
By Jan Sensenich, Chapter 13 Trustee for the District of Vermont (Special thanks to Joyce Babin, Chapter 13 Trustee, Little Rock, Arkansas)

This may, at first, seem an odd title for an article appearing in a publication which is largely addressed to Chapter 13 Trustees. One would hope that we would know what we are. However, how many of us really take time to look at how varied and diverse this work we do really is? Or, for that matter, how often do we really compare notes on how different our positions are in different regions of the country or how much our positions vary from those of us who have very large or very small offices? Even if we do have some sense of these things, how many other constituencies with whom we work in the bankruptcy world have much of a sense of what we really do? Every year, new trustees join our ranks and begin feeling their way into their new positions. It seems to me that it would be valuable to take a step back and take a look at the very unusual position of a Chapter 13 Standing Trustee.

The Dreaded Question: “So what do you do?”

I don’t as a rule attend many cocktail parties, but even so, I occasionally meet new people who are not part of the consumer bankruptcy world. One of the standard questions that I am asked is, “What do you do [for a living]?” I have learned to dread that question. My first reaction is usually an awkward pause as I weigh my options. There is the simple answer — “I’m a lawyer.” While technically correct, because I do hold a law degree and licenses to practice in two states, the answer does not convey an accurate sense of what I do for a living. The concept for most folks of what lawyers do does not bear much of a resemblance to my average day. Moreover, some Chapter 13 trustees are not lawyers but have qualified to do this work by being a CPA or from other disciplines. If I say I am a lawyer, the new acquaintance will follow up with all kinds of questions about my clients and the kind of law I practice. I will then have to explain that I have no clients (or if I am my own “client”); that I don’t really practice law; or that I practice in the “bankruptcy” area. The guy usually will quickly wander off with a confused, yet sympathetic, expression that suggests, “Poor guy, he couldn’t cut it in such a competitive field.”

My other choice is to say that I am a Chapter 13 Trustee, one of slightly over 200 Chapter 13 trustees appointed by the United States Department of Justice in the United States and Puerto Rico, and then wait for the quizzical expression and the follow up — “Oh, what’s that?” At that point, I could launch into my law school lecture on the role of the Chapter 13 Trustee, that after five minutes of which the listener’s eyes would glaze over as he makes a graceful exit to the conversation with a half-heated, “Oh — there’s so and so; I need to go talk; nice meeting you.”

Perhaps part of the incentive to write this article is the hope that someday I can avoid the above conversation by slipping the questioner my card, which will have the URL to this article after the title of “Chapter 13 Standing Trustee.” I then can simply say, “I am in the fresh start business” and steer the conversation to what my curious questioner does for a living.

Many Hats

Most lawyers, accountants and fiduciaries owe to specific entities some professional duty of care. It may be a client or a customer or the beneficiary of an estate or trust. One of the unique things about Chapter 13 trustees is that we have duties that flow in many directions. Our duties run both to debtors and to creditors. Sometimes we are the champion of one and the adversary of the other. At various times and in different situations, the parties whom we assist and with whom we battle, depend on the facts of the specific case.

We, as do our Chapter 7 panel trustee brothers and sisters, have a duty to the integrity of the bankruptcy process to uncover and prevent fraud and report criminal activity. However, we also have a statutory duty to “advise, other than on legal matters, and assist the debtor in performance under the plan.” 11 U.S.C. § 1302(b)(4). Our relationship with debtors is complex. Although we are to assist debtors under their plans, we may also be required to move to dismiss their cases, or seek to convert their cases to a Chapter 7 case if they fail to make their plan payments. We are to assist “honest debtors” attempting in good faith to perform under their plan. Yet if they are concealing assets or are engaging in fraudulent or illegal activities, we are required to report them to prosecuting authorities and may end up as witnesses in their prosecution.

Our relationships with creditors may be complex as well. In general, we are charged with ensuring creditors are treated fairly under plans and making sure that creditors are paid what they are due under plans. At the same time, if individual creditors file defective or incomplete claims, file claims late or file fraudulent claims, our job is to file objections to those claims and make sure those claims do not get paid. Additionally, many trustees have used the trustee’s “strong-arm powers” under 11 U.S.C. § 544 to avoid unperfected mortgages, resulting in secured mortgage loans becoming unsecured claims with other unsecured creditors reaping the benefit. So, just as with debtors, sometimes we are friend, sometimes foe; it just depends on the specifics of the case.

These complex relationships with both debtors and creditors can, at different times, require different skill sets. The skills required to manage anywhere from several hundred to close to 20,000 cases demands a long list of skills that are not always easy to find co-existing. What follows is a partial list of roles that Chapter 13 trustees play. These roles are, to be sure, not equally shared by all trustees. Some trustees are stronger in some roles and less so in others. Some roles are necessary for larger offices, some more so for smaller ones.

Investigator

According to 11 U.S.C. § 704(a)(4), made applicable to Chapter 13 trustees by 11 U.S.C. § 1302(b)(1), Chapter 13 trustees, as well as Chapter 7 trustees, “shall investigate the financial affairs of the debtor.” Generally speaking, the level of investigation that most trustees undertake is determined by the nature of the case. The investigation for a straightforward wage earner will likely consist of examining the debtor’s petition and schedules, recent tax returns, bank statements, and perhaps some valuations on vehicles and appraisals or property assessments on real estate. Some trustees may take additional steps in routine cases to do public record searches to verify a debtor’s assets, but for simple cases investigations generally do not need to be very extensive. For more complex cases, however, where a debtor is self-employed, operates a business, or has complex financial affairs, a more extensive investigation may be warranted to determine whether a business is feasible and whether bankruptcy schedules are accurate.

An important part of a trustee’s investigation is to examine debtors under oath at a meeting of creditors. If a trustee has prepared carefully and made a preliminary investigation, the trustee should be able to ask targeted questions at the meeting which will shed light on issues such as the accuracy of the schedules, the debtor’s financial affairs or other activities prior to the bankruptcy filing. A trustee’s general business knowledge, as well as specific business knowledge, ranging from farming to manufacturing, can be useful in assessing the feasibility of a debtor’s plan.
Jan M. Sensenich graduated from Windham College in Putney, Vermont in 1978 and Vermont Law School in 1983. He served as Core Faculty Member and Director of the Woodbury College Legal Clinic from 1983 to 1987 and from 1990 to 1992. Jan was an Associate with Jerome I. Meyers, P.C. from 1987 to 1990 when he opened his own practice concentrating on bankruptcy matters in both Vermont and New Hampshire. Jan has been serving as Vermont’s Chapter 12 and Chapter 13 Standing Trustee since 1991 and has been a member of the adjunct faculty of Vermont Law School between since 1994 where he teaches Bankruptcy. Jan has been a member of the Vermont Bar Association Bankruptcy Section and the National Association of Chapter 13 Trustees since 1992 and currently serves on the NACTT Due Process Committee.