

Changes to National Bankruptcy Fees, Rules and Forms effective December 1, 2013

There are a number of changes to the National Bankruptcy fees, rules and forms which are scheduled to take effect on December 1, 2013.

FEES:

All Federal Courts

The records retrieval fee will increase from \$53 to \$64 for the first box requested from a Federal Records Center, and \$39 for each additional box that is requested.

Insufficient Funds

Although the fee for insufficient funds has not changed (\$53), the prior fee language regarding “checks” has been amended to include “any payment.”

Section 363(f) Motions

The filing of a motion to sell property of the estate free and clear of liens under 11 U.S.C. § 363(f) will now require a fee of \$176.

RULES:

Rules 1007, 5009, 4004

Rule 1007(b)(7) is revised to relieve individual debtors of the obligation to file Official Form 23, *Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management*, **if** the provider of an instructional course concerning personal financial management directly notifies the court that the debtor has completed the course.

Rule 5009(b) is revised to reflect the amendment of Rule 1007(b)(7). Rule 5009(b) currently requires the clerk to send a warning notice to an individual debtor who has not filed Official Form 23 within 45 days after the first date set for the meeting of creditors. The proposed amendment would require the clerk to send the notice only if the course provider has not notified the court of the debtor's completion of the course and the debtor has failed to file the statement within that 45 day period.

Rule 4004(c)(1)(H) is amended to provide that the court must delay entering a discharge for a debtor who has not filed Official Form 23 only if the debtor was required to do so under Rule 1007(b)(7).

Rules 9006, 9013, and 9014

Rule 9006(d) prescribes time limits for the service of written motions and responses. The amendments to this subsection draw attention to the rule's default deadlines for the service of motions and written responses by amending the title to add a reference to the "time for motion papers." The change is consistent with Civil Rule 6 and should make it easier to find the provision governing motion practice.

Rule 9006(d) currently covers only the timing of serving opposing affidavits. The proposed amendments expand the coverage of subdivision (d) to address the timing of the service of any written response to a motion.

Rule 9013, which addresses the form and service of motions, is amended to provide a cross-reference to the time periods in Rule 9006(d). In addition, stylistic changes are made to Rule 9013 to add greater clarity.

Rule 9014, which addresses contested matters in bankruptcy, is similarly amended to provide a cross-reference to the times under Rule 9006(d) for serving motions and responses.

The proposed rules amendments are posted at <http://www.gpo.gov/fdsys/pkg/CDOC-113hdoc28/pdf/CDOC-113hdoc28.pdf>.

FORMS:

Bankruptcy Forms 3A, 3B, 6I, 6J, 6 Summary, 23 and 27

Official Forms 3A (Application for Individuals to Pay the Filing Fee in Installment), 3B (Application to Have the Chapter 7 Filing Fee Waived), 6I (Schedule Your Income), and 6J (Schedule Your Expenses), are the first of the restyled forms developed as part of the Bankruptcy Rules Committee's ongoing Forms Modernization Project ("FMP"). The forms were selected for the initial implementation phase of the FMP because they make no significant change in substantive content and simply replace existing forms that apply only in individual-debtor cases.

Official Forms 6 Summary, (Summary of Schedules), and 27 (Reaffirmation Cover Sheet) are revised with updated line number cross references to Schedules I and J.

Official Form 23 (Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management) is revised to reflect the change to Rule 1007(b) described above by including an instruction stating that the debtor should complete and file the form only if the provider of an instructional course concerning personal financial management has not already notified the court of the debtor's completion of the course.

Copies of the amended forms have been posted in the Bankruptcy Forms Pending Changes section of the Federal Rules page of the Judiciary website at <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx> .

Bankruptcy Court Miscellaneous Fee Schedule¹

The fees included in the Bankruptcy Court Miscellaneous Fee Schedule are to be charged for services provided by the bankruptcy courts.

- The United States should not be charged fees under this schedule, with the exception of those specifically prescribed in Items 1, 3 and 5 when the information requested is available through remote electronic access.
 - Federal agencies or programs that are funded from judiciary appropriations (agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrators) should not be charged any fees under this schedule.
- (1) For reproducing any document, \$.50 per page. This fee applies to services rendered on behalf of the United States if the document requested is available through electronic access.
 - (2) For certification of any document, \$11.
For exemplification of any document, \$21.
 - (3) For reproduction of an audio recording of a court proceeding, \$30. This fee applies to services rendered on behalf of the United States if the recording is available electronically.
 - (4) For filing an amendment to the debtor's schedules of creditors, lists of creditors, or mailing list, \$30, except:
 - The bankruptcy judge may, for good cause, waive the charge in any case.
 - This fee must not be charged if -
 - the amendment is to change the address of a creditor or an attorney for a creditor listed on the schedules; or
 - the amendment is to add the name and address of an attorney for a creditor listed on the schedules.
 - (5) For conducting a search of the bankruptcy court records, \$30 per name or item searched. This fee applies to services rendered on behalf of the United States if the information requested is available through electronic access.

¹ Issued in accordance with 28 U.S.C. § 1930.

- (6) For filing a complaint, \$293, except:
- If the trustee or debtor-in-possession files the complaint, the fee must be paid only by the estate, to the extent there is an estate.
 - This fee must not be charged if -
 - the debtor is the plaintiff; or
 - a child support creditor or representative files the complaint and submits the form required by § 304(g) of the Bankruptcy Reform Act of 1994.
- (7) For filing any document that is not related to a pending case or proceeding, \$46.
- (8) Administrative fee for filing a case under Title 11 or when a motion to divide a joint case under Title 11 is filed, \$46.
- (9) For payment to trustees pursuant to 11 U.S.C. § 330(b)(2), a \$15 fee applies in the following circumstances:
- For filing a petition under Chapter 7.
 - For filing a motion to reopen a Chapter 7 case.
 - For filing a motion to divide a joint Chapter 7 case.
 - For filing a motion to convert a case to a Chapter 7 case.
 - For filing a notice of conversion to a Chapter 7 case.
- (10) In addition to any fees imposed under Item 9, above, the following fees must be collected:
- For filing a motion to convert a Chapter 12 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1208(a), \$45.
 - For filing a motion to convert a Chapter 13 case to a Chapter 7 case or a notice of conversion pursuant to 11 U.S.C. § 1307(a), \$10.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. §1930(a).

If the trustee files the motion to convert, the fee is payable only from the estate that exists prior to conversion.

If the filing fee for the chapter to which the case is requested to be converted is less than the fee paid at the commencement of the case, no refund may be provided.

- (11) For filing a motion to reopen, the following fees apply:
- For filing a motion to reopen a Chapter 7 case, \$245.
 - For filing a motion to reopen a Chapter 9 case, \$1167.
 - For filing a motion to reopen a Chapter 11 case, \$1167.
 - For filing a motion to reopen a Chapter 12 case, \$200.
 - For filing a motion to reopen a Chapter 13 case, \$235.
 - For filing a motion to reopen a Chapter 15 case, \$1167.

The fee amounts in this item are derived from the fees prescribed in 28 U.S.C. § 1930(a).

The reopening fee must be charged when a case has been closed without a discharge being entered.

The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. If payment is deferred, the fee should be waived if no additional assets are discovered.

The reopening fee must not be charged in the following situations:

- to permit a party to file a complaint to obtain a determination under Rule 4007(b); or
- when a debtor files a motion to reopen a case based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524; or
- when the reopening is to correct an administrative error.

- (12) For retrieval of ~~one box of a~~ records from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, ~~\$53~~ \$64. For retrievals involving multiple boxes, \$39 for each additional box.
- (13) For ~~a check paid into the court which is returned for lack of funds~~ any payment returned or denied for insufficient funds, \$53.
- (14) For filing an appeal or cross appeal from a judgment, order, or decree, \$293.

This fee is collected in addition to the statutory fee of \$5 that is collected under 28 U.S.C. § 1930 (c) when a notice of appeal is filed.

Parties filing a joint notice of appeal should pay only one fee.

If a trustee or debtor-in-possession is the appellant, the fee must be paid only by the estate, to the extent there is an estate.

Upon notice from the court of appeals that a direct appeal or direct cross-appeal has been authorized, an additional fee of \$157 must be collected.

- (15) For filing a case under Chapter 15 of the Bankruptcy Code, \$1167.

This fee is derived from and equal to the fee prescribed in 28 U.S.C. § 1930(a)(3) for filing a case commenced under Chapter 11 of Title 11.

- (16) The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.
- (17) The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

For management of registry funds invested through the Court Registry Investment System, a fee at a rate of 2.5 basis points shall be assessed from interest earnings.

- (18) For a motion filed by the debtor to divide a joint case filed under 11 U.S.C. § 302, the following fees apply:
- For filing a motion to divide a joint Chapter 7 case, \$245.
 - For filing a motion to divide a joint Chapter 11 case, \$1167.
 - For filing a motion to divide a joint Chapter 12 case, \$200.
 - For filing a motion to divide a joint Chapter 13 case, \$235.

These fees are derived from and equal to the filing fees prescribed in 28 U.S.C. § 1930(a).

- (19) For filing the following motions, \$176:
- To terminate, annul, modify or condition the automatic stay;
 - To compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure; ~~or~~
 - To withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d); **or**
 - **To sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).**

This fee must not be collected in the following situations:

- For a motion for relief from the co-debtor stay;
 - For a stipulation for court approval of an agreement for relief from a stay; or
 - For a motion filed by a child support creditor or its representative, if the form required by § 304(g) of the Bankruptcy Reform Act of 1994 is filed.
- (20) For filing a transfer of claim, \$25 per claim transferred.²

² This fee will be effective May 1, 2013.

Effective December 1, 2013

ELECTRONIC PUBLIC ACCESS FEE SCHEDULE
(Issued in accordance with 28 U.S.C. §§ 1913, 1914, 1926, 1930, 1932)

The fees included in the Electronic Public Access Fee Schedule are to be charged for providing electronic public access to court records.

Fees for Public Access to Court Electronic Records (PACER)

- (1) Except as provided below, for electronic access to any case document, docket sheet, or case-specific report via PACER: \$0.10 per page, not to exceed the fee for thirty pages.
- (2) For electronic access to transcripts and non-case specific reports via PACER (such as reports obtained from the PACER Case Locator or docket activity reports): \$0.10 per page.
- (3) For electronic access to an audio file of a court hearing via PACER: \$2.40 per audio file.

Fees for Courthouse Electronic Access

- (4) For printing copies of any record or document accessed electronically at a public terminal in a courthouse: \$0.10 per page.

PACER Service Center Fees

- (5) For every search of court records conducted by the PACER Service Center, \$30 per name or item searched.
- (6) For the PACER Service Center to reproduce on paper any record pertaining to a PACER account, if this information is remotely available through electronic access: \$0.50 per page.
- (7) For ~~a check paid to the PACER Service Center which is returned for lack of funds~~ **any payment returned or denied for insufficient funds**, \$53.

Free Access and Exemptions

(8) Automatic Fee Exemptions

- No fee is owed for electronic access to court data or audio files via PACER until an account holder accrues charges of more than \$15.00 in a quarterly billing cycle.
- Parties in a case (including *pro se* litigants) and attorneys of record receive one free electronic copy, via the notice of electronic filing or notice of docket activity, of all documents filed electronically, if receipt is required by law or directed by the filer.
- No fee is charged for access to judicial opinions.
- No fee is charged for viewing case information or documents at courthouse public access terminals.

(9) Discretionary Fee Exemptions:

- Courts may exempt certain persons or classes of persons from payment of the user access fee. Examples of individuals and groups that a court may consider exempting include: indigents, bankruptcy case trustees, *pro bono* attorneys, *pro bono* alternative dispute resolution neutrals, Section 501(c)(3) not-for-profit organizations, and individual researchers associated with educational institutions. Courts should not, however, exempt individuals or groups that have the ability to pay the statutorily established access fee. Examples of individuals and groups that a court should not exempt include: local, state or federal government agencies, members of the media, privately paid attorneys or others who have the ability to pay the fee.
- In considering granting an exemption, courts must find:
 - that those seeking an exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information;
 - that individual researchers requesting an exemption have shown that the defined research project is intended for scholarly research, that it is limited in scope, and that it is not intended for redistribution on the internet or for commercial purposes.

- If the court grants an exemption:
 - the user receiving the exemption must agree not to sell the data obtained as a result, and must not transfer any data obtained as the result of a fee exemption, unless expressly authorized by the court; and
 - the exemption should be granted for a definite period of time, should be limited in scope, and may be revoked at the discretion of the court granting the exemption.
- Courts may provide local court information at no cost (e.g., local rules, court forms, news items, court calendars, and other information) to benefit the public.

Applicability to the United States and State and Local Governments

- (10) Unless otherwise authorized by the Judicial Conference, these fees must be charged to the United States, except to federal agencies or programs that are funded from judiciary appropriations (including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act [18 U.S.C. § 3006A], and bankruptcy administrators).
- (11) The fee for printing copies of any record or document accessed electronically at a public terminal (\$0.10 per page) described in (4) above does not apply to services rendered on behalf of the United States if the record requested is not remotely available through electronic access.
- (12) The fee for local, state, and federal government entities, shall be \$0.08 per page until April 1, 2015, after which time, the fee shall be \$0.10 per page.

JUDICIAL CONFERENCE POLICY NOTES

The Electronic Public Access (EPA) fee and its exemptions are directly related to the requirement that the judiciary charge user-based fees for the development and maintenance of electronic public access services. The fee schedule provides examples of users that may not be able to afford reasonable user fees (such as indigents, bankruptcy case trustees, individual researchers associated with educational institutions, 501(c)(3) not-for-profit organizations, and court-appointed pro bono attorneys), but requires those seeking an exemption to demonstrate that an exemption is limited in scope and is necessary in order to avoid an unreasonable burden. In

addition, the fee schedule includes examples of other entities that courts should not exempt from the fee (such as local, state or federal government agencies, members of the media, and attorneys). The goal is to provide courts with guidance in evaluating a requestor's ability to pay the fee.

Judicial Conference policy also limits exemptions in other ways. First, it requires exempted users to agree not to sell the data they receive through an exemption (unless expressly authorized by the court). This prohibition is not intended to bar a quote or reference to information received as a result of a fee exemption in a scholarly or other similar work. Second, it permits courts to grant exemptions for a definite period of time, to limit the scope of the exemptions, and to revoke exemptions. Third, it cautions that exemptions should be granted as the exception, not the rule, and prohibits courts from exempting all users from EPA fees.