819 (Bankr. S.D.N.Y. 2018); *In re Wright*, 290 B.R. 145 (Bankr. C.D. Cal. 2003); *In re Al Sammak*, 2016 WL 3912375 (Bankr. D. Idaho July 12, 2016); *In re Egwu*, 2012 WL 5193958 (Bankr. D. Md. Oct. 19, 2012); *In re Bernhardt*, 2012 WL 646150 (Bankr. D. Colo. Feb. 28, 2012).

Addressing the relationship among the lead attorney, appearance counsel and the debtor, one court emphasized the following:

> Despite [lead counsel's] characterization, [appearance counsel] were not simply agreeing to appear on [lead counsel's behalf]. They

[3] The materials are far from comprehensive. The author expresses no opinion regarding the decisions cited herein. Practitioners are encouraged to review the actual decisions in order to thoroughly understand their issues and holdings. For additional discussion regarding the use of appearance counsel in bankruptcy cases, *see* Hon. Alan Trust and Michael A. Pantzer, *Does Sending or Being an Appearance Attorney Have an 80 Percent Chance of Success?*, Am. Bankr. Inst. J. (July 2017); Neil M. Berman, *Judge, This Is Not My Case . . .*, Norton Bankr. L. Adviser 3 (May 2004); *see also* Darin Day, *New Limited Scope Rules Benefit Underemployed Attorneys and Overburdened Courts*, Mich. Bar. J. (June 2018).

> were appearing, as counsel, *for [the debtor]*. And, they were not just "appearing" – they were *representing* her at a § 341(a) hearing *as [the debtor's] attorney*. . . Even though this arrangement may be for a limited purpose or duration, [appearance counsel] is, for that time and purpose, *the* attorney who is representing [the debtor].

In re Olson, 2016 WL 343341, at *5 (Bankr. D. Idaho June 16, 2016) (emphasis included). Other than the limited scope of the representation, the role of appearance counsel is no different than that of co-counsel.

As discussed in more detail below, when acting as either lead counsel or appearance counsel, communication, disclosure and preparedness are of paramount importance.

B. *Disclosure Obligations Under the Bankruptcy Code and Fed. R. Bankr. P.*

The Bankruptcy Code and the Bankruptcy Rules, both of which require attorneys for debtors to make certain disclosures, do not distinguish between lead counsel and appearance counsel. Instead *all* attorneys must disclose the information required by section 329 and Bankruptcy Rule 2016(b).

1. 11 U.S.C. § 329 – Debtor's Transactions with Attorneys

Section 329(a) provides that:

> any attorney representing a debtor in or in connection with a case shall file a statement of the compensation paid or agreed to be paid for the services rendered or to be rendered by that attorney and the source of the compensation.

11 U.S.C. § 329(a). The language of section 329 is mandatory in all respects. It evinces Congress's intent that bankruptcy courts closely review and monitor compensation arrangements between a debtor and his or her attorney. *Henderson v. Kisseberth (In re Kisseberth)*, 273 F.3d 714, 720 (6th Cir. 2001). In the event that compensation is unreasonable, the court has the authority to cancel the agreement and/or order the attorney to disgorge amounts previously paid. 11 U.S.C. § 329(b).

By its express terms, section 329(a) requires an attorney for a debtor to file a statement of compensation. This requirement applies to any attorney representing the debtor *in* the actual case, including lead counsel and appearance counsel. It also applies to attorneys representing a debtor *in connection with a case*, an extremely broad phrase. *See, e.g.*, *In re Gorski*, 519 B.R. 67 (Bankr. S.D.N.Y. 2014) (debtor's divorce attorney subject to disclosure obligation in debtor's bankruptcy case).

In addition, section 329 requires an attorney to disclose the compensation paid or anticipated to be paid, as well as the source of any such compensation. *See Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996). This requirement is not limited to lead counsel and extends to appearance counsel. Lead counsel and appearance counsel therefore have independent obligations to disclose compensation arrangements. *See, e.g.*, *In re Egwu*, 2012 WL 5193958, at *4 (Bankr. D. Md. Oct. 19, 2012).

2. Fed. R. Bankr. P. 2016(b) – Compensation for Services Rendered and Reimbursement of Expenses

Section 329 is implemented by Bankruptcy Rule 2016(b), which provides that:

> Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code, including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

Fed. R. Bankr. P. 2016(b).

Bankruptcy Rule 2016(b) requires an attorney representing a debtor in any chapter and in any capacity related to the bankruptcy case to file a statement of compensation, even if the attorney is not being compensated for his or her services and regardless of the scope of the representation. *See, e.g.*, *In re Bradley*, 495 B.R. at 789-90; *In re Wright*, 290 B.R. 145, 155 (Bankr. C.D. Cal. 2003). This requirement is strictly enforced. *See Halbert v. Yousif*, 225 B.R. 336, 351 (E.D. Mich. 1998) (attorney must file statement of compensation and cannot rely on other documents filed with court in lieu of such statement); *see also In re Bernhardt*, 2012 WL 646150, at *6 (Bankr. D. Colo. Feb. 28, 2012) (disclosure under Bankruptcy Rule 2016(b) is not an "empty exercise" or one that may be satisfied by filing a form with the same information in every case).[4] Therefore, lead counsel and appearance counsel are each required to file a statement of compensation under Bankruptcy Rule 2016(b). *See, e.g.*, *In re Bradley*, 495 B.R. at 790 (citation omitted). If, for example, lead counsel for a debtor in a chapter 7 case agrees to pay or has paid appearance counsel $X, two statements of compensation should be filed with the court – one by lead counsel and another by appearance counsel, both of which disclose $X as compensation paid by lead counsel to appearance counsel.

The statement of compensation required by Bankruptcy Rule 2016(b) must specifically state whether the attorney filing the statement has shared or agreed to share compensation with any other entity (other than a member or associate of the disclosing attorney's firm). It must also explain the details of such arrangement. Neither section 329 nor Bankruptcy Rule 2016(b) provide further instruction as to the level of detail. As a matter of best practices, an attorney filing a

[4] Official Form 3020, which is entitled Disclosure of Compensation of Attorney for Debtor, has been prescribed for use by the Judicial Conference of the United States. *See* Fed. R. Bankr. P. 9009. Certain bankruptcy courts, including the Bankruptcy Court for the Eastern District of Michigan, have modified Official Form 3020. *See id*. (permitting modifications under appropriate circumstances). The form adopted by the Bankruptcy Court for the Eastern District of Michigan is available on its website at www.mieb.uscourts.gov/forms/all-forms.

statement of compensation should consider attaching his or her retention agreement with the debtor, as well as any fee sharing agreement with other attorneys. *See* 11 U.S.C. § 528(a) (requiring written contract between debtor and debt relief agency); *see also Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 235-39 (2010) (attorneys are debt relief agencies).[5]

The timing of such disclosures is also important. An attorney must file the statement within fourteen days of the order for relief (the petition date in most cases) or such other time as the court instructs. An attorney's disclosure obligations under Bankruptcy Rule 2016(b) do not end upon the filing of the initial disclosure though. An attorney is also required to file a supplemental statement within fourteen days of receiving payment or entering into an agreement for payment that was previously not disclosed. The obligation is continuing in nature, meaning an attorney must timely file a supplemental statement each time he receives payment or enters into a new agreement for compensation. *See In re D'Arata*, 587 B.R. at 822 n.5; *In re Hirsch*, 550 B.R. 126, 135 (Bankr. W.D. Mich. 2015) (citations omitted) (statement of compensation must be filed even after completion or dismissal of case); *In re Bradley*, 495 B.R. at 789 (lead counsel and appearance counsel required to file supplemental statements once lead counsel decides to use appearance counsel).

For further discussion regarding the application of section 329 and Bankruptcy Rule 2016(b) to the use of appearance counsel, see *In re Harwell*, 439 B.R. 455 (Bankr. W.D. Mich. 2010); *In re Al-Sammak*, 2016 WL 3912375 (Bankr. D. Idaho July 12, 2016); *In re Olson*, 2016 WL 3453341 (Bankr. D. Idaho June 16, 2016).

[5] For discussion regarding the unbundling of services in chapter 7, see *In re Slabbink*, 482 B.R. 576 (Bankr. E.D. Mich. 2012); *In re Gourlay*, 483 B.R. 496 (Bankr. E.D. Mich. 2012).

3. Fed. R. Bankr. P. 9010 – Representation and Appearance

An attorney appearing for any party (including the debtor) "in a case" is required to file a notice of appearance. Fed. R. Bankr. P. 9010(b). This requirement applies equally to lead counsel and appearance counsel. Although it is unclear whether Bankruptcy Rule 9010(b) technically requires an attorney to file a notice of appearance if he or she only attends the meeting of creditors, the Michigan Rules of Professional Conduct do. *See infra* at p. 9. Moreover, local rules may require appearance counsel to file a notice of limited appearance. *See infra* at p. 13. In order to ensure compliance with applicable authorities, appearance counsel should file some form of notice of appearance whenever he or she is representing a debtor (or any other party, for that matter).

For additional discussion regarding the need for appearance counsel to file notices of appearance, see *In re Jacobson*, 402 B.R. 359, 364-65 (Bankr. W.D. Wash. 2009).

4. 11 U.S.C. § 504 – Sharing of Compensation

Section 504(a) provides, in pertinent part, that "a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) . . . may not share or agree to share . . . any such compensation or reimbursement with another person; or any compensation or reimbursement received by another person under such sections." 11 U.S.C. § 504(a). Congress enacted section 504(a) to address at least three policy-driven concerns: (i) the potential that an attorney may inflate his or her fee to make up for the portion lost to sharing; (ii) the potential that the attorney may be subject to outside influences of which the court does not have knowledge or control; and (iii) the potential for the *de facto* transfer of judicial power over expenditures and allowances. *In re Egwu*, 2012 WL 5193958, at *4 (Bankr. D. Md. 2012).

Because section 504(a) only applies to attorneys who receive compensation allowed as an administrative expense, it generally does not apply to attorneys for chapter 7 debtors. *See Lamie*

v. United States Trustee, 540 U.S. 526 (2004). An attorney for a chapter 7 debtor may therefore agree to share compensation, whether pre or post-petition, so long as he or she complies with section 329, Bankruptcy Rule 2016(b) and any applicable rules of professional conduct.

The same cannot be said for an attorney, whether the lead attorney or appearance counsel, representing a debtor in a chapter 13 case. Even with the requisite disclosures under section 329 and Bankruptcy Rule 2016(b), section 504 seemingly precludes lead counsel and appearance counsel from sharing fees that are derived from an administrative expense allowed under section 503(b)(2) or (4).[6] At least one court has rejected an attempt to circumvent section 504 by concluding that it is inappropriate to include the fees of appearance counsel in a fee application filed by the lead counsel for a chapter 13 debtor. *In re Egwu*, 2012 WL 5193958, at *4 (Bankr. D. Md. Oct. 19, 2012); *but see also In re Wright*, 290 B.R. at 156 (discussing lead counsel applying for fees for services performed by contract attorney). Therefore, as a matter of best practices and to ensure technical compliance with section 504, appearance counsel in a chapter 13 case should consider filing his or her own *short* fee application or, if allowed by the local rules, a stipulation with the chapter 13 trustee. *See* Fed. R. Bankr. P. 2002(a)(6); LBR 2016-1(d) (Bankr. E.D. Mich.) (*ex parte* application for fees less than $1,000 in chapter 13 case with endorsed approval of debtor and trustee); LBR 2016-2(c), (d)(4) (Bankr. W.D. Mich.) (permitting stipulated final fee applications for $1,000 or less in chapter 13 cases).

[6] As the *Egwu* court noted, section 504 applies only to administrative expenses. *In re Egwu*, 2012 WL 5193958, at *4 n.15 (Bankr. D. Md. Oct. 19, 2012). Therefore, any fees paid prepetition are not subject to the prohibition on fee sharing. *Id*. Nonetheless, disclosure obligations remain under section 329, Bankruptcy Rule 2016(b) and the applicable rules of professional conduct.

C. *Michigan Rules of Professional Conduct*

The Michigan Rules of Professional Conduct are equally as important to the use of appearance counsel. They impose additional requirements to ensure that clients, including debtors in bankruptcy cases, have an opportunity to consent to the use of appearance counsel.

1. Mich. R. Prof. Cond. 1.2 – Scope of Representation

Rule 1.2(b) provides, in pertinent part that:

> [a] lawyer licensed to practice in the State of Michigan may limit the scope of a representation, file a limited appearance in a civil action, and act as counsel of record for the limited purpose identified in that appearance, if the limitation is reasonable under the circumstances and the client gives informed consent, preferably confirmed in writing.

Mich. R. Prof. Cond. 1.2(b).

Because Rule 1.2(b) specifically refers to a "limited appearance," it applies to appearance counsel in a bankruptcy case, which is a civil action. Moreover, the rule seems to contemplate that the notice of limited appearance will at least reference the role of appearance counsel and the services he or she is expected to provide.

Rule 1.2(b) clearly allows an attorney to limit the scope of a representation, subject to two conditions. First, any limitation must be pursuant to *an agreement with the client* and documented in writing whenever possible. *Accord* 11 U.S.C. § 528(a). It is not appropriate to attempt to limit the scope of the representation by presenting a client with a form agreement, by filing a notice of appearance, or by filing a statement of compensation without the terms of the engagement and the signature of the client.

Importantly, any agreement to limit the scope of the representation requires that the client give his or her "informed consent" to such limitation. "Informed consent" is defined as "an agreement to a proposed course of conduct after the lawyer has communicated adequate

information and explanation about the material risks of the proposed course of conduct, and reasonably available alternatives to the proposed course of conduct." Mich. R. Prof. Cond. 1.0. As such, an attorney may not limit the scope of his or her representation without first providing the client with sufficient information to understand the limitations of the engagement and the potential consequences thereof. Moreover, the client should be given sufficient time to understand the limitations, meaning that absent exigent circumstances, lead counsel should discuss use of appearance counsel well in advance of any hearing or the meeting of creditors that appearance counsel will attend.

Second, any limitation must be reasonable under the circumstances.[7] An attorney cannot limit the scope of the representation by disclaiming an obligation to represent a client with respect to a fundamental matter. In bankruptcy cases, courts have held that attorneys may not, among other things, limit the scope of their representation so as to exclude their obligation to appear with a debtor at the meeting of creditors. *See, e.g.*, *In re Castorena*, 270 B.R. 504, 524-28 (Bankr. D. Idaho 2001) (citations omitted); *In re Ortiz*, 496 B.R. 144, 150-51 (Bankr. S.D.N.Y. 2013); *see also In re D'Arata*, 587 B.R. at 828 (encouraging parties to report instances where counsel fails to meet obligations to debtor, including by failing to appear at meeting of creditors). In effect, because the meeting of creditors is such a critical event in a bankruptcy case, an attorney is expected to represent the debtor's interests at the meeting and cannot disclaim this obligation.[8]

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[7] As a threshold matter, lead counsel and appearance counsel must each conduct a conflicts search before agreeing to represent the client. *See* Mich. R. Prof. Cond. 1.7. An attorney must obtain the informed consent of the client to proceed with the representation if the conflict is not *per se* disqualifying. *Id*.

[8] In a strongly worded letter regarding problems associated with use of appearance counsel, one trustee commented as follows with respect to the significance of the meeting of creditors for debtors:

> [Individual debtors] have most often never hired a lawyer. They are overwhelmed by debt. They are in need of help. They nearly all are honest debtors. They are not proud to be filing for bankruptcy. The day they appear for examination by the

2. Mich. R. Prof. Cond. 1.5 – Disclosure of Fee Division

Rule 1.5 of the Michigan Rules of Professional Conduct allows a division of a fee between lawyers who are not in the same firm to divide a fee if (i) the client is advised of, and does not object to, the participation of all the lawyers involved, and (ii) the total fee is reasonable. Mich. R. Prof. Cond. 1.5(e). In other words, the client must be given an opportunity to consider and approve of any fee sharing arrangement between lead counsel and appearance counsel. Although Rule 1.5(e) does not require that the client agree to the fee sharing arrangement in writing, appearance counsel and lead counsel should include such a disclosure in their respective retention agreements as a matter of best practices. *See* Mich. R. Prof. Cond. 1.2(b). The agreements should state the identity of all attorneys sharing in the fee and the amount to be paid to each attorney.

For additional discussion regarding fee disclosure requirements, see *In re Olson*, 2016 WL 3453341, at *7 (Bankr. D. Idaho June 16, 2016); *In re Bernhardt*, 2012 WL 646150, at *5 (Bankr. D. Colo. Feb. 28, 2012).

3. Mich. R. Prof. Cond. 1.1 – Competent Representation

Rule 1.1 of the Michigan Rules of Professional Conduct establishes the standard for competence of a lawyer with respect to a particular engagement by providing that a lawyer shall not:

> (a) handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
>
> (b) handle a legal matter without preparation adequate in the circumstances; or
>
> (c) neglect a legal matter entrusted to the lawyer.

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trustee is the lowest day of their lives. If ever there was a day when they need the help of their lawyer, it is the day of their § 341 examination.

In re D'Arata, 587 B.R. at 827.

Mich. R. Prof. Cond. 1.1. While the rule is fairly self-explanatory, it should be noted that it applies equally to lead counsel and appearance counsel. Lead counsel and appearance counsel must be fully prepared and possess the requisite skill and knowledge to provide the services expected by the client.

Importantly, Rule 1.1 provides that an attorney may not neglect a matter entrusted to the attorney. Obviously, Rule 1.1 imposes an obligation on appearance counsel with respect to the limited services he or she is providing. However, an additional burden is placed on lead counsel. Lead counsel must ensure that appearance counsel has been fully briefed, provided with all necessary information, and has coordinated with the client well in advance of any hearing, the meeting of creditors or any other matter. *See* Mich. R. Prof. Cond. 1.4 (requiring attorney to keep client reasonably informed and provide sufficient explanation to permit client to make informed decisions); *see also In re Bradley*, 495 B.R. at 787-88; *In re Olson*, 2016 WL 3453341, at *9 (Bankr. D. Idaho June 16, 2016). As a matter of best practices, lead counsel should participate in a meeting with appearance counsel and the client at least one week before a hearing or the meeting of creditors.

D. ***LBR 9010-1 (Bankr. E.D. Mich.) – Appearances***

The Bankruptcy Court for the Eastern District of Michigan has promulgated a local rule that addresses the use of appearance counsel at hearings and the meeting of creditors.[9] LBR 9010-1 (Bankr. E.D. Mich.). Although the Bankruptcy Court for the Western District of Michigan does not have a similar local rule, attorneys practicing in the Western District of Michigan may wish to refer to the Eastern District of Michigan's rule for guidance.

[9] Other bankruptcy courts have similar local rules. *See, e.g.*, LBR 2090-1(a)(2)-(3) (Bankr. C.D. Cal.); LBR 9010-6 (Bankr. S.D. Cal.); LBR 2017-1(a)-(b) (Bankr. E.D. Cal.); LBR 2090-1(D) (Bankr. S.D. Fla.); LBR 2090-2(a), (e) (Bankr. E.D.N.Y.).

Consistent with Mich. R. Prof. Cond. 1.1, LBR 9010-1 provides that all attorneys appearing before the court are expected to "be fully prepared and knowledgeable of the issues and matters to be addressed." LBR 9010-1(a)(2)(G) (Bankr. E.D. Mich.); *see* Mich. R. Prof. Cond. 1.1(b). Relatedly, any attorney appearing at a hearing or the meeting of creditors "must have sufficient familiarity and knowledge of the case and its prior proceedings as to permit informed discussion and argument." LBR 9010-1(b) (Bankr. E.D. Mich.). Appearance counsel is therefore expected to represent the interests of the debtor as if he or she was acting as lead counsel. Moreover, it is generally expected that the debtor's attorney "will attend and represent the debtor at the meeting of creditors, any hearing on reaffirmation agreements, and all other hearings within the scope of the representation." *Id*.

Subject to certain requirements, the local rules for the Eastern District of Michigan expressly allow for the use of appearance counsel, including at the meeting of creditors. LBR 9010-1(c) (Bankr. E.D. Mich.). According to the local rules, appearance counsel must file, prior to his or her appearance, a written notice of special appearance and a statement of compensation. *Id*. The statement of compensation filed by appearance counsel for a debtor must be countersigned by the debtor. *See* LBR 9010-1(d) (Bankr. E.D. Mich.). In addition, appearance counsel must provide a copy of a filed notice of special appearance upon request. LBR 9010-1(c) (Bankr. E.D. Mich.).

Finally, consistent with LBR 9010-1(b), appearance counsel "will be accountable for adequately representing the interests of the person or entity on whose behalf the appearance is made." *Id*. In other words, the role of appearance counsel is not to simply appear; it is to represent the interests of the client pursuant to all requirements imposed by the Bankruptcy Code, the

Bankruptcy Rules, the local rules, the Michigan Rules of Professional Conduct and other applicable authorities.

E. ***Practice Pointers***

The use of appearance counsel can be perilous to both lead counsel and appearance counsel if the relationship is not properly structured. As a matter of best practices, attorneys are encouraged to consider the following non-exhaustive actions when implementing an appearance counsel relationship:

- Lead counsel should perform a conflicts search prior to meeting with the client. Appearance counsel, whenever identified, should likewise conduct a conflicts search.

- If the client wishes to retain lead counsel, the parties should enter into a retention agreement.

- If lead counsel anticipates using appearance counsel, the client should be informed of the potential relationship, the identity of appearance counsel, if known, and the fee to be shared. Lead counsel should explain the relationship among lead counsel, appearance counsel and the client. The agreement should be set forth in writing, ideally as part of the retention agreement.

- Appearance counsel and the client should enter into a separate agreement reflecting the services to be performed, the fees for such services, and the person responsible for payment of such fees.

- Lead counsel and appearance counsel should file notices of appearance in the appropriate form.

- Lead counsel and, when identified, appearance counsel, should each file statements of compensation on the prescribed form in a particular district, and supplemented as necessary, under Bankruptcy Rule 2016(b). Any written agreements should be attached to the statements.

- Lead counsel, appearance counsel and the client should meet at least seven days before a hearing or the meeting of creditors. Lead counsel should provide appearance counsel with the file prior to the meeting with the client.

- After the hearing or meeting of creditors, appearance counsel should inform lead counsel of the results (ideally in a meeting with the client) and not rely on the client to do so.

- Lead counsel and appearance counsel should separately request fees in chapter 13 cases.