

**STATEMENT OF EUGENE CRANE
BANKRUPTCY TRUSTEE FOR OVER 45 YEARS**

Madam Chair Sanchez, Ranking Member Cannon, and other distinguished members of the Sub-Committee, let me thank you for the opportunity to provide the views and position of the Panel Bankruptcy Trustee on this very important and crucial subject.

I have served as a Bankruptcy Trustee for over 45 years and have practiced law for over 54 years with emphasis on representation of debtors, creditors, other Trustees, and creditor committees in bankruptcy cases.

The 1978 Bankruptcy Code changed the proceedings so that judges no longer conduct bankruptcy hearings called 341 meetings or creditors meetings. The function of conducting an examination into the finances and activities of a debtor passed from the court to the Trustee. As a result, the vast majority of debtors never appear before a judge, but in the 95% (maybe 96%) of all chapter seven cases, they appear before and are examined under oath by a Panel Trustee and occasionally by creditors who are allowed to question the debtor at the hearing (or meeting) conducted by the Trustee. Having assumed the former judicial function and charged with investigating into the financial affairs of the debtor, the valid functioning of chapter 7 proceedings rests squarely on the shoulders of the Trustee.

Over the years the responsibilities of the Trustee have been expanded so that Trustees are responsible for rights and interests of all parties; creditor, debtor, court and interested parties. These duties have been mandated by the courts to apply to the Trustee's activities as "Independent Fiduciary responsibility," to preserve the integrity of the system.

As Trustee, I assumed the former judicial function, but did not have the power and authority of a judge. Without such power, the Trustee must prepare pleadings and have hearings before the judge to secure court orders to enforce the provisions of the law. (To require corrected pleadings, turnover of records and documents and assets, and enforce compliance with the law.)

The vast majority of bankruptcies (over 90-95 percent) are “no asset” cases of individual debtors. These people rarely go before a judge, and the Trustee is the “court” in their perspective.

As Trustee, I must review the bankruptcy schedules and filed documents prior to my conducting the meeting, including review of their income tax returns. I contact the secured creditors seeking proof of their secured position. I contact any banks listed asking for balances and statements. If applicable, I acquire judgments for divorce to determine assets disclosed to the divorce court, and I answer the calls and questions of debtors and creditors seeking information.

In today’s chaotic economy, I am served with motions of mortgage lenders to modify the automatic stay and be allowed to foreclose their mortgages, all requiring appearances in court. I must value the real properties covered to see if there is any equity for the estate (or for the debtor). These motions could average as many as six per week, each requiring a court appearance or pleading (non compensable).

The number of “no assets” cases of former businesses, usually end in a treasure hunt for records, continued hearings, requests for document production and even filing law suits to enforce the duties under the Code or to recover property. More often than not resulting in a “no asset” estate.

Trustees' duties include filing objections to a debtor's discharge, if warranted. These objections represent a non-compensable trial in court because no assets are involved or generally recovered.

I am required, under Title 18, to report any conceived violations of the criminal bankruptcy provisions to initiate an investigation by the Justice Department, and prepare backup reports, for which there is no compensation.

The bankruptcy process was sufficiently complicated without the passage of BACPA, but now the duties of the trustee are further enlarged and expanded, creating substantive new burdens without compensation.

In addition to the requirement already mentioned of having the debtor supply tax returns and pay advices (stubs) to ensure compliance with the means test obligations, anywhere from 5% to 30% of cases require time and effort to secure compliance with such demands. Additional or continued hearings are necessary when the debtor does not follow the rules and the Trustee must schedule another hearing just to get and review the tax returns and financial information. As Trustee, I am committed to communicating a presumption of "abuse" to the United States Trustee after reviewing the income revealing documents.

"Abuse" is defined as a consumer debtor having more than \$271.00 per month left over after deducting all qualified and allowed deductions.

I am required under Section 704(a)(10) of the Act to report all debtors who have child support obligations to notify all agencies and persons to whom such obligations are due upon filing of the case and again upon discharge of the debtor.

In a case involving medical records of a supplier of such services, the patient records must be stored and protected. In a no asset case where will the Trustee get the funds to store and preserve such records, publish in newspapers and notify every patient and appropriate insurance carrier? Illinois requires maintaining such records for at least ten years.

In Forma Pauperis filings are now allowed, in appropriate cases, which permit nonpayment of a filing fee. This is admirable, but the Trustee's \$60.00 comes from the filing fee, so that we have a further reduction in compensation for these cases estimated (by survey across the country) to range from 2% to 11% of no asset cases filed in a particular district.

Trustees protect interests of debtors as well as creditors. If a personal injury case value exceeds the total debt and cost of administering the estate, there is still the interest of the debtor to protect. If creditors have been guilty of a violation of Truth in Lending laws, the Trustee must prosecute such claims for benefit of the estate and benefit of the debtor. Trustees do not get paid on funds distributed to the debtor from any surplus recovery, but have a duty to see that there are such funds, if possible.

An Independent Fiduciary is needed to protect the system, the creditors, the debtor and the law. I consider it not only a duty as Trustee, but a privilege to support this law and all affected by it.

Trustee payment is set at \$60.00 per case, and has not been increased in over 14 years. A cost of living increase has been built into the Code mandating an increase every three years in line with the cost of living index, but not for Trustees. Waiver of filing fees

for *In Forma Pauperis* debtors has eliminated fees for Trustees from those cases, resulting in a corresponding decrease in income for Trustees.

Thank you for the opportunity to address you and express my views regarding compensation for Trustees.

Respectfully submitted,

Eugene Crane