

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JEFFREY DAVID KISSINGER,

Debtor.

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Case No. DK 08-08480

Hon. Scott W. Dales

Chapter 7

ORDER

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

On October 28, 2009, the Clerk closed the bankruptcy case of Debtor Jeffrey David Kissinger (the “Debtor”) without a discharge because the Debtor “did not file a Certification of Completion of Instructional Course Concerning Personal Financial Management in compliance with 11 U.S.C. § 727(a)(11) & § 1328(g) and BR 1007(b)(7).” *See* Notice of Chapter 7 Case Closed Without a Discharge (DN 25). The Debtor has filed two motions seeking an order (1) reopening the case and (2) waiving the filing fee. *See* Motion to Reopen Chapter 7 Case Pursuant to 11 U.S.C. § 350(b) and Waiver of Fees to Reopen Closed Case (the “First Motion,” DN 28); Motion to Reopen Chapter 7 Case Pursuant to 11 U.S.C. § 350(b) and Waiver of Fees to Reopen Closed Case (the “Second Motion,” DN 33).

In response to the Debtor’s First Motion, the court reopened the case to permit the Debtor to file the certificate establishing that he completed post-petition debtor education but declined to waive the filing fee. *See* Order Reopening Bankruptcy Case to Permit Debtor to File Notice of Completion of Instructional Course for Personal Financial Management (DN 29). In response, the Debtor filed a Certification of Completion of Financial Management Course (DN 31), but he did not pay the reopening fee. Instead, he filed the Second Motion which, in effect, seeks reconsideration of the decision declining to waive the reopening fee.

The court previously declined to waive the reopening fee because applicable authority clearly prohibits the court from waiving reopening fees where, as here, “the case has been closed without a discharge being entered.” *See* 28 U.S.C. § 1930 Appendix

(Bankruptcy Court Miscellaneous Fee Schedule); *see also* Appendix A.<sup>1</sup> Although the court has authority to waive filing fees “in accordance with Judicial Conference Policy,” the court concludes that Judicial Conference Policy precludes waiver of the reopening fee under the circumstances of this case. Accordingly, the court will adhere to its prior ruling in this regard.

The court has considered the unfortunate circumstances described in the Second Motion and the effect of its decision on the Debtor and his discharge. Although the court remains unwilling to waive the fee, it will nevertheless grant the Debtor a further extension of time to pay the fee.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Second Motion is DENIED.

IT IS FURTHER ORDERED that the Clerk shall close the case without a discharge unless, on or before, August 31, 2011, the Debtor pays the reopening fees in full.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Jeffrey David Kissinger, Gary J. Irving, Esq., and the United States Trustee.

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<sup>1</sup> The Bankruptcy Fee Compendium, issued by the Administrative Office of the U.S. Courts, provides guidance to bankruptcy clerks regarding collection of the fees prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930.



# **BANKRUPTCY FEE COMPENDIUM III**

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of additional assets.<sup>286</sup> If the court defers payment pending discovery of additional assets, the fee shall be waived if no additional assets are discovered.<sup>287</sup>

**A. Bankruptcy Code Cases.** Although the clerk collects the \$15 chapter 7 trustee surcharge with a motion to reopen a chapter 7 case, the clerk collects no \$39 administrative fee regardless of the chapter being reopened. On the other hand, the clerk must collect the filing fee<sup>288</sup> when a party files a motion to reopen a case unless the reopening is either to correct an administrative error, or to file an action related to the discharge. The amount of the fee due is the same as the filing fee in effect for filing a new case on the date the petitioner files the motion.<sup>289</sup>

- (1) **Refunds Prohibited.** The fee is for the motion to reopen. The Judicial Conference prohibits refunding the fee if the court denies the motion.
- (2) **Exemption to Correct an Administrative Error.** On motion by the court or a party in the case, the court may waive the reopening fee if the case is being reopened to correct an administrative error.<sup>290</sup> To qualify for the exemption, either the clerk or the court itself must have made the error. The phrase "to correct an administrative error" does not include errors by the debtor, the debtor's attorney, or the trustee.
- (3) **Exemption for Actions Related to Discharge.** No fee is due if the case is reopened to file an action related to the debtor's discharge.<sup>291</sup> Nevertheless, a

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<sup>286</sup>Prior to January 1, 1998, Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule imposed a \$5 fee for filing an appeal in an Act case. On January 1, 1998, the Judicial Conference repealed that fee, and renumbered as Item 9 the previously unnumbered fee for reopening a case. In November 2000, the Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) again renumbered the items, and Item 9 became the chapter 7 trustee's fee.

<sup>287</sup>The Judicial Conference, at its September 2003 session, created this exception effective November 1, 2003. [Director's memorandum, October 2, 2003.](#)

<sup>288</sup>Prescribed by 28 U.S.C. § 1930(a).

<sup>289</sup>Item 11, Bankruptcy Court Miscellaneous Fee Schedule; Fed. R. Bankr. P. 4007(b).

<sup>290</sup>Item 11, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>291</sup>This exception to the reopening fee has two sources. The first dates from the days of the Bankruptcy Act, when many creditors ignored the debtor's discharge, and sued debtors in state courts to collect discharged debts. Because state courts failed to enforce the discharge, the debtors returned to bankruptcy court, paid the reopening fee, and asked for an injunction to enforce their discharge. In March 1969 the Judicial Conference approved this exception to the reopening fee when debtors move to reopen to initiate proceedings to enforce their discharge. The Judicial Conference has stated that this exception is triggered when a case "is reopened for the purpose of issuing restraining orders or for other proceedings in connection with a discharge granted in the original [case]." JCUS-MAR 69, p. 26. The second source is Federal Rule of Bankruptcy Procedure 4007(b) which excepts dischargeability actions. That

creditor must pay the fee for filing the complaint initiating the adversary proceeding. The debtor is exempt from the adversary filing fee if the debtor files the complaint.<sup>292</sup>

- (a) **No Exemption for Cases Closed for Failing to Certify Debtor Education Courses.**<sup>293</sup> This exemption is inapplicable to cases closed or dismissed in which the court declined to enter a discharge because the debtor failed to certify it underwent the required debtor education course.
  
- (4) **Exemption for U.S. Trustees and Bankruptcy Administrators.** United States trustees and bankruptcy administrators are exempt from the reopening fee.<sup>294</sup> Nevertheless, if the United States trustee is acting as a “private trustee,” he or she must pay the reopening fee unless the court waives or defers the fee.
  
- (5) **No Exemption for Private Trustee.**<sup>295</sup> A private trustee must pay the reopening fee unless the court waives or defers the fee. If the court declines to waive or defer the fee, a private trustee must use personal funds to pay the reopening fee, and other expenses associated with the reopening. If a private trustee successfully recovers assets for the estate, he or she may apply for reimbursement of these expenses from the estate.<sup>296</sup>

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rule states that: "A complaint [to obtain a determination of dischargeability of a debt] other than under [Code] § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule." Currently, the exception will likely apply in one of two circumstances. First, when one or more of the debtors' creditors are violating the discharge injunction by continuing their collection attempts notwithstanding the debtor's discharge. In state court it may be difficult for the debtors to assert their discharge other than as a defense to a collection action. So, they must return to bankruptcy court to ask for help and are probably asking to reopen to find the violating creditor in contempt. The second circumstance is when a creditor is asserting it holds a non-dischargeable debt and either the debtor or that creditor wants the bankruptcy court to rule on it. Whoever is asking to reopen will probably say they want to do so to ask the court to determine the dischargeability of a debt.

<sup>292</sup>Item 6, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>293</sup>Item 11, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>294</sup>Because the reopening fee is part of the Bankruptcy Court Miscellaneous Fee Schedule, the provision exempting the fee for services rendered on behalf of the United States applies. See Preamble to the Bankruptcy Court Miscellaneous Fee Schedule in Exhibit 2. One court has held that the exemption applies to a United States trustee acting in his or her official capacity as a representative of the government. *In re Pomaville*, 183 B.R. 187 (Bankr. D. Minn. 1995).

<sup>295</sup>Under 28 U.S.C. § 586(a)(1), a “private trustee” is anyone who is a member of the chapter 7 trustee panel that is maintained and supervised by the United States trustee.

<sup>296</sup>The court usually discharges a private chapter 7, 12 or 13 trustee as part of its closing procedure. When the court reopens these cases, under Fed.R.Bankr.P. 5010, the U.S. trustee appoints no trustee in a reopened case under these chapters unless the court determines one is necessary. Once discharged, a case trustee has no authority to

(a) **Waiver or Deferred Payment Permitted for Private Trustee.** The court may either waive this fee under appropriate circumstances or defer payment of the fee by the trustees pending discovery of additional assets.<sup>297</sup> If payment is deferred, the fee shall be waived if the trustee discovers no additional assets.<sup>298</sup>

(b) **Trustee Reimbursed upon Recovery.** A private trustee must pay the reopening fee from his or her personal funds unless the court waives the fee or defers payment of the fee pending recovery of additional assets. If the trustee pays the reopening fee from personal funds, and recovers assets for the estate, the trustee may request reimbursement as an administrative expense. The clerk, in coordination with the office of the United States trustee or bankruptcy administrator, must determine whether the case trustee has been paid the \$45 portion that represents the trustee fee prior to reimbursing the trustee from **fund 6855TT**.

(6) **No Exemption for Reopening to Add a Creditor.** The debtor must pay the reopening fee, and the fee for amending the schedules or lists of creditors to reopen a case to add a creditor. If the clerk must retrieve the case file from an off-site storage location, the debtor must also pay the retrieval fee.

**B. Bankruptcy Act Cases.** When the court reopens a case under the Bankruptcy Act of 1898, the amount of the fee due is the same as the filing fee due for cases filed on September 30, 1979, the last day cases were eligible to be administered under the 1898 Act.<sup>299</sup>

**C. Unpaid Balance of Original Filing Fee in Reopened Case.** If installments of the original filing fee are due when a debtor files a motion to reopen, the Administrative Office's policy requires the debtor to pay all remaining installments as well as the reopening fee. Although the amount of the reopening fee is the same as the fee for filing a new case, the two fees are for different services. The original fee is for filing

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reappoint himself or herself.

<sup>297</sup>The Judicial Conference modified the reopening fee effective January 1, 1998, and November 1, 2003.

<sup>298</sup>The Judicial Conference, at its September 2003 session, inserted this exception in the Bankruptcy Court Miscellaneous Fee Schedule item governing reopening fees to clarify the exception available case trustees, and to encourage case trustees to reopen promising cases. [Director's memorandum, October 2, 2003.](#)

<sup>299</sup>Exhibit 4 is the schedule of the Act's filing fees.