



United States Bankruptcy Court
District of New Mexico

Bankruptcy Rule, Fee, and Form Changes

Informational Packet

Effective December 1, 2013

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I. Introduction

On December 1, 2013, revisions to the Federal Rules of Bankruptcy Procedure, Bankruptcy Fee Schedule, and official Bankruptcy forms will take effect, unless Congress enacts legislation to reject, modify, or defer them. This informational packet was developed by the United States Bankruptcy Courts in the Eastern, Northern and Western Districts. It is being provided for informational purposes should not be considered legal advice.

If you have any questions, or need further assistance, please contact the New Mexico Bankruptcy Court at 505-348-2500.

II. Summary of Fee Changes

Motion to sell property free and clear of liens under 11 U.S.C. §363(f)

Item (19) of the Bankruptcy Court Miscellaneous Fee Schedule is being added; a new fee will be charged upon the filing of a motion for the sale of property free and clear of liens under 11 U.S.C. § 363(f), as follows:

(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).**

Retrieval of file from Archives

Item (12) of the Bankruptcy Court Miscellaneous Fee Schedule has been amended to provide as follows:

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.**

Lack of funds

Item (13) of the Bankruptcy Court Miscellaneous Fee Schedule was amended as follows:

~~For a check paid into the court which is returned for lack of funds~~ **any payment returned or denied for insufficient funds, \$53.**

III. Summary of Proposed Rule Changes

The amended rules can be viewed at the following link:

http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/supct0412/BK_Clean_Rules_2012.pdf

1007(b)(7)

Current:

(7) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form. An individual debtor shall file the statement in a chapter 11 case in which § 1141(d)(3) applies.

New Proposed:

(7) Unless an approved provider of an instructional course concerning personal financial management has notified the court that a debtor has completed the course after filing the petition:

(A) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of the course, prepared as prescribed by the appropriate Official Form; and

(B) An individual debtor in a chapter 11 case shall file the statement if § 1141 (d)(3) applies.

4004(c)(1)

Current:

(1) In a chapter 7 case, on expiration of the times fixed for objecting to a discharge and or filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

New Proposed:

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and **for** filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge, **except that the court shall not grant the discharge if:**

Current:

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management **as** required by Rule 1007(b)(7);

New Proposed:

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management **if** required by Rule 1007(b)(7);

Current:

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship; or

New Proposed:

(K) a presumption is in effect under § 524(m) that a reaffirmation agreement is an undue hardship **and the court has not concluded a hearing on the presumption**; or

5009(b)

Current:

(b) Notice of Failure to File Rule 1007(b)(7) Statement. If an individual debtor in a chapter 7 or 13 case **has not** filed **the** statement **required by** Rule 1007(b)(7) within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the applicable time limit under Rule 1007(c).

New Proposed:

(b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7) STATEMENT. If an individual debtor in a chapter 7 or 13 case **is required to file a statement under Rule 1007(b)(7) and fails to do so** within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the **required** statement is filed within the applicable time limit under Rule 1007(c).

9006

Current:

(d) For Motion – Affidavits. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; **and**, except as otherwise provided in

Rule 9023, **opposing affidavits may** be served not later than one day before the hearing, unless the court permits them to be served at some other time.

New Proposed:

(d) MOTION PAPERS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion. Except as otherwise provided in Rule 9023, **any written response shall** be served not later than one day before the hearing, unless the court permits otherwise.

9013

Current:

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs

New Proposed:

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered ex parte, shall be served by the moving party **within the time determined under Rule 9006(d)**. The moving party shall serve the motion on:

- (a) The trustee or debtor in possession and on those entities specified by these rules; or
- (b) The entities the court directs if these rules do not require service or specify the entities to be served.

9014

Current:

(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.

New Proposed:

(b) SERVICE. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 **and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d).** Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.

IV. Changes in the Bankruptcy Forms

The new forms can be viewed at the following link:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms/BankruptcyFormsPendingChanges.aspx>

B 3 A – Application for Individuals to Pay the Filing Fee in Installments

- Revised as part of the Forms Modernization Project.
- Also, the declaration and signature section for a non-attorney bankruptcy petition preparer has been removed.

B 3B – Application to Have the Chapter 7 Filing Fee Waived

- Revised as part of the Forms Modernization Project.
- Line 2 now directs the debtor to exclude non-cash governmental assistance.
- Also, the declaration and signature section for a non-attorney bankruptcy petition preparer has been removed.

B 6I – Schedule I: Your Income

- Revised as part of the Forms Modernization Project (therefore providing more complete and accurate responses).

B 6J – Schedule J: Your Expenses

- Revised as part of the Forms Modernization Project (therefore providing more complete and accurate responses).

B 6 – Summary (Summary of Schedules)

- Updated to reflect new line number references to Schedules I & J.

B 23 – Debtor’s Certification of Completion of Instructional Course Concerning Financial Management

- Updated to reflect amendment of Rule 1007(b)(7).

B 27 – Reaffirmation Agreement Cover Sheet

- Updated to reflect new line number references to Schedules I & J.

Subpoenas – B 254, B 255, B 256, B 257 – clarified for the average person to read and understand.

Effective December 1, 2013

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.