

Date: 01/31/2011 03:22 PM

Subject: Clarification on Deferral of Filing Fee for Adversary Complaint When Trustee is Plaintiff

Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. Section 1930) -  
Clarification on Deferral of Filing Fee For Adversary Complaint When Trustee  
is Plaintiff

Subsection (6) of the Bankruptcy Court Miscellaneous Fee Schedule directs that a \$250 filing fee is due upon the filing of a complaint. If a trustee is filing the complaint, the fee must be paid only by the estate to the extent there are sufficient liquid assets. The filing fee is deferred in CM/ECF, provided the trustee is the filer. To verify the deferral, our local practice requires that the trustee provide an affidavit that explains there are insufficient assets in the estate to pay the filing fee. The affidavit is oftentimes not timely filed. Please file these affidavits immediately after the electronic filing of the complaint. In the alternative, if there are liquid funds sufficient to pay the filing fee in the estate (not the adversary proceeding), a check in payment of the filing fee shall be immediately forwarded to the clerk's office. Some trustees are under the mistaken impression that they must have funds in the adversary proceeding before the fee becomes due and payable. This is not correct. The deferral is applicable only if there are insufficient funds in the estate.

We have recently changed the CM/ECF interface for filing a complaint by a trustee. You will now be asked whether there are sufficient funds in the estate to pay the filing fee. If you indicate there are not sufficient funds, our financial staff will verify the applicability of the deferral by reviewing your affidavit. If you indicate there are sufficient funds, they will be tracking the case for the immediate payment of the filing fee. Please be sure that you timely take this second action in either event.

Please also note that if an adversary proceeding is unsuccessful, and there are liquid assets in the estate, the fee is due and owing.

I appreciate your timely cooperation to comply with filing the affidavit in cases with no funds in the estate and to pay the fee once funds are recovered in previously insolvent estates.

If you have any questions, please contact Lisa Cardinal, Financial Specialist (518-257-1601).

Kim F. Lefebvre  
Clerk of Court  
United States Bankruptcy Court  
Northern District of New York