

Bankruptcy lawyers balk at disclosure plan

By Lisa van der Pool

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The United States Trustee Program's recent push to place increased scrutiny on bankruptcy lawyers' rates has angered attorneys who say the proposed rules aren't necessary and come with a host of problems.

Among the more controversial proposed rules are those surrounding the U.S. Trustee's desire for lawyers to provide detailed budgets and staffing plans, and to disclose "the lowest, highest, and average rates billed for the preceding year for estate-paid bankruptcy work and for all other work combined."

The U.S. Trustee — the part of the U.S. Department of Justice that serves as the "watchdog" for the U.S. bankruptcy system — is also seeking disclosure early on in the case of firms' lowest, highest, and average rates for partners and associates for the preceding year in its bankruptcy practice and all other practices.

Boston-area bankruptcy lawyers say such detailed disclosures would expose proprietary information to competitors and waste valuable time at the start of bankruptcy cases, when every minute counts for companies in distress.

"If everyone knows your budget, they also know your strategy," said Richard Mikels, chairman of Mintz Levin Cohn Ferris Glovsky and Popeo PC's bankruptcy section. (Mikels said he charges \$795 per hour.)

Mikels notes, however, that the dialog the U.S. Trustee office has started is healthy. He said it's not surprising that the regulators and the attorneys they regulate don't see eye-to-eye.

"The reality is that the correct answer is probably somewhere in between," said Mikels.



John La Liberte of the firm Sherin and Lodgen says billing abuses are rare and new rules governing fee disclosure probably are unnecessary.

The U.S. Trustee argues on its website that sky-high bankruptcy rates helped prompt its call for new rules, noting that: “when bankruptcy attorneys and other professionals in the case seek to be paid unreasonable sums, we again are often the only party to police the compensation...”

During the past few years bankruptcy lawyers have charged some spectacularly high fees. Weil Gotshal & Manges, which worked on the Lehman Brothers bankruptcy, pulled in a total of \$383 million in payments, according to a Reuters report citing a securities filing.

Locally, Boston-based Brown Rudnick LLP worked on Beacon Power’s bankruptcy case. At one point, about 35 Brown Rudnick attorneys worked on the deal, which took a total of 3,800 hours, the Boston Business Journal reported earlier this year. Court documents indicate the firm billed about \$1.8 million for its first three months of work on the case, for an average of about \$473 per hour. (Beacon Power filed for bankruptcy protection last fall, and was sold this year.)

While the proposed regulations will only apply to big bankruptcy cases with combined assets and liabilities totaling \$50 million or more, that doesn’t seem to provide comfort to the bankruptcy bar.

“While that number seems high, it captures many middle market cases and real estate cases. The new guidelines would require professionals, at the inception of a case, to provide fee data, staffing outlines and budgets,” said Christopher Panos, managing shareholder of Craig and Macauley, in an email. “At that stage in a chapter 11 case, the client is in crisis mode and requires full attention of its professionals on critical hearings and negotiations. Services that must be provided are often reactive and unpredictable. Realistic budgeting would be almost impossible and would potentially require disclosure of confidential strategies and possible issues with various constituencies that may or may not occur.”

Joe Baldiga, a bankruptcy partner with Boston-based Mirick O’Connell, is not convinced small bankruptcies won’t be affected.

“Eventually, these regulations may trickle down to smaller cases,” said Baldiga, who does think some of the regulations the U.S. Trustee is proposing are on target.

“There is something to be said for the expertise that these firms (offer), but at what point does it become unreasonable?” said Baldiga, who charges around \$380 an hour.

John La Liberte, a partner with Sherin and Lodgen, whose hourly rate is between \$300 and \$400, points out that bankruptcy attorneys are already required to disclose billing rates and other information up front.

“We all have to file affidavits (as to) the firm’s relationship with potential creditors and debtors and frankly in any other forum that’s not required for attorneys,” said La Liberte. “I’m not saying there aren’t abuses that occur in the system, but I think they are few and far between. The mechanisms we currently have in the bankruptcy system are adequate to address those abuses.”