

*Claims Administration and Objections:* Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

*Employee Benefits/Pensions:* Review issues such as severance, retention, 401K coverage and continuance of pension plan.

*Fee/Employment Applicants:* Preparation of employment and fee applications for self or others; motions to establish interim procedures.

*Fee/Employment Objections:* Review of and objections to the employment and fee applications of others.

*Financing:* Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

*Litigation:* There should be a separate category established for each matter (e.g., XYZ Litigation).

*Meetings of Creditors:* Preparing for and attending the conference of creditors, the §341(a) meeting and other creditors' committee meetings.

*Plan and Disclosure Statement:* Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

*Relief From Stay Proceedings:* Matters relating to termination or continuation of automatic stay under §362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

*Accounting/Auditing:* Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

*Business Analysis:* Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

*Corporate Finance:* Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

*Data Analysis:* Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

*Litigation Consulting:* Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

*Reconstruction Accounting:* Reconstructing books and records from past transactions and bringing accounting current.

*Tax Issues:* Analysis of tax issues and preparation of state and federal tax returns.

*Valuation:* Appraise or review appraisals of assets.

[61 FR 24890, May 17, 1996]

## PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

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AUTHORITY: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

SOURCE: Order No. 942-81, 46 FR 22364, Apr. 17, 1981, unless otherwise noted.

### § 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy interests, and to protect against unnecessary intrusions. Generally, when documentary materials are held by a disinterested third party, a subpoena, administrative summons, or governmental request will be an effective alternative to the use of a search warrant and will be considerably less intrusive. The purpose of the guidelines set forth in this part is to assure that federal officers and employees do not use search and seizure to obtain documentary materials in the possession of disinterested third parties unless reliance on alternative means would substantially jeopardize their availability (e.g., by creating a risk of destruction, etc.) or usefulness (e.g., by detrimentally delaying the investigation, destroying a chain of custody, etc.). Therefore, the guidelines in this part establish certain criteria and procedural requirements which must be met before a search warrant may be used to

obtain documentary materials held by disinterested third parties. The guidelines in this part are not intended to inhibit the use of less intrusive means of obtaining documentary materials such as the use of a subpoena, summons, or formal or informal request.

### § 59.2 Definitions.

As used in this part—

(a) The term *attorney for the government* shall have the same meaning as is given that term in Rule 54(c) of the Federal Rules of Criminal Procedure;

(b) The term *disinterested third party* means a person or organization not reasonably believed to be—

(1) A suspect in the criminal offense to which the materials sought under these guidelines relate; or

(2) Related by blood or marriage to such a suspect;

(c) The term *documentary materials* means any materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, films or negatives, audio or video tapes, or materials upon which information is electronically or magnetically recorded, *but does not include* materials which constitute contraband, the fruits or instrumentalities of a crime, or things otherwise criminally possessed;

(d) The term *law enforcement officer* shall have the same meaning as the term “federal law enforcement officer” as defined in Rule 41(h) of the Federal Rules of Criminal Procedure; and

(e) The term *supervisory official of the Department of Justice* means the supervising attorney for the section, office, or branch within the Department of Justice which is responsible for the investigation or prosecution of the offense at issue, or any of his superiors.

### § 59.3 Applicability.

(a) The guidelines set forth in this part apply, pursuant to section 201 of the Privacy Protection Act of 1980 (Sec. 201, Pub. L. 96-440, 94 Stat. 1879, (42 U.S.C. 2000aa-11)), to the procedures used by any federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a disinterested third party.

(b) The guidelines set forth in this part do not apply to:

(1) Audits, examinations, or regulatory, compliance, or administrative inspections or searches pursuant to federal statute or the terms of a federal contract;

(2) The conduct of foreign intelligence or counterintelligence activities by a government authority pursuant to otherwise applicable law;

(3) The conduct, pursuant to otherwise applicable law, of searches and seizures at the borders of, or at international points of entry into, the United States in order to enforce the customs laws of the United States;

(4) Governmental access to documentary materials for which valid consent has been obtained; or

(5) Methods of obtaining documentary materials whose location is known but which have been abandoned or which cannot be obtained through subpoena or request because they are in the possession of a person whose identity is unknown and cannot with reasonable effort be ascertained.

(c) The use of search and seizure to obtain documentary materials which are believed to be possessed for the purpose of disseminating to the public a book, newspaper, broadcast, or other form of public communication is subject to title I of the Privacy Protection Act of 1980 (Sec. 101, *et seq.*, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa, *et seq.*)), which strictly prohibits the use of search and seizure to obtain such materials except under specified circumstances.

(d) These guidelines are not intended to supersede any other statutory, regulatory, or policy limitations on access to, or the use or disclosure of particular types of documentary materials, including, but not limited to, the provisions of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401, *et seq.*), the Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1101, *et seq.*), and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended (42 U.S.C. 4541, *et seq.*).