

BANKRUPTCY FEE COMPENDIUM III

August, 2007

BANKRUPTCY FEE COMPENDIUM III

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Part A. In General

- 1. Purpose.** This *Bankruptcy Fee Compendium* discusses the fees collected by the bankruptcy clerks. It will guide bankruptcy clerks in collecting fees for filing bankruptcy cases, in filing certain proceedings within or related to bankruptcy cases, and in delivering services either by the clerk's office or under the clerk's supervision.
- 2. Scope.** This information applies to all bankruptcy courts, to all bankruptcy operations in courts having consolidated bankruptcy and district court clerk's offices, and to all district courts exercising bankruptcy jurisdiction because the court either withdrew the reference or is entertaining a bankruptcy appeal. This information applies to all cases and to all proceedings in cases under title 11, United States Code, (the "Bankruptcy Code"). This information also applies to proceedings related to cases under title 11 when the bankruptcy court conducts those proceedings.
- 3. Organization.** As far as practical, this *Compendium* organizes fee information by transaction. Historical information, such as legislative history, and parenthetical information, such as citations, are footnoted.
- 4. Statutory Authority.**¹ The statutory authority for the initial filing fees is 28 U.S.C. § 1930(a). The Judicial Conference Schedule of Additional Fees for Bankruptcy Courts (Bankruptcy Court Miscellaneous Fee Schedule) prescribes fees for filing an adversary proceeding, filing a motion to reopen a case, filing chapter 15 petitions,² filing certain motions, and for certain services provided by the clerk.³ The Bankruptcy Court Miscellaneous Fee Schedule is authorized by 28 U.S.C. § 1930(b).
- 5. Previous Judicial Conference Action.** In 1988, 1989, and 1990, the Judicial Conference prescribed new fees for using the court's registry fund, for dividing a joint case filed under 11 U.S.C. § 302(a), for filing a motion to terminate, annul, modify, or condition the automatic stay, for filing a motion to compel abandonment of estate property, for filing a motion to withdraw the reference under 28 U.S.C. § 157(d), for docketing a cross appeal, and for electronic access to the courts' computer data.

A. Amendments to Electronic Access Fees. Amendments to Electronic Access Fees.
The Judicial Conference modified the electronic access fee in March 1991, March

¹All statutory citations are to the Bankruptcy Code unless indicated otherwise.

²Formerly, ancillary petition under §304.

³The Bankruptcy Court Miscellaneous Fee Schedule applies also to cases filed under the Bankruptcy Act of 1898. (Congress empowered the Judicial Conference to prescribe similar fees under §§ 40c.(2), 40c.(3), 241, and 491 of the Act.)

1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), March 1996 (reducing the fee to \$.60 per minute), September 1998 (establishing the fee for Internet access at \$.07 per page); March 2001 (establishing fees for printing from public access terminal and for searches by PACER Service Center staff), March 2002 (establishing a per-document fee cap), September 2003 (establishing a national exemption policy, to be applied locally), September 2004 (raising the fee for Internet access to \$.08 per page), and September 2005 (establishing a separate fee for public access to transcripts of court proceedings⁴). These fees go into the Judiciary Information Technology Fund.

- B. Amendments in 1997.** In September 1997, the Judicial Conference modified the Bankruptcy Court Miscellaneous Fee Schedule substantially. The Conference doubled the fee to exemplify a document and modified the fee to amend a debtor's schedules. The Conference eliminated the 50 cents per notice fee and expanded the \$30 administrative fee to cover all cases filed under Title 11 (including involuntary cases and cases ancillary to foreign proceedings). The Conference repealed the \$5 notice of appeal fee for Act cases (but not Code cases), the claims processing fee, and the fee for bankruptcy court staff transcribing a record. The Conference modified the fees to docket an appeal and to docket a cross appeal to track the fee to file an appeal to the court of appeals. The Conference revised the fee to file a motion to lift stay, etc., replacing the dollar amount with a reference to one-half the amount of the civil action filing fee. The Conference modified the reopening fee, now new Item 9 on the Bankruptcy Court Miscellaneous Fee Schedule, to provide that the fee is for the motion to reopen and to include a provision for court waiver or deferral. These changes were effective January 1, 1998.⁵
- C. Amendments in 2000.** In November 2000, Congress enacted the Federal Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act) which included provisions that affected the Bankruptcy Court Miscellaneous Fee Schedule. The Act both renumbered the schedule and authorized the judiciary to keep all increases to the charges and new charges effective following the effective date of the Act. The Judicial Conference implemented inflationary increases effective January 1, 2001 for seven of the charges.⁶

⁴ This fee has been established, but not yet implemented. See Preliminary Report of Proceedings, JCUS-SEP 05, pp.2-3.

⁵ Director's memorandum, November 24, 1997; Bankruptcy Court Administration Division's memorandum, December 16, 1997; Office of Finance and Budget memorandum, December 30, 1997.

⁶ The seven charges increased were: Certification fee (Item 2) from \$5 to \$7; exemplifications (also Item 2) from \$10 to \$14; magnetic tape recordings (Item 3) from \$15 to \$20; records searches (Item 5) from \$15 to \$20; fee for filing or indexing papers (Item 7) from \$20 to \$30; microfilm/microfiche (Item 12) from \$3 to \$4; and returned check fee (Item 14) from \$25 to \$35.

- D. Amendments in 2001.** At its March 2001 session, the Judicial Conference approved two new services and related fees, approved two recommendations regarding EPA fees as applied to litigants and infrequent users, and endorsed creating a separate Fee Schedule for Electronic Public Access (EPA Fee Schedule).⁷ The first new service and related fee was reducing the fee from 50 cents per page to 10 cents per page for printing copies from the public access terminals in the courthouse. The second was a \$20 fee for searches performed by the PACER Service Center. The first EPA fee recommendation the Conference approved permitted litigants one free electronic copy of all documents filed in a case if receiving that document is required by law or is directed by the filer. Second, the Conference approved a policy that no fee is due for accessing information from a judiciary Internet site until an individual account holder accrues charges of more than \$10 in a calendar year. Finally, the Conference approves a separate EPA Fee Schedule because, since fees pertaining to the EPA program cut across court lines, it believed having one EPA Fee Schedule apply to all federal courts would preserve consistency.
- E. Amendments in 2003.**⁸ The Judicial Conference, at its September 2003 session, approved inflationary increases for 10 administrative charges,⁹ increasing the fee for splitting a case from one-half to the full filing fee for filing a second separate original petition,¹⁰ increasing the fees for motions to modify the automatic stay,¹¹ to compel abandonment of property,¹² and to withdraw the reference¹³ from one-half to the full statutory filing fee to initiate a civil action,¹⁴ and to increase the fees for docketing appeals and cross appeals from \$100 to \$250. These changes became effective November 1, 2003.
- F. Amendments in 2004.** At its March 2004 session, the Judicial Conference changed the preamble to the various Miscellaneous Fee Schedules applying to the Courts of

⁷Director's memorandum, April 30, 2001.

⁸Director's letter dated October 2, 2003.

⁹The 10 charges increased were: Certification fee (Item 2) from \$7 to \$9; exemplifications (also Item 2) from \$14 to \$18; magnetic tape recordings (Item 3) from \$20 to \$26; amending scheduled (Item 4) from \$20 to \$26; records searches (Item 5) from \$20 to \$26; fee for filing or indexing papers (Item 7) from \$30 to \$39; misc. administrative fee due upon filing (Item 8) from \$30 to \$39; microfilm/microfiche (Item 12) from \$4 to \$5; record retrievals (Item 13) from \$35 to \$45; and returned check fee (Item 14) from \$35 to \$45.

¹⁰Under 28 U.S.C. § 1930.

¹¹Under 11 U.S.C. § 362(a).

¹²Under Rule 6007(b) of the Federal Rules of Bankruptcy Procedure.

¹³Under 28 U.S.C. § 157(d).

¹⁴Under 28 U.S.C. § 1914(a).

Appeals, the District Courts, the Court of Federal Claims, the Bankruptcy Courts, and the Judicial Panel on Multidistrict Litigation clarifying that courts charge fees for all services they provide, including those for which litigants perform the initial task using the court's electronic systems. The previous language seemed to restrict charges to services performed directly by court personnel. The new language recognizes that the court's CM/ECF system changes the service model from the clerk performing initial tasks to the litigant performing initial tasks with the clerk performing related tasks such as system and equipment maintenance, quality control, case management, and case adjudication. The new language makes clear that courts charge fees for the bundle of services they perform.¹⁵ At its September 2004 session, the Judicial Conference increased the PACER internet access fee from seven cents per page to eight cents effective January 1, 2005.¹⁶ Finally, at its September 2004 session, the Judicial Conference increased the civil filing fee under 28 U.S.C. § 1914(a) from \$150 to \$250. The fee for filing certain contested proceedings, such as a lift stay proceeding, and adversary proceeding were linked to the civil filing fee and would have increased at the same time. Nevertheless, the Judicial Conference deleted the language linking the fees for filing certain contested proceedings to the fees for filing a civil action and deferred raising the adversary filing fee pending consideration by other Judicial Conference Committees.¹⁷ Since no objections were raised, the adversary filing fee increased to \$250 effective September 20, 2005.¹⁸

- G. Amendments in 2005.** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, as modified by FY 2005 Supp. Appropriations Act, Section 6058 of Pub. L. No. 109-3, 119 Stat. 231, (the Act) made four changes to the statutory fees effective October 17, 2005. The Act increased the filing fee for chapter 7 cases from \$155 to \$220,¹⁹ it decreased the chapter 13 filing fee from \$155 to \$150, it increased the chapter 11 non-railroad filing fee from \$800 to \$1,000, and it increased the chapter 9 filing fee from \$800 to \$1,000.²⁰ The legislation also changed how the

¹⁵Director's letter dated May 3, 2004.

¹⁶Director's memorandum dated October 21, 2004.

¹⁷G. Palman memorandum dated December 22, 2004.

¹⁸Director's memorandum dated August 10, 2005, G. Palman memorandum dated December 22, 2004. .

¹⁹The original Act increased it to \$200, the supplemental legislation increased it to \$220.

²⁰Under 28 U.S.C. § 1930(a)(2), the chapter 9 filing fee is equal to the filing fee for a chapter 11 non-railroad case.

fees are allocated among the judiciary, the U.S. Trustee program and the U.S. Treasury.²¹ The Act also authorized *in forma pauperis* proceedings.

H. Amendments in 2006. Congress enacted the Deficit Reduction Act of 2005²² (the “Act”) increasing certain filing fees. The Act increased the Court of Appeals filing fee from \$250 to \$450, the District Court civil action filing fee from \$250 to \$350, and several Bankruptcy Court filing fees.²³ The chapter 7 filing fee increased from \$220 to \$245, making the total fees due at filing \$299;²⁴ the chapter 13 filing fee increased from \$150 to \$235, making the total fees due at filing \$274; and the fee to convert a chapter 7 or chapter 13 case to a chapter 11 case decreased.²⁵ These fee changes took effect for all new cases filed on or after Sunday, April 9, 2006. The Act directed the courts deposit the incremental amounts collect into a special Treasury assessment fund²⁶ but made no changes to the amounts the courts deposited previously into the four existing funds (Judiciary, U.S. Trustee, Case Trustee, and Treasury).²⁷

Although these fee increases would have increased some fees in the Bankruptcy Court Miscellaneous Fee Schedule which were linked to statutory filing fees,²⁸ at their March, 2006 session, the Judicial Conference stayed the increases in miscellaneous

²¹Due to an error in the original Act, the Supplement Act reallocated these fees. G. Palman memorandum dated May 13, 2005 and Director’s memorandum dated September 27, 2005. These allocations are discussed in Part B, section 5.

²²Pub.L. 109-171.

²³It looks like Congress also intended to increase chapter 11 filing fees from \$1,000 to \$2,750, which would raise the total fees due at filing to \$2,789. Nevertheless, a drafting error in the bill incorrectly references the statutory subsection prescribing the chapter 9 fee, rather than the chapter 11 fee. Consequently, neither the chapter 11 fee nor chapter 9 fee changed.

²⁴The bankruptcy fee increases affect only the statutory chapter filing fees; all other fees collected at filing, such as the \$39 miscellaneous fee in all chapters and the \$15 trustee fee in chapter 7 cases, remain unchanged.

²⁵“For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the . . . court . . . a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph . . .” (a)(1)(A) and (a)(1)(B). 28 U.S.C. § 1930 (a).

²⁶Filing fees, PL-109-171, Title X (Account 086400).

²⁷Director’s memorandum dated March 8, 2006, P. McKinney memorandum dated March 30, 2006.

²⁸The miscellaneous fees that are potentially affected are: **Item 6** - the adversary filing fee, linked to the civil action filing fee; **Item 11** - the reopening fee, which is the same as the statutory filing fee for the chapter under which the debtor filed the case originally; **Item 15** - the fee for docketing an appeal, linked to the fee for filing an appeal in the Court of Appeals; **Item 19** - the fee for splitting a joint case, linked to the current filing fee for the chapter under which the debtor filed the case originally; and **Item 21** - the fee for docketing a cross appeal, linked to the fee for filing an appeal in the Court of Appeals. Additionally, if Congress increases the chapter 11 filing fee, **Item 16** - the chapter 15 filing fee would increase.

fees until the Court Administration and Case Management Committee and the Bankruptcy Committee reviewed these increases at their June 2006 meetings.

- I. **Amendments in 2007.**²⁹ The Judicial Conference, at its September 2006 session, uncoupled the adversary filing fee from the civil action fees thereby fixing the adversary filing fee at \$250.³⁰ It made clear that, when a case converts to a chapter with a higher filing fee, the conversion fee is the difference between the two fees ensuring the clerk ultimately collects the higher filing fee. Nevertheless, there is no refund upon converting to a chapter with a lower filing fee.³¹ The Conference made clear that the reopening fee for a chapter 15 case is the same as the initial filing fee, and that the exemption to the reopening fee applies only in cases where the court has already awarded a discharge. The Conference added \$15 to a chapter 7 reopening fee making the base reopening fee the same as the statutory filing fee.³² The Conference also added \$15 to the fee to split a chapter 7 case to make the fee to split a case the same as the statutory filing fee.³³ It uncoupled the bankruptcy appeals and cross appeals fees from the Appellate Court appeals and cross appeals fees fixing the bankruptcy fees at \$250. It added \$200 to the fees for appeals for direct appeals to the Circuit Court bringing the total direct and cross appeal fees to \$450. The additional \$200, however, is only due if the Circuit Court accepts the appeal.³⁴ Concerning to the electronic public access (EPA) program, the Conference amended the EPA Fee Schedule to prohibit the unauthorized transfer of case information received under a fee exemption granted by a court.³⁵

6. Listing of Fees Due.

- A. **Fees Due upon Filing.**³⁶ Two separate fees are due upon filing under all chapters of the U.S. Bankruptcy Code, and a third fee is due upon filing under chapter 7. All chapters have an initial filing fee and an administrative fee³⁷ due upon filing. Debtors

²⁹Director's Memorandum dated December 1, 2006.

³⁰Misc. Fee Schedule Item 6 - adversary fees.

³¹Misc. Fee Schedule Item 10 - conversions.

³²Misc. Fee Schedule Item 11 - reopening.

³³Misc. Fee Schedule Item 19 - splits.

³⁴Misc. Fee Schedule Item 15 & 21 - appeals.

³⁵Director's Memorandum dated September 26, 2007.

³⁶Exhibit 1 is 28 U.S.C. § 1930. Exhibit 2 is the Bankruptcy Court Miscellaneous Fee Schedule.

³⁷The clerk charges an administrative fee in all cases under all chapters (including all chapter 15 petitions) filed on or after January 1, 1998.

filing under chapter 7 are responsible for a chapter 7 trustee surcharge in addition to the filing fee and the administrative fee.³⁸

- B. Fees for Splitting Cases.**³⁹ When a debtor requests the court to split a joint case,⁴⁰ the clerk must collect a fee⁴¹ equal to the filing fee for the chapter under which the joint case is pending as of the date the court splits the joint case. If the case is proceeding under chapter 7, the \$15 chapter 7 trustee fee is due in addition to the filing fee.⁴²
- C. Fees for Converting Cases.**⁴³ When the court converts a case from one chapter to another, the clerk must collect a fee. The amount of the fee depends upon the chapter to which the case is converted. Upon converting to a chapter with a higher filing fee, the conversion fee is the difference between the two filing fees ensuring the court collects the higher filing fee. There is no refund when converting to a chapter with a lower filing fee. This fee is inapplicable to *sua sponte* conversions.⁴⁴
- D. Procedure for Interdistrict Transfers.** No fee is due, but the clerk must employ procedures to transfer both funds and files between courts.

³⁸Items 8 and 9 of the Bankruptcy Court Miscellaneous Fee Schedule authorize the administrative fee and the chapter 7 trustee surcharge.

³⁹Item 19 of the Bankruptcy Court Miscellaneous fee Schedule. Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. Director's memorandum dated March 24, 2006. Once these committees completed their review and reported no objection, at its September 2006 meeting, the Judicial Conference adopted the increased fees which became effective January 1, 2007. Director's memorandum dated December 1, 2006. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition. This change became effective November 1, 2003. Director's memorandum dated October 2, 2003.

⁴⁰Filed under § 302 of title 11.

⁴¹Although the Deficit Reduction Act of 2005 increased the chapter 7 and 13 filing fees, at its March ,2006 session, the Judicial Conference decided to defer raising the fee due upon splitting a case, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. Director's memorandum dated March 24, 2006. Once these committees completed their review and reported no objection, at its September 2006 meeting, the Judicial Conference adopted the increased fees which became effective January 1, 2007. Director's memorandum dated December 1, 2006.

⁴²At its September, 2006 meeting, the Judicial Conference amended item 19 of the Bankruptcy Court Miscellaneous Fee Schedule to implement this charge. Director's memorandum dated December 1, 2006.

⁴³Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule and 28 U.S.C. § 1930(a) (for conversions to chapter 11).

⁴⁴At its September, 2006 meeting, the Judicial Conference amended item 10 of the Bankruptcy Court Miscellaneous Fee Schedule to implement this charge. Director's memorandum dated December 1, 2006.

- E. Fees for Miscellaneous Contested Proceedings.** Currently, this fee is **\$150.**⁴⁵
- F. Fees for Filing Adversary Proceedings.**⁴⁶ Currently, the fee is **\$250.00.**
- G. Fees for Filing Appeals.**⁴⁷ The clerk must collect a notice of appeal fee of **\$5.00** and docketing fee of **\$250.00.** An additional \$200 is due if the Circuit Court accepts a direct appeal.
- H. Fees for Dismissals.** No additional fee is due from the debtor, but the trustee appointed to service the case still is entitled to the usual statutory compensation.
- I. Fees for Reopening Cases.**⁴⁸ The clerk must collect a fee equal to the filing fee for the chapter under which the case was pending as of the date the party files the request.⁴⁹ Upon reopening a chapter 7 case, the clerk must collect the \$15 chapter 7

⁴⁵Although once linked to the district court civil action fee, at its September 2005 session, the Judicial Conference increased the civil filing fee under 28 U.S.C. § 1914(a) from \$150 to \$250 and amended the fee for filing a motion to lift the automatic stay so that the fee would remain at \$150. The Judicial Conference's Memorandum of Action dated December 16, 2004, G. Palman memorandum dated December 22, 2004. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a civil action effective November 1, 2003. Director's memorandum dated October 2, 2003. The Judicial Conference previously modified this fee effective January 1, 1998 from \$60 to one-half of the filing fee for filing a civil action.

⁴⁶Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule. Originally, this fee was linked to the civil action fee prescribed by 28 U.S.C. § 1914(a). Nevertheless, when the Deficit Reduction Act of 2005 increased the district court civil action fee, at its March session the Judicial Conference decided to defer raising the adversary proceedings filing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. JCUS-MAR 06, p14; Director's memorandum dated March 24, 2006 and P. McKenney memorandum dated March 30, 2006. Ultimately, at its September 2006 meeting, the Judicial Conference decided to uncouple the adversary proceeding fee from the civil action fee and permit it to remain at the old level. Director's memorandum dated December 1, 2006.

⁴⁷28 U.S.C. § 1930(c) prescribes fees for filing a notice of appeal. Item 15 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee. Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee for cross-appeals. Although the Deficit Reduction Act of 2005 increased the appellate docketing fee, at its March session, the Judicial Conference decided to defer raising the bankruptcy docketing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. JCUS-MAR 06, p14; Director's memorandum dated March 24, 2006 and P. McKenney memorandum dated March 30, 2006. Ultimately, at its September 2006 meeting, the Judicial Conference decided to uncouple the adversary proceeding fee from the civil action fee and permit it to remain at the old level. Director's memorandum dated December 1, 2006.

⁴⁸Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule and Fed. R. Bankr. P. 4007(b).

⁴⁹Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fee, at its March session, the Judicial Conference decided to defer raising the reopening fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. JCUS-MAR 06, p14, Director's memorandum dated March 24, 2006, and P. McKenney memorandum dated March 30, 2006. Ultimately, at its September 2006 meeting, the Judicial Conference decided to permit the reopening fee to continue to equal the filing fee. The Judicial Conference also added the \$15 chapter 7 trustee surcharge to the

trustee surcharge in addition to the chapter 7 filing fee. The Judicial Conference has provided exceptions to the fee, and the court may either waive or defer the reopening fee for good cause.

J. Miscellaneous Administrative Fees. These fees include fees for copying, certifications, reproducing audio recordings, amendments to schedules, record searches, indexing papers, microfilm, retrieving documents from offsite storage, return checks, printing local rules, handling the registry of funds, and electronic access.

(1) Services Provided by Persons or Facilities Outside the Court. Section 156(c), title 28, United States Code, authorizes the clerk to use persons or facilities outside of the court to provide services the clerk would perform otherwise. Section 156(c) also authorizes each circuit's judicial council to issue guidelines for using outside services.⁵⁰

(2) Noticing by Someone Other Than the Clerk. Federal Rules of Bankruptcy Procedure 2002(a), (b), (d), (f), (k), and (o) permit the court to direct a person other than the clerk to send the notices required under the Rules.⁵¹ Moreover, Congress has prohibited the Administrative Office or the courts from restricting the noticing function to the staff of the clerk's office.⁵²

K. Electronic Public Access Fees. The PACER Service Center must charge 60 cents per minute for electronic access to the court's data via dial up service;⁵³ eight cents per page for public users obtaining information through the federal judiciary Internet site,⁵⁴ with the total for any document (excluding transcripts of court proceedings) not to exceed the fees for thirty pages; and \$20 for every search of court records conducted by the PACER Service Center. The clerk must charge ten cents per page for printing copies of any record or document accessed electronically at a public terminal in the courthouse.

reopening fee in chapter 7 cases. Director's memorandum dated December 1, 2006.

⁵⁰Exhibit 13 is section 156(c) implementation guidelines issued by the Judicial Conference for adoption by the judicial councils of each circuit.

⁵¹Exhibit 12 is the Judicial Conference Noticing Guidelines.

⁵²Section 403 of Pub.L.No. 101-162, 103 Stat. 1013, Judiciary Appropriations Act of 1990.

⁵³The Judicial Conference modified the electronic access fee in March 1991, March 1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), and March 1996 (reducing the fee to \$.60 per minute).

⁵⁴The Judicial Conference increased this fee effective January 1, 2005 from seven cents to eight cents at its September 21, 2004 session.

- L. Fees in Bankruptcy Act Cases.**⁵⁵ Congress codified filing fees for cases under the former Bankruptcy Act of 1898, ("Act"), §§ 40c.(1), 48c., 52a., 77(a), 85(c), 132, 324, 424(2), and 624(2) of the Act.
- 7. Exceptions to the Fee.** With the exception of *in forma pauperis* proceedings, neither Congress nor the Judicial Conference has authorized exceptions to the fees due upon filing the original request for relief. The Judicial Conference has authorized some exceptions to the fees due upon filing adversary proceedings and to the fees due for some of the services listed in the Bankruptcy Court Miscellaneous Fee Schedule. The Conference has exempted bankruptcy administrators from all the fees listed on the Bankruptcy Court Miscellaneous Fee Schedule, and has exempted the United States trustee from some of those fees.
- A. Limited Exception for Services Rendered on Behalf of the United States.** The exemption for the United States⁵⁶ is in the Judicial Conference's language in the preamble to the fee schedule. No fees are due for services rendered on behalf of the United States or to bankruptcy administrators.⁵⁷ Additionally, the exemption applies to United States trustees except when serving as the case trustee.
- (1) No Exemption for Electronic Access Services.** Effective October 1, 1993, the Judicial Conference eliminated the exemption for federal agencies from fees for using electronic access services. Nevertheless, those federal agencies that receive funding from judiciary appropriations, such as bankruptcy administrators, still enjoy the exemption.
- (2) No Exemption for Copy Services Where Electronic Access Is Available.** To both mitigate the pressure on clerks' office operations that could result from eliminating the exemption from fees, and to encourage federal agencies to use either remote terminals or the public access terminals in clerks' offices to access the files electronically,⁵⁸ the Judicial Conference authorized the clerk to collect fees from federal agencies for copying court records, and for performing searches where electronic access is available.
- B. Limited Exemptions for Case Trustees.** Although trustees are subject to all fees, such as for photocopying, searches, and certifications, limited exemptions or waivers are available for some of the fees.

⁵⁵Exhibit 4 is the schedule of filing fees for Bankruptcy Act cases.

⁵⁶Any executive branch agency is considered the United States for this purpose and qualifies for the exemption.

⁵⁷ Appointed under Pub.L.No. 99-554, § 302(d)(3)(I).

⁵⁸Director's memorandum, July 1, 1993 and the following discussion of copy, search, and electronic access fees. For a more complete discussion of which entities are "the United States" for purposes of an exemption from fees, see "Adversary Proceedings Initiated by United States."

- (1) **Motions to Convert.** For the benefit of a trustee, the court may defer or waive the fee for filing a motion to convert the case.
 - (2) **Adversary Complaints.** For the benefit of a trustee, the court may defer or waive the fee for filing a complaint.
 - (3) **Reopening Fees.** The court may waive the reopening fee under appropriate circumstances or may defer payment of the fee from trustees pending recovery of additional assets. If the reopening fee is deferred pending recovery of assets, the fee shall be waived if no assets are recovered.
 - (4) **Electronic Access Fee.** In courts where the electronic access fee is applicable, the court may grant an exemption, where necessary, to avoid unreasonable burdens and to promote public access. Nevertheless, the courts grant exceptions cautiously.⁵⁹
 - (5) **Reimbursement from the Estate.** With court approval,⁶⁰ the estate may reimburse a chapter 7 or chapter 11 trustee for actual and necessary expenses of administration such as photocopying and certification fees. If a chapter 13 debtor has begun making plan payments, the standing trustee should have funds on hand to pay the fees prescribed by the Bankruptcy Court Miscellaneous Fee Schedule.
8. **Waivers Must Be Authorized.** Bankruptcy fees apply to everyone, including the United States and all trustees, unless specifically exempted. Nevertheless, the court may allow the debtor to pay some fees in installments.⁶¹
9. **Prohibition Against Refunding Filing Fees.** The Judicial Conference prohibits refunding the fees due upon filing. The Conference prohibits the clerk from refunding these fees even if the party filed the case in error, and even if the court dismisses the case or proceeding.⁶² Nevertheless, the clerk must refund any fee collected without authority. For example, the clerk has no authority to collect a fee to reopen a case unless the case is closed. Consequently, the clerk must refund a fee to reopen if the parties discover later that the case was open.

⁵⁹As noted in Appendix I to Exhibit 2 (Bankruptcy Court Miscellaneous Fee Schedule). Director's memorandum, July 1, 1993.

⁶⁰11 U.S.C. § 330(a).

⁶¹See following discussion at Part A, ¶ 9 and Part B, ¶ 3.

⁶²JCUS-SEP 49, p. 202; JCUS-SEP 48, p. 30-31.

A. Refunding Fees Paid Electronically.⁶³ The courts administered the policy prohibiting refunds easily in the paper environment but, with CM/ECF and electronic payments, administering the no refund policy became difficult.

- (1) **Develop Local Procedures.** Although the Judicial Conference still prohibits refunds generally, judges, in conjunction with their clerks, may develop procedures addressing CM/ECF refunds.
- (2) **Delegated Judicial Determination.** The authority to approve refunds is a judicial determination, but judges may delegate this determination to the clerk if the court's procedures address clearly the type of refund the clerk may approve.
- (3) **Requested by Motion.** Parties may request refunds by motion, governed by either local rules or standing orders.
- (4) **Correcting Erroneous Filings.** If the court discovers an erroneous filing for which no fee has been paid, the court may correct the filing and simply collect no fee.
- (5) **Process Refunds Electronically.** Courts must process refunds through the electronic credit card system; courts should issue refunds by check only if the debtor paid by check the fee the court is refunding.
- (6) **Sanctions.** Should a particular attorney or law firm err repeatedly, the court may consider remedial action such as issuing a show cause order to show why it should consider further requests for refunds.

10. Installment Payments.⁶⁴ Either an individual filing a voluntary individual case, or a husband and wife filing a voluntary joint case may pay the filing fees in installments.⁶⁵ The "filing fees" in this context include any fee payable to the clerk at the time the debtor files the petition,⁶⁶ and include the traditional filing fee, the miscellaneous administrative fee, and, in chapter 7 cases, the chapter 7 trustee surcharge. Nevertheless, no installments are permitted in involuntary cases.

11. In Forma Pauperis. Effective October 17, 2005, the Bankruptcy Reform Act of 2005⁶⁷ authorizes the court to waive the filing fee for individual chapter 7 debtors whose income is less than 150% of the official poverty line as defined by the Office of Management and

⁶³Director's memorandum, July 29, 2005.

⁶⁴See discussion at Part B, ¶ 3.

⁶⁵28 U.S.C. § 1930(a). The Bankruptcy Court Miscellaneous Fee Schedule also permits fees due upon filing to be paid in installments. JCUS-MAR 94, p. 6

⁶⁶Either under § 1930(a) or under the Bankruptcy Court Miscellaneous Fee Schedule. Fed. R. Bankr. P. 1006(a).

⁶⁷The Bankruptcy Abuse and Consumer Protection Act of 2005 (Public Law 109-8) changed pre-existing law, Section 1930(a) of title 28, United States Code, to permit filing bankruptcy petitions *in forma pauperis*.

Budget.⁶⁸ Should the court deny the application, the clerk must track and collect outstanding fees and, if necessary, issue notices of intent to dismiss.⁶⁹ The court, if it waives the original filing fee, may waive all the other bankruptcy court fees for that chapter 7 individual debtor. Although certain parties are exempted from these fees, the circuits disagree whether 28 U.S.C. § 1915(a) authorized *in forma pauperis* adversary proceeding complaints and appeals for parties other than individual chapter 7 debtors.

12. Procedure When the Fee Fails to Accompany the Filing. The clerk may accept petitions and designate them as “received,” “accepted,” or “lodged for filing,” but has no authority to designate them as “filed” unless the debtor files an application for *in forma pauperis* status or to pay in installments the fees due upon filing along with the petition.

13. Accounting. The clerks allocates the fees they collect in bankruptcy cases among the U.S. Treasury, the United States Trustee System, and the Judiciary.

A. United States Trustee System Fund. Section 589a of title 28, United States Code, establishes a special fund in the United States Treasury known as the United States Trustee System Fund. This fund finances the United States trustee system. Except for chapter 9 bankruptcies and chapter 15 cases, the clerk credits this fund with a portion of the filing fee from cases filed in those judicial districts supported by the United States Trustee System.

(1) Quarterly Fees in Chapter 11 Cases. The United States Trustee credits this fund with both quarterly fees paid by chapter 11 debtors⁷⁰ and all excess compensation received by chapter 12 and chapter 13 standing trustees. Chapter 11 trustees and debtors in possession deposit the fees directly to the United States Trustee System Fund. The clerk plays no role in collecting these fees in U.S. trustee districts.

(2) Bankruptcy Administrator States. Since the judicial districts in Alabama and North Carolina are exempt from the United States Trustee System, the clerk credits those filing fees that would have gone to the United States Trustee System Fund⁷¹ instead to the judiciary’s special fund (**Credit fund 510000**).⁷²

⁶⁸The Judicial Conference published interim procedures for processing *in forma pauperis* relief. Those procedures are reproduced as Exhibit 6.

⁶⁹G. Palman memorandum dated May 4, 2005.

⁷⁰28 U.S.C. § 1930(a)(6).

⁷¹Under 28 U.S.C. § 589a.

⁷²Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

The clerk also credits the general receipts' fund those fees otherwise due a United States trustee for serving as a case trustee.⁷³

(3) Accounting Treatment.⁷⁴ The clerk must treat these fees as offsetting collections to the appropriation "United States Trustees System Fund."⁷⁵ (**Credit fund 5073XX**).

B. Special Fund for the Judiciary (fund 510000).⁷⁶ Section 1931 of title 28, United States Code, establishes a special fund in the Treasury to offset funds appropriated for the operation and maintenance of the United States courts.⁷⁷ The Appropriations Act of 1994⁷⁸ requires the clerk to credit this special fund with a portion of the filing fee.

C. PL 109-171 Fund. Congress enacted the Deficit Reduction Act of 2005⁷⁹ (the "Act") increasing the chapter 7 filing fee from \$220 to \$245, making the total fees due at filing \$299;⁸⁰ the chapter 13 filing fee from \$150 to \$235, making the total fees due at filing \$274; and decreasing the fee to convert a chapter 7 or chapter 13 case to a chapter 11 case.⁸¹ These fee changes took effect for all new cases filed on or after Sunday, April 9, 2006.⁸² The Act directed the courts deposit the incremental amounts

⁷³Under 11 U.S.C. § 330(d).

⁷⁴The Department of Justice Appropriations Act, title I of Pub. L. No. 104-208, contained a general provision that changed the classification of fees creditable to the United States Trustee System Fund prescribed originally under 28 U.S.C. § 589a(a) and (b).

⁷⁵Office of Finance and Budget Memorandum, November 22, 1996.

⁷⁶Section 3302 of title 33 requires a custodian to deposit all public moneys in the Treasury unless a specific statutory exemption applies.

⁷⁷Section 406(b) of Pub.L.No. 101-162, the Judiciary Appropriations Act of 1990, as amended by section 111, Pub.L.No. 103-121.

⁷⁸Pub.L.No. 103-121, § 111, (October 27, 1993); Pub.L.No. 101-162, § 406(b), (November 21, 1989).

⁷⁹Pub.L. 109-171.

⁸⁰The bankruptcy fee increases affect only the statutory chapter filing fees; all other fees collected at filing, such as the \$39 miscellaneous fee in all chapters and the \$15 trustee fee in chapter 7 cases, remain unchanged.

⁸¹"For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the . . . court . . . a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph . . ." (a)(1)(A) and (a)(1)(B). 28 U.S.C. § 1930 (a).

⁸²It looks like Congress intended to increase chapter 11 filing fees as well, from \$1,000 to \$2,750, which would raise the total fees due at filing to \$2,789. Nevertheless, a drafting error in the bill incorrectly references the statutory subsection prescribing the chapter 9 fee, rather than the chapter 11 fee. Consequently, neither the chapter 11 fee nor the chapter 9 fee changed.

collect into a special Treasury assessment fund⁸³ (Account **086400**) but made no changes to the amounts the courts deposited previously into the four existing funds (Judiciary [**fund 510000**], U.S. Trustee [**fund 5073XX**], Case Trustee [**6855TT**], and Treasury [**086900**]).⁸⁴

Part B. Fees for Initial Filings

1. Fees Due.⁸⁵

A. Summary of Fees Due upon Filing.

Table B-1. Filing Fees by Chapter

Chapter	Filing Fee	Administrative Fee	Chapter 7 Surcharge	Total Fee Due Upon Filing
Chapter 7	\$245	\$39	\$15	\$299
Chapter 9	\$1,000	\$39	-0-	\$1,039
Chapter 11 (non railroad) ⁸⁶	\$1,000	\$39	-0-	\$1,039
Chapter 11 (railroad)	\$1,000	\$39	-0-	\$1,039
Chapter 12	\$200	\$39	-0-	\$239
Chapter 13	\$235	\$39	-0-	\$274
Chapter 15	\$1,000	\$39	-0-	\$1,039

⁸³Filing fees, PL-109-171, Title X. P. McKinney memorandum dated March 30, 2006.

⁸⁴Director's memorandum dated March 8, 2006, P. McKinney memorandum dated March 30, 2006.

⁸⁵Exhibit 5 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters, and catalogues the allocation of those fees among the Treasury funds.

⁸⁶As defined by 11 U.S.C. § 101.

- B. Filing Fees.** Under 28 U.S.C. § 1930(a), the clerk⁸⁷ must collect the filing fees⁸⁸ identified in the first column of the preceding chart.
- C. Miscellaneous Administrative Fee.**⁸⁹ In all cases filed under Title 11 and in all chapter 15 cases,⁹⁰ the clerk must collect from the petitioner⁹¹ a miscellaneous administrative fee of **\$39**. Although this fee is not a filing fee, the petitioner must pay it when he or she files the petition.
- (1) Due Only with New Cases.** Since reopening, consolidating, converting to another chapter, and splitting joint cases involve existing cases, no administrative fee is due.
 - (2) Trustees May Move for Reimbursement.** Even though the petitioner paid the administrative fee upon filing, a case trustee, a contractor acting on the trustee's behalf, or other person directed by the court to provide notices under Federal Rule of Bankruptcy Procedure 2002(a) may seek from the estate reimbursement for the costs of noticing.⁹²

⁸⁷Defined in Fed. R. Bankr. P. 9001(3) as the bankruptcy clerk, if one has been appointed, otherwise, clerk of the district court.

⁸⁸Exhibit 5 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters and catalogues the allocation of those fees among the Treasury funds.

⁸⁹Pursuant to Item 8 of the Bankruptcy Court Miscellaneous Fee Schedule. In December 1992, the Judicial Conference approved the collection of a miscellaneous administrative fee of \$30 in all chapter 7 and chapter 13 cases in lieu of charging noticing fees. Effective January 1, 1998, the Conference expanded this fee to all cases filed under Title 11. The Judicial Conference, at its September 2003 session, increased this fee from \$30 to \$39 effective November 1, 2003. Director's memorandum, October 2, 2003.

⁹⁰In September 1992, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule substituting in chapter 7 and 13 cases the administrative fee due upon filing for the notice fees. (Director's memorandum, November 4, 1992.) Effective January 1, 1998, the Judicial Conference eliminated the 50 cents per notice fee altogether by expanding the miscellaneous administrative fee to all chapters of title 11, and to filings under 11 U.S.C. § 304, which permits filing cases ancillary to a foreign proceeding. Therefore, the clerk will no longer charge the 50 cents per notice fee after January 1, 1998 in either pending or future cases. Nevertheless, if the notice fee was incurred prior to January 1, 1998, the clerk must collect it even if the collection takes place after January 1, 1998.

⁹¹Initially, the schedule specified that the clerk would collect the fee from the debtor. The schedule has been modified to include the word petitioner; therefore, the clerk must now collect the \$39 administrative fee from creditors filing an involuntary case against the debtor.

⁹²Bankruptcy Judges Division letter, November 20, 1992.

- D. Chapter 7 Trustee Surcharge.**⁹³ In chapter 7 cases, the clerk must collect⁹⁴ a **\$15** fee⁹⁵ from the petitioner to pay the chapter 7 trustee⁹⁶ in addition to the filing fee prescribed under 28 U.S.C. § 1930(a)(1)(A) (currently **\$245**) and the administrative fee (**\$39**) for a total of **\$299** in fees due upon filing.
- (1) **Accounting.** To satisfy 11 U.S.C. § 330, the clerk must hold the fee in the deposit fund (**6855TT**) until paid to the trustee.⁹⁷
- E. Chapter 15 Petitions.**⁹⁸ For chapter 15 petitions, the clerk must collect **\$1,000.**⁹⁹ Additionally, the clerk must collect the \$39 administrative fee.¹⁰⁰
- F. Fees in Involuntary Cases.** Filing fees¹⁰¹ are the same for both voluntary and involuntary petitions. The clerk must collect the administrative fee (in all chapters), and the chapter 7 trustee surcharge (in chapter 7) from the petitioner in an involuntary case.¹⁰²
- (1) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.
- G. Joint Petitions.** The clerk must collect only one filing fee when debtors file a joint petition.

⁹³At its March 1995 session, the Judicial Conference approved a **\$15** trustee surcharge as part of the Bankruptcy Court Miscellaneous Fee Schedule. This surcharge funds the **\$15** increase in compensation of chapter 7 trustees (from **\$45** to **\$60** per case) provided by the Bankruptcy Reform Act of 1994, Pub.L.No. 103-394, section 117. The fee, effective October 22, 1995, applies to any chapter 7 case filed on or after that date.

⁹⁴Pursuant to Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule, for cases filed on or after October 22, 1995.

⁹⁵**Due for All Cases Closed.** If collected, the **\$15** is payable to trustees in all chapter 7 cases closed on or after October 22, 1995, regardless of when those cases were filed. Director's memorandum, September 13, 1995.

⁹⁶Serving in cases as provided in 11 U.S.C. § 330(b)(2).

⁹⁷Director's memorandum, July 19, 1995.

⁹⁸Formerly petitions ancillary to a foreign proceeding under 11 U.S.C. § 304.

⁹⁹Pursuant to Item 16 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁰⁰See ¶C above.

¹⁰¹28 U.S.C. § 1930(a).

¹⁰²Bankruptcy Court Miscellaneous Fee Schedule, Items 8, 8.1.

- (1) **Eligibility.**¹⁰³ Only an individual and that individual's spouse may file a joint petition.
 - (2) **Two Filing Fees for Serial Filings by Husbands and Wives.** When an individual debtor first files a petition and then that debtor's spouse files a second petition, the debtors may not amend or convert the original filing retroactively to a joint filing.
 - (a) **The second filing spouse must pay a second filing fee.** Filing the first case created an order for relief as of the date of filing. To permit a second petitioning spouse to join the original petition later could impermissibly compromise the rights of parties in interest in the second spouse's case.
 - (b) **Joint administration.** Nevertheless, the court may order the trustee or debtor in possession to jointly administer the two separately docketed cases.
2. **Refunding Fee Prohibited.** The Judicial Conference generally prohibits refunding fees due upon filing. The Conference generally prohibits the clerk from refunding these fees even if the party filed the case in error and even if the court dismisses the case.
- A. ***In Forma Pauperis Chapter 7 Proceedings.*** Effective October 17, 2005, the Bankruptcy Reform Act of 2005¹⁰⁴ authorized the court to waive the filing fee for individual chapter 7 debtors whose income is less than 150% of the official poverty line as defined by the Office of Management and Budget.¹⁰⁵ Should the court deny the application, the clerk must track and collect outstanding fees or, if necessary, issue notices of intent to dismiss.¹⁰⁶ The court, at its discretion, may waive all the other bankruptcy court fees for that chapter 7 individual debtors if it waives the original filing fee. Although certain parties are exempted from these fees, the circuits disagree whether 28 U.S.C. § 1915(a) authorized *in forma pauperis* adversary proceeding complaints and appeals for parties other than individual chapter 7 debtors.
 - B. ***In Forma Pauperis Petitions in Non-Chapter 7 Cases.*** Section 1930(a) of title 28, United States Code, prohibits filing bankruptcy petitions *in forma pauperis*. This

¹⁰³11 U.S.C. § 302(a).

¹⁰⁴The Bankruptcy Abuse and Consumer Protection Act of 2005 (Public Law 109-8) changed pre-existing law, Section 1930(a) of title 28, United States Code, to permit filing bankruptcy petitions *in forma pauperis*.

¹⁰⁵The Judicial Conference published interim procedures for processing *in forma pauperis* relief. Those procedures are reproduced as Exhibit 6.

¹⁰⁶G. Palman memorandum dated May 4, 2005.

provision codifies the decision of the Supreme Court in *In re Kras*, 409 U.S. 434 (1973).¹⁰⁷

- C. Refunding Fees Paid Electronically.**¹⁰⁸ The courts administered the Judicial Conference’s policy prohibiting refunds easily in the paper environment, but, with CM/ECF and electronic payments, administering the no refund policy became difficult.
- (1) Develop Local Procedures.** Although the Judicial Conference still prohibits refunds generally, judges, in conjunction with their clerks, may develop procedures addressing CM/ECF refunds.
 - (2) Delegated Judicial Determination.** The authority to approve refunds is a judicial determination, but judges may delegate this determination to the clerk if the court’s procedures address clearly the type of refund the clerk may approve.
 - (3) Requested by Motion.** Parties may request refunds by motion that may be governed by either local rules or standing orders.
 - (4) Correcting Erroneous Filings.** If the court discovers an erroneous filing¹⁰⁹ for which no fee has been paid, the court may correct the filing and simply collect no fee.
 - (5) Refunds Processed Electronically.** Courts must process refunds through the electronic credit card system; courts should issue no refunds by check.
 - (6) Sanctions.** Should a particular attorney or law firm err repeatedly, the court may consider remedial action such as issuing a show cause order to show why it should consider further requests for refunds.

¹⁰⁷In October 1993 Congress enacted legislation directing the Judicial Conference to conduct a three-year study on the effect of waiving filing fees in chapter 7 bankruptcy cases for individual debtors who are unable to pay the filing fee in installments. The legislation required a fee waiver program be implemented and studied in “not more than six districts,” for a period of three years beginning October 1, 1994. The program operated in the bankruptcy courts of Illinois-Southern, Montana, New York-Eastern, Pennsylvania-Eastern, Tennessee-Western, and Utah. The program sunset on September 30, 1997.

¹⁰⁸Director’s memorandum, July 29, 2005.

¹⁰⁹Usually, through its QA procedures.

3. **Payments in Installments.** Eligible debtors may move ¹¹⁰ for leave to pay in installments the fees due upon filing. Nevertheless, petitioners filing involuntary cases are ineligible for installment payments.
- A. **Eligibility and Maximum Number of Payments.** Only voluntary individual debtors are eligible to pay the filing fee, the administrative fee, and the chapter 7 trustee surcharge (in a chapter 7 case) in installments.¹¹¹
- (1) **Number of Installments Permitted.** The debtors must pay the fees due upon filing in four or fewer installments and must pay the final installment within 120 days of filing unless the court, for cause, extends that time. Even if the court extends that time, the debtors must pay the fees due upon filing in full within 180 days of the date they file the petition.¹¹²
- (2) **Lump Sum Payments.** Debtors may make a "deferred payment" in one installment prior to the discharge provided their proposed payment date falls within the time allowed by Federal Rule of Bankruptcy Procedure 1006(b)(2).¹¹³ The debtors must indicate the date they will make payment in their application.
- (3) **Application of the Installment Payments.**¹¹⁴ The clerk must allocate amounts received among all funds *pro rata*.¹¹⁵

¹¹⁰28 U.S.C. § 1930(a), Fed. R. Bankr. P. 1006. Exhibit 7 is the Application and Order to Pay Filing Fee in Installments (form B3).

¹¹¹28 U.S.C. § 1930(a).

¹¹²Fed. R. Bankr. P. 1006(a), (b)(2).

¹¹³General Counsel memorandum, July 24, 1987.

¹¹⁴Exhibit 8 discusses the application of installment payments and fund transfers upon default.

¹¹⁵Before the Federal Courts improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act), the clerk applied the first \$30 received under an installment payment plan to the \$30 (now \$39) miscellaneous administrative fee. The clerk prioritized the miscellaneous administrative fee because these revenues were treated as a reimbursement to the Judiciary's appropriation. Once the payments satisfied the administrative fee, the clerk allocated the remaining payments between the filing fee and the chapter 7 trustee surcharge *pro rata*. The Act initially was interpreted as changing this treatment by requiring the clerk to allocate the payments received among the filing fees and the chapter 7 trustee *pro rata*. The Act was reinterpreted effective October 8, 2003 to apply the first \$15 collected to the chapter 7 trustee surcharge. Director's memorandum, October 8, 2003. In light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and 2003 amendments to section (b) of Bankruptcy Rule 1017, the allocation priority was again reinterpreted effective October 17, 2005 eliminating the priority formerly given the \$15 trustee fee. General Counsel memorandum dated October 6, 2005 and G. Schafer memorandum dated October 14, 2005.

- (4) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.

B. Procedure. The debtors must file a motion.

- (1) **Requirements of the Motion.** The debtors must prepare their application as prescribed by the appropriate form¹¹⁶ and must state the debtors are unable to pay the fee except in installments.¹¹⁷
- (2) **Both Spouses Must Sign the Application.** In a joint case, both spouses must sign the application.
- (3) **The Court Must Act Before the Meeting of Creditors.** The court must act on the application before the § 341 meeting of creditors.¹¹⁸

C. Chapter 13 Cases. The chapter 13 trustee may pay the filing fees from moneys remitted to the trustee by the debtor under a proposed plan. The chapter 13 trustee may pay the fees due upon filing from this money provided, first, the court authorized installment payments and, second, the court receives full payment within the time provided by Rule 1006(b)(2).¹¹⁹ The debtor must pay the filing fees in full before either the debtor or the chapter 13 trustee may pay an attorney or anyone else rendering services to the debtor.¹²⁰ Additionally, the debtor must make provisions to pay in full those fees and all installments required either by statute or by the plan before the court may confirm a plan in either chapter 12 or chapter 13 cases.¹²¹

D. Penalty for Non-Payment. Permission to pay in installments the fees due upon filing fails to abate the debtor's obligation to pay the fees in full. The court may grant no discharge in a chapter 7 case if the debtor has failed to pay either the filing fee or any

¹¹⁶The application must conform substantially to Official Form 3A, which also contains a proposed order for approving the application. Exhibit 7 is a copy of Form 3A, Application and Order to Pay Filing Fee in Installments.

¹¹⁷Interim Rule 1006(b)(1). The rule previously required the debtors to proposed terms of the installments and to state they paid no attorney for services related to the case, but the rule was amended in 2005 to incorporate the official form, which required the proposed installments and to eliminate the requirement that the debtors pay no attorney as a condition to approving installment payments. Although no longer a condition to approving installment payments, the debtor may make no further payments to attorneys until the fees due upon filing are paid in full.

¹¹⁸Fed. R. Bankr. P. 1006(b)(2).

¹¹⁹General Counsel memorandum, May 7, 1985.

¹²⁰Fed. R. Bankr. P. 1006(b)(3).

¹²¹11 U.S.C. §§ 1225(a)(2), 1325(a)(2).

other fees due upon filing the case.¹²² Fees payable upon filing include the filing fee, the administrative fee, and the chapter 7 trustee surcharge.

- (1) **Dismissals.** If the court dismisses a case before the due date of the last installment payment, the debtor still must pay in full the fees due upon filing. If the court dismisses a case before the debtor pays all fees due upon filing, the court may include a statement that fees are owing in its order of dismissal. The order also may include a statement that the court will decline to entertain a motion to reconsider the dismissal unless the debtor pays the balance of all fees due when the motion is made. The order allowing payment of the fees in installments, and a statement from the clerk of court addressing the status of payments would support the court's finding that fees are due.¹²³
- (2) **Refiling Prohibited for 180 days.** No individual or family farmer may be a debtor under any chapter within 180 days after dismissal if the court dismissed the case due to the debtor's willful failure either to comply with the court's orders or to appear before the court in proper prosecution of the case.¹²⁴ An order to pay the filing fee in installments may be such a court order and, if the debtor has missed an installment, the debtor may be in violation of that order. Consequently, if a debtor with unpaid fees files another case within 180 days, the clerk of court may bring the debtor's default before the court for a hearing to show cause why the new case should not be dismissed.
- (3) **Refiling After 180 Days.** If a debtor with unpaid fees files a new case after 180 days pass, the bankruptcy clerk should bring the unpaid fees to the attention of the court, and the court may consider the debtor's default in deciding whether to allow the debtor again to pay the filing fee in installments.
- (4) **The Court's Claim in a Subsequent Bankruptcy.** Once the debtor with unpaid fees files a new petition, the clerk must stop all action to collect the unpaid fees; the court is merely an unsecured creditor in the new case.¹²⁵ Nevertheless, the clerk may have no authority to file a proof of claim in the new case. Only the Department of Justice has authority to represent the United

¹²²Fed. R. Bankr. P. 4004(c)(1)(f).

¹²³In 1991 General Counsel's Office issued an opinion that seemed to indicate that dismissal may be the only penalty for non-payment of filing fees. J. Chastain memorandum, July 11, 1991. Nevertheless, General Counsel's Office, the Bankruptcy Judges Division, and the Accounting and Financial Systems Division later reached a consensus that the debtor remained liable for filing and other fees after dismissal. R. Avery memorandum, May 11, 2004.

¹²⁴Section 109(g)(1).

¹²⁵Some courts interpret 11 U.S.C. § 707(a)(2) as authorizing dismissal if the debtor fails to pay this claim.

States in litigation,¹²⁶ and whether filing a proof of claim rises to litigation or remains a ministerial collection action is open to interpretation. Clerks should confer with their district's United States Attorney, and they should coordinate their efforts to assert the court's claim with that office.

- (5) **Federal Claims Collections.** The clerk must establish procedures to collect unpaid fees. The Office of General Counsel and the Accounting and Financial Systems Division advises that the Federal Claims Collection Act, as amended by the Debt Collection Improvement Act of 1996,¹²⁷ provides direction for establishing these procedures.
 - (6) **Clerk's Duty of Due Diligence.** An agency must make a "diligent effort" to collect a debt before the debt may be written off, compromised, or referred to the Department of Justice for litigation. The "diligence" required depends on such factors as the amount of the debt, the likelihood of collection, and cost of the collection efforts.¹²⁸
 - (7) **Notation in Order of Dismissal.** The court may include a statement that the fees are due in the order of dismissal. That statement would be a first attempt to collect the fees. Depending on the amount of the fees, the clerk must decide whether to follow up in 30 days with a letter to the debtor. If the debtor fails to file a new case within 180 days, and fails to respond to either the order of dismissal or the follow up letter, if one is sent, the clerk reasonably may write off the debt. The clerk must refer debts outstanding beyond 180 days to the Treasury Department for collection under the Treasury Offset program.
4. **Procedure When the Fee Fails to Accompany the Petition.** The prescribed fees must accompany the petition unless the debtor files an application to either proceed *in forma pauperis* or pay the fees in installments.¹²⁹ If the debtor submits a petition with neither the fees nor an application to proceed *in forma pauperis* or pay the fees in installments, the clerk may accept the papers but designate them as "received," "accepted," or "lodged for filing." The clerk avoids violating his or her duty to collect a fee upon the "filing" of the petition by

¹²⁶28 U.S.C. § 516 restricts conducting litigation to the Department of Justice.

¹²⁷Before the GAO Act of 1996, 31 U.S.C. § 3701, *et seq.*, the GAO and the Department of Justice shared responsibility for setting debt collection standards for federal agencies. In 1996, that Act relieved the GAO of its responsibility to issue these standards. The Debt Collection Improvement Act then designated the Department of the Treasury to share this responsibility with the Department of Justice. In December 2000 the GAO removed the Federal Claims Collections Standards that were published at 4 C.F.R. Parts 101-105, and the Department of the Treasury and the Department of Justice issued new standards at 31 C.F.R. 900-904. Debt collection procedures addressing the disbursing officer's offset authority under DCIA can be found at 31 C.F.R. 285.

¹²⁸General Counsel memorandum, July 11, 1991.

¹²⁹Fed. R. Bankr. P. 1006(a).

declining to designate the petition as "filed" until either the debtor pays the fees or the court enters an order allowing installment payments. Although the clerk declines to process the petition until the debtor resolves the fee deficiency, the clerk does create a record of the date the court received the petition. The parties may contest the significance of the court receiving the petition on that date, but the clerk altered none of the debtor's rights either by failing to accept the document, or by failing to note the date on which it was brought to the clerk's office.

5. Accounting.

A. Generally. The Deficit Reduction Act of 2006 added \$25 to the chapter 7 filing fee and directed the courts to deposit that \$25 surcharge into a special treasury fund (**PL 109-171 fund, 086400**¹³⁰).¹³¹

(1) Funds Credited to United States Trustee System Fund. The clerk must deposit a portion of the filing fee generated by cases filed under chapter 7, 11, 12, or 13, in a judicial district covered by the United States trustee system, to the United States Trustee System Fund¹³² (**Credit fund 5073XX**) as follows:

Table B-2. Filing Fees Credited to the U.S. Trustee System

	Filing Fee	Portion to Fund after Allocating \$25 to PL 109-171 Fund	Amount
Chapters 7	\$ 220	40.46 percent	\$ 89.01
Chapter 11 (non railroad)	\$1,000	55.00 percent	\$550.00
Chapter 11 (railroad)	\$1,000	50.00 percent	\$500.00

¹³⁰P. McKinney memorandum, March 30, 2006.

¹³¹Congress gave the PL 109-171 fund no priority upon distribution. Consequently, upon a partial payment, the distribution is the ratio of the partial payment collected over the total fee, times each party's total share. For example, if the clerk collects \$100 of a total fee of \$299, then the case trustee would receive (100/299) times \$60 = \$20.06. Note that, because the preceding calculation considers the PL 109-171 charge, the percentages resulting from this *pro-rata* fee calculation are inconsistent with the percentages in 28 U.S.C §§ 589a and 1931. Although the Deficit Reduction Act of 2006 increased the filing fee and directed the courts deposit the increase into a special Treasury fund, it neglected to adjust the 28 U.S.C §§ 589a and 1931 percentages.

¹³²28 U.S.C. § 589a(b)(1)-(4).

Chapter 12	\$ 200	50.00 percent	\$100.00
Chapter 13	\$ 150	28.33 percent	\$ 42.50
Chapter 9	\$1,000	-0-	-0-

- (2) **Bankruptcy Administrator Districts.** In the judicial districts in Alabama and North Carolina, the clerk must deposit the United States trustee's portion of the fee to the general receipts of the Treasury.¹³³ **(Credit fund 086900).**
- (3) **Funds Credited to the Special Fund for the Judiciary.** The clerk must deposit a portion of the filing fee from chapters 7, 13 and 11 cases to the special fund for the judiciary.¹³⁴ This fund offsets the judiciary's appropriations for operating the federal courts. **(Credit fund 510000).** The amount of the credit is as follows:

Table B-3. Filing Fees Credited to the Judiciary¹³⁵

	Filing Fee	Portion to Fund 510000 before Allocating \$25 to PL 109-171 Fund	Amount
Chapters 7	\$ 220	28.87 percent	\$ 63.51
Chapter 13	\$ 150	35.00 percent	\$ 52.50
Chapter 11 Non-Railroad	\$1,000	25.0 percent	\$250.00

¹³³Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

¹³⁴Established under 28 U.S.C. § 1931.

¹³⁵See note to 28 U.S.C. § 1931. Congress gave the PL 109-171 fund no priority upon distribution. Consequently, upon a partial payment, the distribution is the ratio of the partial payment collected over the total fee, times each party's total share. For example, if the clerk collects \$100 of a total fee of \$299, then the case trustee would receive (100/299) times \$60 = \$20.06. Note that, because the preceding calculation considers the PL 109-171 charge, the percentages resulting from this *pro-rata* fee calculation are inconsistent with the percentages in 28 U.S.C §§ 589a and 1931. Although the Deficit Reduction Act of 2006 increased the filing fee and directed the courts deposit the increase into a special Treasury fund, it neglected to adjust the 28 U.S.C §§ 589a and 1931 percentages.

Chapter 9	\$1,000	The amount of the fee exceeding \$300.00 ¹³⁶	\$700.00
Chapter 11 (Railroad),	\$1,000	-0-	-0-
Chapter 12	\$ 200	-0-	-0-

- (4) **Cases in Which the Judiciary Receives No Portion of the Fee.** The judiciary receives no portion of the filing fee from chapter 11 railroad cases, or chapter 12 family farmer cases.

B. Chapter 7 Cases.

- (1) **Filing Fee - \$245.00 (28 U.S.C. § 1930(a)).**

Deposit Fund	\$45.00	11 U.S.C. § 330(b)(1)	6855TT
General Fund	22.48	31 U.S.C. § 3302(b) ¹³⁷	086900
PL 109-171 Fund	25.00	Pub. L. 109-171 ¹³⁸	086400
Special Fund for the Judiciary	63.51	28 U.S.C. § 1931 (Note)	510000
Special Fund for the U.S. Trustee	89.01	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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- (3) **Trustee Surcharge - \$15.00.**

¹³⁶28 U.S.C. §1930(a)(2).

¹³⁷33 U.S.C. § 3302 of title 33 requires a custodian to deposit all public moneys in the Treasury unless a specific statutory exemption applies.

¹³⁸P. McKinney memorandum dated March 30, 2006.

Deposit Fund	\$15.00	11 U.S.C. § 330(b)(2)	6855TT
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- (a) **Cases Filed on or After October 22, 1995.** For cases filed on or after October 22, 1995, the clerk must deposit the chapter 7 trustee surcharge to fund 6855TT.

C. Chapter 9 Municipal Debt.

- (1) **Filing Fee - \$1,000.00 (28 U.S.C. § 1930(a)(2)).**

General Fund	\$300.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$700.00	28 U.S.C. § 1930(a)(2)	510000

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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D. Chapter 11 (Non-Railroad).

- (1) **Filing Fee (Non-Railroad) - \$1,000.00 (28 U.S.C. § 1930(a)(3)).**

General Fund	\$200.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	250.00	28 U.S.C. § 1930(a)(3)	510000
Special Fund for the U.S. Trustee	550.00	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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E. Chapter 11 (Railroad).

(1) Filing Fee (Railroad) - \$1,000.

General Fund	\$500.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	500.00	28 U.S.C. § 589a.	5073XX

(2) Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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F. Chapter 12 (Family Farmer).

(1) Filing Fee - \$200.00 (28 U.S.C. § 1930(a)(5)).

General Fund	\$100.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	100.00	28 U.S.C. § 589a.	5073XX

(2) Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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G. Chapter 13 (Wage Earner).

(1) Filing Fee - \$235.00 (28 U.S.C. § 1930(a)(1)).

General Fund	\$ 55.00	31 U.S.C. § 3302(b)	086900
PL 109-171 Fund	85.00	Pub. L. 109-171 ¹³⁹	086400

¹³⁹P. McKinney memorandum dated March 30, 2006.

Special Fund for the Judiciary	52.50	PL 101-162, PL 103-121	510000
Special Fund for the U.S. Trustee	42.50	28 U.S.C. § 589a.	5073XX

(2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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H. General Questions Regarding Payments to Chapter 7 Trustees.

(1) **General Rule.** Chapter 7 trustees will receive \$60 when the trustee completes his or her services.¹⁴⁰ In chapter 7 cases, the clerk must credit \$45 of the filing fee and the \$15 chapter 7 trustee surcharge to the trustee deposit fund, and hold these funds to pay the chapter 7 trustee.¹⁴¹

(a) **Installment Payment Defaults and *In Forma Pauperis* Proceedings.** The clerk may pay the trustee only to the extent the clerk collects the filing fee.¹⁴² Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected.¹⁴³ If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing.

(b) **When a Trustee's Service Is Completed.**¹⁴⁴ The clerk may pay the chapter 7 trustee:

¹⁴⁰11 U.S.C. § 330(b).

¹⁴¹11 U.S.C. § 330(b).

¹⁴²This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005.

¹⁴³Bankruptcy Rule 1017(b)(2).

¹⁴⁴Memorandum of Understanding between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closings and Post Confirmation Chapter 11 Monitoring dated January 1999.

- 1) **In an Asset Case.** When the time has expired to object to the Final Account, Certification That the Estate Has Been Fully Administered, and Application for Discharge of Trustee.¹⁴⁵
 - 2) **In a No Asset Case.** When the time has expired to object to both the “Final Account, Certification That the Estate Has Been Fully Administered, and Application for Discharge of Trustee,”¹⁴⁶ and to the debtor’s discharge.¹⁴⁷
 - 3) **Dismissal.** If the case is dismissed, the trustee is entitled to full payment, or his or her pro rata share if the debtor has failed to pay the full filing fee.
- (2) **Cases Filed Before October 22, 1995.** The trustee in these cases will receive \$45 (or the lesser amount received from the petitioner from the filing fee) from the trustee deposit fund **6855TT**, and \$15 from the **6855UF** fund. The debtors paid no surcharge prescribed under Item 9 in these cases, and fund **6855UF** tracks the deficiency.
 - (3) **Cases Filed on and After October 22, 1995.** The trustee in these cases will receive \$45 from the filing fee and \$15 from the chapter 7 trustee surcharge¹⁴⁸ (or a *pro rata* share of these fees if the clerk receives less than the full fee due upon filing from the petitioner). The clerk will charge **fund 6855TT**.¹⁴⁹
 - (a) **Reporting.** The clerk reports receipts to and disbursements from fund **6855TT** on **AO 274**. The clerk reflects receipts and disbursements of both the \$45 from the filing fee, and the \$15 from the chapter 7 trustee surcharge in the balances reported on quarterly **AO 183** reports.
 - (4) **In Converted Chapter 7 Cases.**¹⁵⁰ When a case is converted to chapter 7, the clerk must first post the initial entry accounting for the conversion fee. Once that is done, the clerk must recast the filing fee’s original entries and fold in the

¹⁴⁵Under F.R.Bankr.P. 5009.

¹⁴⁶Under F.R.Bankr.P. 5009.

¹⁴⁷Under F.R.Bankr.P. 4004(a).

¹⁴⁸Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁴⁹**Cases Filed Before October 22, 1995.** Previously, the trustee in these cases received \$45 (or the lesser amount received from the petitioner from the filing fee) from the trustee deposit fund **6855TT**, and \$15 from the **6855UF** fund. The debtors paid no surcharge prescribed under Item 9 in these cases, and fund **6855UF** tracked the deficiency. Currently, no special procedures are required for these cases.

¹⁵⁰Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

conversion fee to create funds to pay the chapter 7 trustee. Exhibit 14 lists the FinSys entries for these transactions.¹⁵¹

- (a) The Judicial Conference left unchanged the previous instructions for paying the \$45 trustee when it implemented the \$15 chapter 7 trustee surcharge.¹⁵²
- (b) **Funds 6855UF (Unfunded Disbursements) and 6855BK (Receipts)** were created to track disbursements and receipts of fees generated by the \$15 trustee surcharge¹⁵³ credited to **fund 6855TT** and by the \$15 fee for a motion to convert or for a notice of conversion to chapter 7¹⁵⁴ credited to fund **6855BK**.¹⁵⁵
- (5) **If No Trustee Is Appointed.** In cases in which no trustee is appointed, the clerk must transfer the \$45 fee from **fund 6855TT** to **fund 086900**, but the clerk must transfer the \$15 chapter 7 trustee surcharge from **fund 6855TT** to **fund 6855BK**.
- (6) **If Multiple Trustees Serve.** When more than one trustee serves in a chapter 7 case, the court may apportion the \$60¹⁵⁶ among them as it finds appropriate.¹⁵⁷ Multiple trustees may serve for many reasons, for example: creditors may elect a trustee replacing the interim trustee, the original trustee may become unable to serve and resign, or the parties may transfer the case. (**Credit fund 6855TT**).
- (7) **Split Cases.** When a debtor moves the court to split a joint case,¹⁵⁸ the clerk must charge a fee¹⁵⁹ equal to the current filing fee for the chapter under which

¹⁵¹Many thanks to the folks in Bankruptcy Court for the Eastern District of Virginia who created the exhibit.

¹⁵²*Guide to Judiciary Policies and Procedures*, Vol. 1, Ch. 7, pp. 33 and 391.

¹⁵³Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁵⁴Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁵⁵Director's memorandum, October 11, 1995.

¹⁵⁶Pre-October 17, 2005 the judiciary interpreted 11 U.S.C. 330(b)(2) as requiring the \$15 portion of the trustee to be paid to each trustee in full. Current policy is for the trustees to ask the court to allocate the entire \$60 fee between or among them.

¹⁵⁷11 U.S.C. §§ 326(c) and 703(c).

¹⁵⁸Filed under 11 U.S.C. § 302.

¹⁵⁹Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. Director's memorandum dated March 24, 2006. Ultimately, at its September 2006 meeting, the Judicial Conference decided to

the joint case is pending.¹⁶⁰ Upon splitting a chapter 7 case, the clerk must also collect the \$15 chapter 7 trustee fee.¹⁶¹ In a chapter 7 case, the clerk must deposit **\$60 of the fee to fund 6855TT and the remainder (\$200) to 510000**. In all other split cases, the clerk deposits the entire fee to **fund 510000**.

- (a) **Splitting Chapter 7 Cases.** When a joint chapter 7 case splits, the clerk must pay the second trustee from **fund 6855TT**. No recasting is necessary when converting a split case to chapter 7 because the clerk deposited all the fees collected upon the split **fund 510000**, the clerk allocated no funds to the U.S. Treasury or to the U.S. Trustee.
- (b) **Splitting Cases Other Than Chapter 7.** When cases split in non-chapter 7 cases then convert to chapter 7, the clerk will collect a fee to split and then a fee to convert. Consequently, the clerk will collect the \$15 chapter 7 surcharge. So, when the second chapter 7 trustee completes his or her services, the clerk will transfer \$45 from **fund 510000** and \$15 from **fund 6855BK** to pay him or her the full \$60. The clerk will post the \$60 (for each trustee) both to the individual trustee ledgers, and to the Treasury control account for **fund 6855TT**. The clerk will reflect the adjustment on **form AO283** or its equivalent.
- (8) **Sua Sponte Conversions.** If the court converts a chapter 12 or chapter 13 case *sua sponte* (on its own motion), the clerk will collect no \$15 chapter 7 trustee surcharge, and so will pay the chapter 7 trustee only \$45.¹⁶² The clerk will transfer \$45 from fund **086900** to **6855TT**. Use **form AO283** to document the transfer.
- (9) **United States Trustee Serving As the Chapter 7 Trustee.** When the United States trustee serves as a trustee in a case, the clerk deposits the compensation due for the United States trustee's services as trustee to the United States Trustee System Fund. **(Credit fund 5073XX.)**

permit the fee to increase in tandem with the filing fee. Director's memorandum dated December 1, 2006.

¹⁶⁰The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition effective November 1, 2003. Director's memorandum, October 2, 2003.

¹⁶¹At its September 2006 meeting, the Judicial Conference added the \$15 chapter 7 trustee surcharge to the chapter 7 split fee. Director's memorandum dated December 1, 2006.

¹⁶²Before October 17, 2005, the clerk paid the trustee the \$15 chapter 7 trustee surcharge from monies the clerk collected with motions and notices to convert to chapter 7 (Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule). Current policy authorizes no payment to the chapter 7 trustee unless collected with the filing fee. Director's memorandum, October 5, 2005; General Counsel's memorandum, October 7, 2005. Since the clerk has no authority to collect the \$15 portion of the fee upon a *sui sponte* conversion, clerks have no authority to pay out this portion of the fee upon a *sui sponte* conversion. This policy applies only to *sui sponte* conversions, with all other conversions the movant pays the \$15 conversion fee upon filing the motion.

- (a) **For Case Filed on or After October 22, 1995.**¹⁶³ The clerk will transfer \$15 from **6855TT** to **5073XX**, the United States Trustee System Fund, after the case is closed.¹⁶⁴
- (b) **Accounting Procedure.** If the United States trustee is due both the \$15 trustee surcharge,¹⁶⁵ and the \$45 trustee fee generated by the chapter 7 filing fee,¹⁶⁶ the clerk must use form **AO283** to transfer the fees from the trustee deposit fund (**fund 6855TT**) to the United States Trustee System Fund (**fund 5073XX**).¹⁶⁷ The clerk prepares no **TR4** trustee payment voucher.
- (10) **Reopened Cases.** Although petitioners must pay a fee that equals the current statutory filing fee when moving to reopen a case, generally, they are under no obligation to pay the miscellaneous fees due upon filing imposed by Bankruptcy Court Miscellaneous Fee Schedule. Upon reopening a chapter 7 case, the clerk must also collect the chapter 7 trustee \$15 surcharge.¹⁶⁸
- (11) **Installment Payment Defaults.** In a chapter 7 case filed after October 22, 1995 in which the debtor defaults before completing the installments, the case trustee

¹⁶³**For Cases Filed Before October 22, 1995.** Previously, the clerk transferred \$15 from **fund 6855UF** to **fund 5073XX**, the United States Trustee System Fund, after the case was closed. Currently, no special procedures are required for these cases.

¹⁶⁴11 U.S.C. § 330(d).

¹⁶⁵11 U.S.C. § 330(b)(2).

¹⁶⁶11 U.S.C. § 330(b)(1).

¹⁶⁷11 U.S.C. § 330(d).

¹⁶⁸Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to reopen, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. Director's memorandum dated March 24, 2006. Ultimately, at its September 2006 meeting, the Judicial Conference decided to permit the fee to increase in tandem with the filing fee. Also, at its September 2006 meeting, the Judicial Conference added the \$15 chapter 7 trustee surcharge to the chapter 7 reopening fee. Director's memorandum dated December 1, 2006. Previously, if the court appointed a trustee in a reopened chapter 7 case, clerks paid the \$15 portion of the trustee's fee from a reserve account (The clerk paid the trustee the \$15 surcharge from the funds the clerk collected with motions and notices to convert to chapter 7 by transferring \$15 from **fund 6855BK** to **fund 6855TT**). When the judiciary implemented its policy permitting paying a chapter 7 trustee fee only to the extent that the fee is collected upon filing, the clerks were unable to pay the \$15 portion of a chapter 7 trustee's fee in a reopened case. Effective January 1, 2007, item 11 of the Miscellaneous Fee Schedule was amended to add \$15 to the chapter 7 reopening fee enabling clerks to pay the \$15 portion of a chapter 7 trustee's fee in a reopened case. Since the chapter 7 trustees are only appointed in reopened cases for cause, this fee, if applied in re-openings, may contribute to the judiciary's general revenues.

will receive the prorated portion of the filing fee and the chapter 7 trustee surcharge the clerk credited to the **6855TT** account.¹⁶⁹

- (12) ***In Forma Pauperis* Cases.** Current policy permits paying chapter 7 trustees only to the extent the clerk collects their fee upon filing. Consequently, the clerk pays nothing to chapter 7 trustees in *in forma pauperis* cases.

I. General Questions Regarding Collecting the Chapter 7 Trustee Surcharge.

- (1) **Joint Cases.** Only one \$15 chapter 7 surcharge is due with joint cases filed on or after October 22, 1995.
- (2) **Splits.** The \$15 trustee surcharge is due when a chapter 7 joint case splits.
- (3) **Involuntary Cases.** The \$15 trustee surcharge is due from the petitioners in an involuntary case.
- (4) **Reopened Cases.** The \$15 chapter 7 trustee surcharge is due when a case is reopened.¹⁷⁰

¹⁶⁹Exhibit 8 is an example.

¹⁷⁰Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule. With some exceptions, the only fee due when a petitioner files a motion to reopen is a new “filing fee” prescribed by 28 U.S.C. § 1930(a) for filing a new case in effect on the date the petitioner files the motion to reopen. Nevertheless, although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to reopen, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. Director’s memorandum dated March 24, 2006.

Part C. Fee upon Splitting Cases¹⁷¹

1. **The Fee Due.** When a debtor moves the court to split a joint case,¹⁷² the clerk must charge a fee¹⁷³ equal to the current filing fee for the chapter under which the joint case is pending.¹⁷⁴ The fee is due when the debtor files the motion.
 - A. **Amount of the Fee.**
 - (1) **Chapter 7 Cases.** The current filing fee is **\$245**, so the fee to split the case is **\$260 (\$245 statutory filing fee plus the \$15 chapter 7 trustee surcharge)**.
 - (2) **Chapter 13 Cases.** The current filing fee is **\$235**, so the fee to split the case is **\$235**.
 - (3) **Chapter 12 Cases.** The current filing fee is **\$200**.
 - (4) **Chapter 11 Cases.** The current filing fee is **\$1,000**.
 - B. **Consolidated Cases Distinguished.** The fee for splitting cases under item 19 of the Bankruptcy Court Miscellaneous Fee Schedule applies only to husband and wife cases filed jointly. Occasionally, two or more estates that were filed separately, with each paying its own filing fee, are consolidated into one proceeding. These consolidated

¹⁷¹Bankruptcy Court's Miscellaneous Fee Schedule, Item 19; 28 U.S.C. § 1931 notes. The Bankruptcy Court Miscellaneous Fee Schedule originally referred to the fee for splitting a joint case filed under section 302(a) of the Code as a "deconsolidation" fee. To ease confusion concerning application of the fee, on February 14-15, 1990 the Executive Committee of the Judicial Conference changed the denomination of the fee. Director's memorandum, February 26, 1990.

¹⁷²Filed under 11 U.S.C. § 302.

¹⁷³Although the deficit Reduction Act of 2005 increased the chapter 7 and 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee due upon splitting a case, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee reviewed these fee increases. Ultimately, at its September 2006 meeting, the Judicial Conference decided to permit the fee to increase in tandem with the filing fee. Director's memorandum dated December 1, 2006. Also at its September 2006 meeting, the Judicial Conference added the \$15 chapter 7 trustee surcharge to the chapter 7 split fee. Director's memorandum dated December 1, 2006. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition effective November 1, 2003. Director's memorandum, October 2, 2003.

¹⁷⁴The wording of the Bankruptcy Court's Miscellaneous Fee Schedule, Item 19 suggests that the fee to split the case is the fee for the chapter under which the case was filed originally, not the chapter the case is in when it splits. Nevertheless, 11 U.S.C. § 348 requires using the chapter the case is under currently (i.e. had been converted to before the split) for all purposes except those purposes excepted specifically, and the statute does not except charging fees.

cases require judicial action,¹⁷⁵ and, although called consolidated, the majority of these cases are jointly administered, rather than actually consolidated. Since consolidated cases are excluded from item 19 of the Bankruptcy Court Miscellaneous Fee Schedule, if these cases are subsequently deconsolidated, no fee is due.

2. **Exceptions to the Fee.** No fee is due if the court splits a case either *sua sponte* or at the request of a party other than one of the joint debtors. Additionally, no fee is due if the only reason for the split is to dismiss one of the two resulting individual cases, and the court actually dismisses one of the joint debtors.
3. **Chapter 7 Trustee Payments upon Installment Payment Defaults and *In Forma Pauperis* Proceedings.** The clerk may pay the trustee only to the extent the clerk collects the filing fee.¹⁷⁶ Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected.¹⁷⁷ If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing.
4. **Accounting.**¹⁷⁸

Table C-1. Fees Due upon Splitting Cases

Chapter	Fee	Account
Chapters 7	\$200 (filing fee) \$ 60 (chapter 7 trustee fee)	510000 6855BK
Chapter 13	\$235	510000
Chapter 12	\$200.00	510000
Chapter 11	\$1,000.00	510000

¹⁷⁵Rule 1015 of the Federal Rules of Bankruptcy Procedure. Joint husband and wife cases are permitted by 11 U.S.C. § 302.

¹⁷⁶This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005.

¹⁷⁷Bankruptcy Rule 1017(b)(2).

¹⁷⁸See Part B, ¶6.H.(7) for a discussion of the accounting for payments to trustees in split chapter 7 cases.

Part D. Fees for Converting Cases

1. **Fees Due.** Generally, when converting to a chapter with a higher filing fee, the conversion fee is the difference between the two ensuring the higher filing fee. Nevertheless, there is no refund when converting to a chapter with a lower filing fee. Additionally, when converting to chapter 7, \$15 is added to the fee for the chapter 7 trustee.¹⁷⁹
 - A. **Conversions to Chapter 11.** When the court converts a case to one under chapter 11 at the debtor's request, the clerk must collect a conversion fee equal to the difference between the original chapter's filing fee and the chapter 11 filing fee. The current chapter 11 filing fee is **\$1,000.00**.
 - (1) **Conversions from Chapter 7.** Since the current chapter 7 filing fee is \$245, the clerk must collect **\$755**.
 - (2) **Conversions from Chapter 13.** Since the current chapter 13 filing fee is \$235, the clerk must collect **\$765**.
 - (3) **Conversions from Chapter 12.**¹⁸⁰ Since the current chapter 12 filing fee is \$200, the clerk must collect **\$800**.
 - (4) **Re-conversions to Chapter 11.** Occasionally, a case, filed under chapter 11, is first converted from chapter 11 to chapter 7, then reconverted from chapter 7 to chapter 11. No fee is due upon the reconversion to chapter 11. The intent is to prevent a debtor from defeating the chapter 11 filing fee by filing a chapter 7 or 13 petition then converting to chapter 11. Since the debtor paid the full chapter 11 fee with the original petition, no additional fee is due upon reconversion.¹⁸¹
 - (5) **Accounting.** The clerk credits **three-fourths (\$566.25** in chapter 7 conversions and **\$573.75** in chapter 13 conversions) of the fee to the United States Trustee System Fund, (**fund 5073XX**), and **one-fourth (\$188.75** in chapter 7 conversions and **\$191.25** in chapter 13 conversions) to the general fund of the Treasury, (**fund 086900**).¹⁸²

¹⁷⁹Director's memorandum, December 1, 2006.

¹⁸⁰Initially, 28 U.S.C. § 1930 omitted conversions from chapter 12, so no fee was due. Subsequently, the Judicial Conference modified item 10 of the Bankruptcy Court Miscellaneous Fee Schedule to include conversions from chapter 12 to chapter 11.

¹⁸¹See *In re United Bonding International, LLC*, No. 00-11838-ECF-RTB (Bankr. D. Ariz. Nov. 12, 2001).

¹⁸²28 U.S.C. § 589a(b)(6).

B. Conversions to Chapter 7.¹⁸³ The clerk must collect two fees upon converting to chapter 7. The clerk must collect a fee representing the difference between the filing fee paid under the initial chapter and the chapter 7 filing fee (currently **\$10** with conversions from chapter 13, **\$45** with conversions from chapter 12, and nothing with conversions from chapter 11) and a **\$15** chapter 7 trustee fee. The fee is due upon receiving either a motion to convert a case to chapter 7 or a notice of conversion.¹⁸⁴ The clerk will use the **\$15** chapter 7 trustee fee to pay the case trustee.¹⁸⁵ If the trustee serving in the case before the conversion is the movant, the conversion fee is payable only from the estate that existed before conversion.

Summary of The Fees to Convert to Chapter 7

Original Chapter	Original Filing Fee	Chapter 7 Filing Fee	Charge to Adjust for The Difference in Filing Fees	Chapter 7 Trustee Fee	Total Conversion Fee
From chapter 11	\$1,000	\$245	N/A	\$15	\$15
From chapter 12	\$200	\$245	\$45	\$15	\$60
From chapter 13	\$235	\$245	\$10	\$15	\$25

¹⁸³Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule requires that a movant pay a **\$15** fee to file a motion to convert a case under chapter 11 to one under chapter 7. In addition, Item 10 requires a chapter 12 or chapter 13 debtor pay two fees to file a notice of conversion to chapter 7: a conversion fee representing the difference between the filing fee paid under the initial chapter and the chapter 7 filing fee (**\$10** with chapter 13 conversions and **\$45** with chapter 12 conversions) and a **\$15** chapter 7 trustee fee. The procedure differs from converting to chapter 11 because the source of law creating the fee is different. The law addressing conversion to chapter 11 is 28 U.S.C. § 1930(a)(7), the source addressing chapter 7 conversions is the Bankruptcy Courts Miscellaneous Fee Schedule. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 raised the chapter 7 filing fee and lowered the chapter 13 filing fee making it less expensive to file under chapter 13 than to convert to chapter 7 than to file under chapter 7 initially. An adjustment correcting the Bankruptcy Court Miscellaneous Fee Schedule is being considered.

¹⁸⁴Under 11 U.S.C. § 1208(a) or § 1307(a).

¹⁸⁵Under 11 U.S.C. § 330(b)(2).

- (1) **Fee Due upon Filing.** The conversion fee¹⁸⁶ is due when a party files either a motion to convert, or a notice of conversion to chapter 7. This fee is due in addition to the fee for splitting a case.¹⁸⁷
- (2) **No Refund upon Denial of the Motion.** If the court denies a motion to convert to chapter 7, the Judicial Conference prohibits the clerk from refunding the conversion fee collected when the motion was filed. The Judicial Conference prohibits the clerk from refunding these fees even if the party filed the case in error, the court dismisses the case, or if no trustee is appointed. The fee is earned when the motion is filed.
- (3) **Fee Collected When the Motion to Convert Is Combined with Other Motions.** When a party combines a motion to convert with any other motion (e.g., motion to dismiss), the clerk must collect the conversion fee. Additionally, if more than one party file motions to convert a case to chapter 7, the clerk must collect the conversion fee from each filing party. Yet, if several parties join in a single motion to convert, the clerk will only collect one conversion fee.
- (4) **Clerk Has No Authority to Reject the Debtor's Motion to Convert for Non-payment of the Fee.** A debtor's right to convert is independent of his or her duty to pay the conversion fee. The clerk's office must accept a notice of conversion with or without the fee. Nevertheless, the debtor's failure to pay the fee may be grounds for dismissing the case. The court may issue an order to show cause why the case should not be dismissed for failing to pay the conversion fee.
- (5) **No Fee Due upon *Sua Sponte* Conversions.** If the court converts a chapter 11, 12, or 13 case *sua sponte*, no conversion fee is due.
- (6) **Exemption for Case Trustee.** When a trustee serving in a case moves to convert, he or she must either pay the conversion fee or certify in writing that the estate has no assets. If the estate has insufficient funds to pay the fee in full, the estate must submit whatever it has up to the full amount due. Nevertheless, for the benefit of a trustee, the court may defer or waive the fee for filing a motion to convert the case. The conversion fee is payable only from the assets that exist in the estate before the court enters conversion order or the notice of conversion is entered on the docket.¹⁸⁸

¹⁸⁶Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁸⁷Item 19 of the Bankruptcy Court Miscellaneous Fee Schedule.

¹⁸⁸The Bankruptcy Court Miscellaneous Fee schedule, item 10.

