



Bankruptcy Clerk's Newsletter

Volume I
January 2001

FEE INCREASES

The Federal Courts Improvement Act of 2000 included provisions that affect the miscellaneous fee schedules. The changes are effective February 1, 2001.

Searches	\$20
Certifications	\$ 7
Exemplifications	\$14
Returned checks	\$35
Filing a miscellaneous paper	\$30

Our web site will note the fee increases on February 1, 2001.

DISCLOSURE RULES

Amendments to Bankruptcy Rules 1017, 2002(a), 4003, 4004 and 5003 took effect on December 1, 2000. Amendments to several civil rules were also made. Of particular note are amendments to Civil Rule 26. Our local rules had previously exempted most disclosure requirements in adversary proceedings. In the future you will see a modified pre-trial order which establishes the parameters of disclosure in bankruptcy proceedings.

To view the amended rules go to <http://www.uscourts.gov/rules/>

AMENDED OFFICIAL FORM

The Judicial Conference, at its September 2000 session, approved amendments to Bankruptcy Form 7, the Statement of Financial Affairs. The form must be completed by the debtor in every bankruptcy case. The amended form requires additional information for taxing authorities, pension fund supervisors and governmental units charged with environmental protection and regulation. The instructions have also been changed. The form is available at www.uscourts.gov/bankform/

The amended form is effective now but is probably not available from publishers at this printing. Trustees and creditors who need the additional information may make the request from debtors.



Pacernet and Other Automation Endeavors

By Jim Snyder, Systems Manager

Our service month demonstrations of our Pacer and Racer systems were successful and we are happy that you are using our resources and it is clear that you are learning new applications monthly. The usage of our web site applications is up 43%. Our Racer system is still growing in popularity. One of the more popular links on the Court's site is still the decision page.

We have not experienced any fee increases for these resources since we last reported at our seminars in Fargo and Bismarck. The charge for viewing images on Racer is still .07/cents per page and the data is current with the Bankruptcy Courts Bancap computer. Remember, Pacer data is still 24 hours old.

We have been able to upgrade our server and our web site's leased line and have moved from a 56K line to a 256K line. This is a four-fold increase from the previous line speed meaning users can get information faster and we can serve more people at one time.

Registered users of our system can also access the Pacer Service Center on the world wide web at <http://pacer.uspci.uscourts.gov>. At this site pacer users have access to systems all over the nation using the same login and password. Feel free to call the Pacer Billing Center at 1-800-676-6856 or send email to pacer@aottd.uscourts.gov with questions or comments.

Our Administrative Office is busy developing a new system called, CM/ECF or Case Management/Electronic Case Filing. This new system is going to be implemented in all bankruptcy courts around the nation. Attorneys will be able to file a bankruptcy, motion, or order on line through our web site and even do some of the docketing. Don't worry, we will still check your work. We are getting closer to becoming a virtual clerk's office, keeping our hours of operation 24 hours a day, seven days a week. We are not scheduled to implement this new application for over a year, but we will do our best to keep you up to date.

The Clerk's Office has another project that we would like to implement and we need your input to see if it is worthwhile. It is a subscription/email notice service. When we have announcements or news that we would like to notify you of, we would send it to you via email. Items we could notify you of may include changes in fees, policy changes, court schedules or even a reminder of an upcoming federal holiday. If you are interested, send us an email giving us the "OK" to include you in our new listing - we'd like to hear from you. Our email is webmaster@ndb.uscourts.gov.



CLINTON VETOES BANKRUPTCY REFORM BILL

From Bruce Gering - Assistant United States Trustee

President Clinton exercised a "pocket veto" of the Bankruptcy Reform Bill by refusing to sign it after it was passed by the Senate on December 7th.

The House and Senate had passed differing version of the bill during the past year. Then a conference version of the bill was passed by both houses late in the year, with the Senate voting 70-28 in favor of it.

However, because both bodies adjourned for the year, the President was able to kill the bill by simply refusing to sign it. In a statement issued on December 19th, he said that he was refusing to sign it because it lacked the balance that he believed was critical to bankruptcy reform.

Bankruptcy reform legislation will undoubtedly be proposed again during the coming year, possibly as early as February. The proponents of the reform bill believe that they will be able to pass a bill that is essentially the same as the previous one, while opponents believe that the decrease in bankruptcy filings may lead to a bill that is more favorable to consumers.

U.S. TRUSTEE REQUIRES INCOME AND EXPENSES OF NON-FILING SPOUSES

Occasionally, only one half of a married couple files for bankruptcy relief. Often this is because the debts are attributable to only one of the spouses because they were incurred prior to the marriage, or because one spouse was engaged in a failed business, or had a gambling problem.

Whatever the reason, the just and fair operation of the bankruptcy system depends on full disclosure of the debtor's financial situation. The United States Trustee believes that this full financial picture is not complete unless it includes the non-filing spouse's income and monthly expenses. Occasionally, the debtor will show only his or her income, but will show all of the monthly expenses for the family. Or, the debtor will have very minimal income, but the non-filing spouse will have a high income.

Recently, a debtor who lived in Sioux City came to Sioux Falls and filed her chapter 7 petition because she did not want her husband to know that she had suffered large gambling losses. Inquiry by the Trustee revealed that her husband earns in excess of \$100,000 per year. Such manipulation of the bankruptcy system is simply not fair to the creditors.

The United States Trustee examines every chapter 7 case for possible substantial abuse per 11 U.S.C. § 707(b). In the 8th Circuit, the debtor's ability to repay a significant portion of his or her unsecured debt with future income constitutes substantial abuse. In cases where there is a non-filing spouse, the United States Trustee will nearly always ask the case trustee to require the debtor to provide copies of his or her pay stubs as well as those of the non-filing spouse, copies of their income tax returns, and an explanation of the monthly expenses. In making her substantial abuse analysis, the United States Trustee will pro-rate the expenses in accordance with the debtor's contribution to the total family income.

Practitioners can avoid this extra inquiry burden by including the non-filing spouse's income on Schedule I, and including all of the family's expenses on Schedule J.¹ In cases where the couple is separated, two schedule J's can be included, or an explanation of the separation can be substituted. This will save the debtor's attorneys, the case trustees and the U.S. Trustee time and effort in administering the cases.

¹Judge Hoyt has issued an opinion in South Dakota which requires the disclosure of the income and expenses of non-filing spouses, but the matter has not been before Judge Hill for a ruling in North Dakota.

**STATISTICS FOR TWELVE MONTH PERIOD
JANUARY 1, 2000 THROUGH DECEMBER 31, 2000**

	<u>1999</u>	<u>2000</u>	<u>CHANGE</u>
Cases	2132	1909	-10%
Estates	3037	2679	-12%
Joint Cases	905	770	-15%
Business Cases	98	90	- 8%
Chapter 7 Cases	2003	1828	- 9%
Chapter 11 Cases	5	14	180%
Chapter 12 Cases	34	5	-85%
Chapter 13 Cases	90	62	-31%
Adversary Proceeding	88	71	-19%