



memorandum

DATE: February 21, 1994
TO: Alan Resnick
FROM: Beth Wiggins
SUBJECT: Survey Results

Here are the results of the survey regarding the suggested change to Fed. R. Bankr. P. 1006. I also have enclosed a clean copy of the questionnaire. Please give me a call if you have any questions. I will bring copies of this memorandum to Sea Island.

1. Responses to the survey were received from 73 districts.
2. 45 (61.6 %) of the districts that responded to the survey do not currently permit chapter 13 debtors to pay filing fee installments to the chapter 13 trustee for transmission to the clerk.
 - 33 of the 45 districts reported that the practice had never been permitted in their district.
 - 11 of the 45 districts reported that the practice had been permitted in their district at one time but that its use had been discontinued. Attachment 1 shows for each of these districts the time period during which the practice was permitted and the clerk's explanation of why its use was discontinued.
 - One of the 45 districts did not provide information regarding their past practices.
3. Nine (12.3%) of the districts that responded to the survey reported that chapter 13 debtors were permitted to pay filing fee installments to the chapter 13 trustee for transmission to the clerk in an occasional case. (In one of these districts, the practice was permitted in only one of two divisions.)
 - One of the nine districts reported that such installment payments counted in determining the amount of compensation paid to the standing chapter 13 trustee. See attachment 2 for an explanation

provided by this district. Six of the districts reported that such payments did not count in determining the amount of compensation paid to the standing chapter 13 trustee and two of the districts did not provide any information regarding the compensation of the standing chapter 13 trustee.

- None of the nine districts reported that such installment payments counted in determining the amount of compensation paid to a non-standing chapter 13 trustee. (Four districts reported that such payments did not count in determining the amount of compensation paid to a non-standing chapter 13 trustee, one district did not provide any information regarding the compensation of non-standing chapter 13 trustees, and four districts reported that there were no non-standing chapter 13 trustees in their districts.)
4. 19 (26.0%) of the districts that responded to the survey reported that chapter 13 debtors were permitted to pay filing fee installments to the chapter 13 trustee for transmission to the clerk on a routine basis. (In one of the eighteen districts, the practice was permitted on a routine basis in only one of the district's five divisions. It was permitted in an occasional case in another division, but was not permitted at all in the three remaining divisions. In another of the eighteen districts, the practice also was permitted in only one of the district's divisions; no information was provided about practices elsewhere in the district.)
- Fifteen of the 19 districts reported that such installment payments counted in determining the amount of compensation paid to the standing chapter 13 trustee. See attachment 2 for explanations provided by these districts. Three of the districts reported that such payments did not count in determining the amount of compensation paid to the standing chapter 13 trustee and one of the districts did not provide any information regarding the compensation of the standing chapter 13 trustee.
 - None of the 19 districts reported that such installment payments counted in determining the amount of compensation paid to a non-standing chapter 13 trustee. (Three districts reported that such payments did not count in determining the amount of compensation paid to a non-standing chapter 13 trustee, four districts did not provide any information regarding the compensation of non-standing chapter 13 trustees, and eight districts reported that there were no non-standing chapter 13 trustees in their districts.)
5. Attachments 3 and 4 set forth the clerks' comments regarding the advantages and disadvantages of permitting chapter 13 debtors to pay filing fee

installments to the chapter 13 trustee for transmission to the clerk. The clerks' comments are divided into the following three categories depending on the experience of the clerk's district with the practice under study:

(1) districts that currently permit the practice in either an occasional case or on a routine basis, (2) districts that permitted the practice at one time but have discontinued its use, and (3) districts with no known experience with the practice.

6. Attachment 5 sets forth additional comments provided by the clerks related to the issues raised in the questionnaire.

ATTACHMENT 1

DISTRICTS THAT HAVE DISCONTINUED THE PRACTICE OF PERMITTING FILING FEE INSTALLMENTS TO BE PAID TO THE CHAPTER 13 TRUSTEE FOR TRANSMISSION TO THE CLERK

The following information is given for each district that has discontinued the practice of permitting filing fee installments to be paid to the chapter 13 trustee for transmission to the clerk:

- time period during which the practice was permitted, and
- the clerk's explanation of why the practice was discontinued.

1) From ? to 1992

Installment payments from the chapter 13 trustee were not made until after confirmation of the plan. The court decided to give debtors 60 days from the date of filing to make full payment of filing fee. The time involved to process the installment through the trustee was no longer practicable.

2) From 1978 to 1988

May have been the practice prior to 1978 but we are not certain.

We are not certain, but it may have been the discovery that the procedure was not in compliance with the rules.

3) From the 1960's to 10/01/79

Effective date of Bankruptcy Code.

4) From 1984 to 1985

When the trustee sent over the final report, too many cases were not paid in full.

5) Before the Bankruptcy Reform Act of 1978

Under §622 of the Bankruptcy Act, the debtor paid \$15.00 upon the filing of the petition. Pursuant to §633, an additional \$10.00 or \$15.00 was due at the first meeting of creditors. The second fee required under §633 normally was paid to the trustee at the first meeting of creditors and then transmitted to the clerk. This procedure was eliminated under the Bankruptcy Reform Act of 1978.

6) From 1/17/83 to 5/11/84

As explained in my letter dated May 11, 1984 (a copy of which is exhibited hereto), to the then Chapter 13 Standing Trustee in this district, in Chapter 13 cases in which plans are never confirmed, filing fees do not get paid. Furthermore, an amendment to Rule 1006 will not make lawful the payment of filing fees through plans. By statute, 11 U.S.C. §1325(a)(2), any fee required under Chapter 123 of Title 28 to be paid before confirmation must be paid before the Court may confirm a plan. The bankruptcy cases filing fees statute, 28 U.S.C. §1930, is a part of said Chapter 123. (Note: Attached as Exhibit 1.)

7) From ? to approximately March, 1991.

We experienced numerous instances where creditors were paid prior to the Court's fee. In some instances, the case was dismissed and the Court never received payment.

8) From 1979 to 1985

Practicing attorneys did not prefer this method as their attorney fees, if being paid through plan, and the creditors payments would be delayed until the filing fee was paid. It could be up to a year before creditors would start to receive monies.

9) From approximately 1971 to 1989

No reason given for discontinuing the practice.

10) From the mid 1970's to 1988 or 1989

An Administrative Office of the U.S. Courts' audit recommended that the filing fee for all chapters be paid to the court at the time of the filing of the petition. The Court also felt that this should be preferred policy.

11) From ? until 1979

The practice was discontinued for two reasons. The first was that the standing trustee at the time did not have a system in place that adequately allowed for accurate collection and accounting of the filing. Secondly, our reading of 11 U.S.C. §1325(a)(2) seemed to require that before a plan could be confirmed the filing fee needed to be paid. Also, our reading of 11 U.S.C. §1325(a)(2) seemed to require the trustee to retain all payments and distribute them only pursuant to a confirmed plan. Thus, the practice we developed was for the debtor to pay the filing fee, even when paid in installments, directly to the office of the clerk, as required by 28 U.S.C. §1930(a).

Two districts reported that the practice had been used and discontinued in one of their divisions. The time period during which the practice was permitted and the reasons provided by the clerk for discontinuance of the practice in these divisions is set out below.

1) From 1967 to 1984

We changed our policy on installment payments because of abuse by some attorneys (not necessarily Chapter 13 attorneys).

2) This procedure was in place more than 10 years ago, and from what I can remember, it pertained to cases that filed with an application to pay filing in installments and dismissed before confirmation.

ATTACHMENT 2

EXPLANATIONS GIVEN BY DISTRICTS IN WHICH INSTALLMENT PAYMENTS TO THE CHAPTER 13 TRUSTEE COUNT IN DETERMINING THE AMOUNT OF COMPENSATION PAID TO THE TRUSTEE

- 1) The trustee treats the clerk the same as any creditor in that he takes trustee percentage fees on any disbursements.
- 2) Filing fees paid as an administrative expense.
- 3) In certain circumstances it could effect the compensation of the trustee since this amount is included in "payments received," however, procedures in this court are such that the trustee is paid below the maximum limit and therefore, the filing fees do not affect the trustee's actual compensation.

In our district the debtor's plan provides that the filing fees be paid out of the first monies paid to the trustee by the debtor. The Confirmation Order also orders the trustee pay to the clerk the balance due of filing fees before any other disbursements are made. Therefore, filing fees are considered payments received under the plan as defined in 28 U.S.C. (e).

If you need more information regarding this, please call me at (205) 223-7253.

- 4) Standing trustee calculates compensation paid to trustee on filing fees paid to the clerk.
- 5) They take commission on anything disbursed.
- 6) Two districts explained that: The debtors begin making chapter 13 plan payments to the trustee when the petition is filed. The first monies are set aside for the filing fee. Upon confirmation of the plan, the filing fee is transmitted to the clerk. A 3.75% of funds disbursed in confirmed cases is taken. If a case is not confirmed, the filing fee is transmitted to the court and no percentage of this disbursement is taken.
- 7) The balance of the filing fee is included under the plan.
- 8) Chapter 13 percentage applies to all receipts and funds paid out.
- 9) Payments to Clerk's office are reasoned to be counted as monies handled by Trustee.

- 10) In two of four divisions, payments are considered a distribution upon which compensation is paid.
- 11) Calculation includes total disbursements through the plan, but no cost disbursements are eliminated in figuring trustee compensation.
- 12) No explanation given.
- 13) Standing chapter 13 trustee makes one payment to the clerk's office for filing fee paid in full when sufficient funds are available. If case is dismissed prior to full filing fee being paid trustee receives a percentage as well as clerk's office.
- 14) The percentage of compensation paid to the trustee is calculated on all disbursements.
- 15) The trustee is paid a percentage based on disbursements from a case.

ATTACHMENT 3

PERCEIVED ADVANTAGES OF PERMITTING CHAPTER 13 DEBTORS TO PAY FILING FEE INSTALLMENTS TO THE CHAPTER 13 TRUSTEE FOR TRANSMISSION TO THE CLERK

The comments provided by the clerks are divided into three categories depending on the experience of the clerk's district with the practice under study.

Comments from districts with no known experience with the practice:

- 1) We are a “high” 13 court. Yet, rarely has a debtor had a problem paying the filing fee. I do not see the advantages.
- 2) I can think of no advantages. Perhaps it would create more paperwork for all involved to add a new “money handler.” I can think of no reason to add the disbursing burden to the trustee’s responsibility.
- 3) No advantages.
- 4) No response.
- 5) No advantages.
- 6) Only a long shot - the trustee would probably be more lenient in enforcing for non-payments; therefore, the slight advantage would be to the debtor, and only in the sense that it would be slightly easier to abuse the requirement.
- 7) Uncertain. If collecting installment payments is a problem, this might help insure payment. But generally, if a chapter 13 debtor follows through with payments and withholding order, they also follow through with payment of installment payments.
- 8) No response.
- 9) No advantages.
- 10) I can see absolutely no advantages.
- 11) At this time we see no real advantage in permitting chapter 13 debtors to pay filing fee installment payments to the trustee.
- 12) No advantage to the clerk’s office.

- 13) Chapter 13 trustee would be responsible for the show cause order and setting hearing for failure to pay filing fees in installments, instead of the clerk's office. If the chapter 13 trustee is to be responsible for the monitoring of payments, then the chapter 13 trustee should be responsible for the follow-up of unpaid fees, i.e., show cause.
- 14) No advantages.
- 15) Would take the Clerk out of the check clearing business.
- 16) No advantages.
- 17) None, unless the payments are being made as part of a confirmed plan, which would be convenient for the debtor; otherwise I see little difference between paying the court directly and paying the trustee.
- 18) No response.
- 19) No advantages could be considered when, as responsible officer, the Clerk of Court would be delegating her responsibilities to people outside the Financial Division of the Clerk's office. This could produce situations out of our control, including the collection of the only account receivable in our office (filing fees in installments).

The number of cases that have been filed with filing fees in installments has been declining and if we implement this suggestion, the number of cases with filing fees in installments will increase, consequently, more time would have to be allocated in the follow up of those cases with people outside our office.

- 20) I see no advantage to this arrangement.
- 21) We don't find any advantages to permitting chapter 13 debtors to pay filing fees in installments to the chapter 13 trustee for transmission to the Clerk.
- 22) None. I see no benefit to the clerk's office and no benefit to the debtor. If the filing fee is to be paid as ordered, paying it to the trustee instead of the clerk has no advantages.
- 23) If it is intended that installment payments would be part of the plan payments and that the chapter 13 trustee would remit a separate check to the clerk, then one advantage would be that the debtor would only have to remit one check each month. If the intent is just to funnel the payment through the trustee's office, who would in turn remit the check to the clerk, then we can see no advantage to the debtor.

An advantage to the court would be that it has more assurance of timely receiving installment payments and if not made with the first plan payment, then the trustee could more quickly move to have the case dismissed. It would also ensure that a case would not get confirmed with installment fees pending, although, in this district the standing chapter 13 trustees monitor installment cases through a report provided by the clerk's office, and do not recommend confirmation unless fees have been paid.

- 24) No advantages.
- 25) Fewer bookkeeping entries for clerk and fewer deposits for clerk.
- 26) It might possibly be more convenient for a chapter 13 debtor to pay a filing fee installment through the trustee, but it appears that the disadvantages (see item 4) would outweigh the advantages.
- 27) In chapter 13 cases where the chapter 13 trustee is also making payments to debtor's attorney, the amendment will insure that filing fee is paid in full before payments are made to an attorney or other person who renders service to the debtor in connection with the case as required by FRBP 1006(b)(3).

As part of the chapter 13 trustee's routine distribution, installment payments (or portions thereof) will be made at regular intervals.

If the chapter 13 trustee includes installments for multiple cases in one check, processing will require fewer receipted transactions.

Chapter 13 trustee checks would be less likely to bounce.

- 28) Many Chapter 13 debtors are in such a financial state at the time of filing that the payment of the filing fee must be made in installments. These installment payments are, of course, made after the petition is filed. Oftentimes, once a petition is filed, debtors tend to lose contact with their attorney and do not make the required installment payments. Oftentimes, the payment of the fee is not made in full by the time of confirmation in the chapter 13 case, and the confirmation must then be delayed.

Chapter 13 trustees in this district utilize deduction orders almost from the inception of the case. This immediately results in payments to the trustee and in a majority of cases, the total fee can be in the hands of the trustee prior to the confirmation of the case. The trustee can then be in a position of forwarding the fee to the Clerk's Office. The trustees in this district use a computer system for accounting for monies and the issuance of checks, and the payment of the filing fee can be done without involving trustee fees.

In addition to a large number of Chapter 13 cases having the fees paid in full in this manner, it would also remove from attorneys the clerical task of monitoring their clients compliance with installment payment orders.

- 29) The responsibility of tracking the payment of fees would be placed on the trustee instead of the Clerk's Office.

Instead of the Clerk's Office issuing an Order to Show Cause for Failure to Pay Filing Fees, the trustee would have the responsibility of pursuing the late fee.

- 30) No advantages.
- 31) Tracking responsibility shifts to the trustee.
- 32) No advantages.
- 33) No advantages
- 34) One point of contact.

Relieves Clerk's office from collection activities.

Provides for faster dismissals for nonpayment.

- 35) There are no advantages for the clerk. We would still have to do the same bookkeeping. (Comment from a divisional office.)
- 36) The advantages favor the debtor by permitting a debtor to satisfy filing fees over longer period of time. I do not see any advantages for the clerk. (Comment from a divisional office.)

Comments for districts that permitted the practice at one time but have discontinued its use:

- 1) Using our current procedure we find no advantage to the payments coming from the trustee.
- 2) It may improve the timeliness of payment of filing fees.

It would be easier for the debtor - one payment to the trustee rather than payments to both the court and the trustee.

- 3) Current \$160.00 filing fees plus required payments under the plan within 30 days under Code § 1326(a)(1) are unduly burdensome to some debtors. The proposal would permit better budgeting of all payments and family expenses by new Chapter 13 debtors.

- 4) If a case is dismissed for failure to pay filing fees, the trustee would be able to get their costs.
- 5) If the filing fee could be paid from the first monies paid into the plan by the debtors, it would then assure payment of the fee very early into the case.

It would relieve the clerk from having to pursue collection of the fee.

Debtors would have only one place to send payments thereby reducing confusion. Sometimes we receive plan payments that should have been directed to the trustee.

It might reduce show cause hearings before the judges because the trustees would actively pursue collection. Failure to make installment payments could result in a motion to dismiss being filed by the trustee.

The clerk's office would receipt only one check from each standing chapter 13 trustee each month for the payment of the installment fees instead of processing the various payments from individual debtors.

Better calendar management of motions to dismiss for non-payment of fees by scheduling at one time.

It would make it easier for a chapter 13 debtor to file a petition. They are faced with the first plan payment being due within 30 days of the filing of the petition as well as the \$160.00 filing fee. If the fee could be paid from the first monies coming into the plan, they would not be faced with the first plan payment AND the filing fee within such a short time frame.

If the filing fees could be paid from the first monies coming into the plan, it is more likely that the fee will be collected if a case is dismissed prior to confirmation.

- 6) In my opinion there are absolutely no advantages in permitting Chapter 13 debtors to pay filing fees installments to the Chapter 13 Trustee for transmission to the Clerk.
- 7) The only advantage would be the convenience to the debtor.
- 8) No advantages.
- 9) I can see no advantage. The Chapter 13 debtor is currently allowed to pay filing fees in installments to the Clerk. We do not require three equal installment payments of the filing fee. The only requirements are that the debtor file an Application to Pay in Installments, the debtor's attorney may

not receive any compensation prior to the filing fee being paid in full, and the filing fee must be paid in full by the 341 meeting.

- 10) No advantages.
- 11) There may be some time savings realized by the chapter 13 trustee monitoring the payment of installments and bringing a dismissal motion under FRBP 1017(b) for failure to pay the fee. Additionally, in our court where the chapter 13 trustee presents the order of confirmation for signature, they would not be presented unless the fee was paid. The requirement in this court is that the plan is not confirmed until the filing fee is paid in full (11 U.S.C. §1325).
- 12) There were no advantages for the Clerk to have installments paid by the trustee. The only benefit would be for the debtor, it would extend the payments over a longer period of time. (Comment from a divisional office.)

Comments from districts that currently permit the practice in either an occasional case or on a routine basis:

- 1) Sorry, I don't see any. Just extra time and paperwork for everyone!
- 2) None - just muddies the water and 13 trustee has nothing to do with collecting the filing fee. If no pay, it's the clerk's responsibility to move for dismissal. Who cares what 13 trustee thinks! They just want to charge more money!
- 3) Orderly, regular payments come in to trustee and all disbursements so made. Debtors cannot (or won't) handle multiple payments smoothly.
- 4) To the chapter 13 trustee: The chapter 13 trustee would be entitled to additional compensation on the payments. See, 11 U.S.C. § 326(b) (up to five percent for standing trustees split between the trustee and the U.S. Trustee). Five percent of \$160.00 is \$8.00 per case. In 1993, this could have generated an additional \$12,280.00 for the standing trustee in Indianapolis (plus \$12,280.00 for the U.S. Trustee System Fund) and an additional \$4,264.00 among the three trustees in the divisional offices in the Southern District of Indiana.

To the debtor: The debtor would be able to make all payments (filing fee installments and plan payments) conveniently at one location. This would save the debtor the fee for a money order (\$4.00) or cashier's check (\$6.00) and the cost of an envelope (\$0.01) and a stamp (\$0.29) or a trip to the clerk's office every month. On a 36 month plan, the savings would be between \$154.80 (\$4.30 x 36) and \$226.80 (\$6.30 x 36) per case.

To creditors: Payments to creditors presumably could increase by the amount the debtor saves. This increase would be partially, if not completely, offset by the amount the trustee's percentage fee increases and the expenses of collection.

To the court: The Court would not have to deal directly with delinquent debtors. Payment processing may be facilitated by having to deal with only four trustees and the financial instrument of their choice (which, unlike debtors, includes checks).

- 5) Debtors have only one (1) payment for all post filing chapter 13 obligations. Debtors are sometimes confused by making two payments, one to the chapter 13 trustee and one for installment payments to the court, and need prodding. The trustee should be a good focal point.
- 6) No advantages.
- 7) It would probably be less confusing to the debtor to send all payments to one location, rather than both the clerk's office and the chapter 13 trustee's office.

The clerk's office would receive one check per month from the trustee's office versus numerous checks from the debtors.

- 8) More organized and timely submission of installment fee payments.

Debtor will not have to make two (2) separate payments to different parties; less confusion from debtor's perspective.

The clerk's office will handle one check from the trustee.

- 9) No advantages.
- 10) The filing fee is paid in full at the time of confirmation and/or prior to any payments under the chapter 13 plan.
- 11) Much time is saved in the clerk's office by only having to issue one receipt each month as opposed to several hundred. It alleviates confusion for the debtor by not having to pay installment fees to the clerk and payments under the plan to the trustee during a same period of time. It provides easy monitoring by the clerk's financial staff in determining if all fees have been paid.
- 12) This court has a General Order that states that if an application to pay filing fees in installments is filed by the debtor, the filing fee will be paid by the chapter 13 trustee out of the first monies paid to the trustee by the debtor. This keeps the clerk's office from having to issue orders in each chapter 13

case for payment of fees in installments; eliminates need of debtors to come to the clerk's office and make installment payments; saves clerk's office tremendous time and energy in not having to assist debtor's at counter; cuts down on number of receipts written by clerk's office, etc.

- 13) It is simpler for the debtors. They only have to worry about paying one entity—not two.

We get the first dollars paid to anyone—so the chances of getting paid are quite good.

Simplifies record keeping for us.

- 14) Comment from two districts: Efficiency of monitoring installment payments. The trustee monitors plan payments. Since the filing fee is part of the plan payment, monitoring the filing fee is accomplished by the trustee.

Because our court is a large Chapter 13 court and considering the amount of work involved in collecting Chapter 7 installment payments, the Clerk's office would definitely require additional staff to monitor the payments, send out notices for non-payment, monitor notice response and send out orders of dismissal for failure to pay the filing fee. Most Chapter 7 installment accounts require noticing. Given the number Chapter 13 filings, the work would be tremendous.

By having the Chapter 13 filing fee paid through the trustee, receipts issued are less. The Chapter 13 trustee sends one check for an average of 150 filing fees per month.

- 15) It greatly reduces the number of follow-up notices to debtors regarding unpaid filing fees.

It results in substantially fewer cases being dismissed for nonpayment of filing fees.

- 16) Easier for court. Clerk's office does not need to monitor installment deadlines or issue show cause orders when payments are late.
- 17) Advantage: Payment of fees through plan does not prohibit confirmation.
- 18) Debtors do not always have sufficient funds to pay the filing fee up-front. Payments more conveniently can be made to the chapter 13 trustee for later transmission to the clerk.

Some clerk's office work load requirements have been reduced.

This arrangement is more convenient for debtors and encourages the filing of chapter 13 petitions.

- 19) One receipt for multiple cases (approximately 300 to 400 cases paid monthly).
- 20) We do not have to keep track of chapter 13 installment payments. The trustee transmits the fees to the court only when they have been paid in full.
- 21) This procedure permits the clerk's office do less tracking of partial fee payments. We only record one payment, as paid in full or partial. This procedure has been used for several years and works extremely well.

- 22) Comments from two divisions in the same district:

First division: If the filing fees are to be made through the Chapter 13 plan, the trustee would be responsible for issuing one check to the court for the filing fees rather than the court receiving 4 installments from the debtor.

Advantage to trustee: The trustee would receive compensation for all filing fees disbursed by them.

Advantage to debtor: Would help debtor in emergency situations when they do not have the entire fee to pay up front.

Second division: These installments are paid by the trustee to the court as an administrative expense. The court receives this money before any other payments are made.

- 23) Instead of four additional receipts being written, only one additional receipt would be written for the balance due.

Tracking installments is a very time consuming task with no additional personnel allocated, so it would be an advantage to the clerk's office if the burden of collection would be shifted to the trustee.

Payment of filing fees through plan payments to the trustee might promote more debtors to file Chapter 13 instead of Chapter 7, thus recovering more monies for creditors.

Presently, the Chapter 13 trustee must verify with the clerk's office that the filing fee has been paid in full before the Chapter 13 plan is confirmed. With the Chapter 13 trustee collecting and tracking fees they would already have this information.

- 24) Eliminate duplicate accounting programs in chapter 13 trustee's and clerk's offices.

Only one office would be required to monitor cases for installment payments.

Reduce, if not eliminate, daily phone calls and paper work going between offices to see if installment was paid at one office or the other.

Eliminate refunds of filing fees to the Chapter 13 Trustee.

- 25) Chapter 13 cases represent a large percentage of filings in this district, and one advantage of the installments being paid directly to the trustee eliminates the need for the clerk's office to review and determine whether or not the debtor has proposed to pay the filing fee in installments through the chapter 13 plan. This court has also delegated to the chapter 13 trustee the preparation and submission of the order approving the application to pay the filing fee in installments.

Another advantage to our system is that all installments in chapter 13 cases are paid directly to the trustee which provides a consistent practice in all chapter 13 cases. Any required monitoring or follow-up on installment payments is done simply between the clerk's office and the office of the chapter 13 trustee thereby eliminating the unnecessary monitoring of chapter 13 installments and preparation of documents which may ultimately dismiss the chapter 13 case if the installments are not timely paid.

- 26) In the Eastern District of Wisconsin, Milwaukee, the chapter 13 installment filing fees are paid by the trustee directly to the clerk from the first monies received in the debtor's estate. This is by an order entered by the court on application and is an one time lump sum payment - in full.

One big advantage is that the financial administrator would not have the responsibility of follow up for non-payment of any of the required installment payments, or be subjected to monitoring any orders of extending time for installment payments.

The financial administrator would have less auditing responsibility if the transmission of the installment filing fee to the clerk is made once in the total sum of the filing fee. This would be in lieu of transmission of several installment filing fee payments for each case.

- 27) One advantage is that the clerk's office is ensured that they will receive payments from the trustee with limited follow-up.

ATTACHMENT 4

PERCEIVED DISADVANTAGES OF PERMITTING CHAPTER 13 DEBTORS TO PAY FILING FEE INSTALLMENTS TO THE CHAPTER 13 TRUSTEE FOR TRANSMISSION TO THE CLERK

The comments provided by the clerks are divided into three categories depending on the experience of the clerk's district with the practice under study.

Comments from districts with no known experience with the practice:

- 1) Clerk's statutory responsibility to collect fees. Concerned with between collecting the fees. Chapter 13 trustee's liability would increase and possibilities exist for increased abuse.
- 2) The principal disadvantage which we see is that there is no advantage to be had from duplicating this record-keeping and financial burden.
- 3) No disadvantages.
- 4) I prefer to have the fee paid directly by the debtor(s) for bookkeeping purposes. Our docketing system allows us to keep track of unpaid fees and a reminder letter is then sent, after which the payment is then remitted. If the chapter 13 trustee is to be responsible for paying the filing fee, the burden of timely payments will then be placed on that person; however, I feel that the trustee should not be able to get a percentage of commission and expenses for the filing fee, when the fee could be paid directly by the debtor(s).
- 5) Added financial responsibility for the chapter 13 trustees.

Added financial responsibility for the clerk's office.

Double work for both offices. Clerk's office would still have to keep records on whether or not the fee was paid.

- 6) More work for the trustee; just as much work for the clerk; would still permit abuse.
- 7) If chapter 13 trustee used this disbursement to determine compensation, it would be a disadvantage to debtor.
- 8) Possible competition between the chapter 13 trustee and clerk's office for funds in the event of a dismissal of the case and the fee has not been fully paid.

- 9) There is only one standing chapter 13 trustee handling all Pittsburgh cases. To rely on his office for the turnover of filing fees would be time consuming for both his office and the clerk's office. The possibility of funds being lost and/or unaccounted for would be great.

Our current procedure of all filing fee payments, regardless of chapter number, made directly to the clerk's office works efficiently in that all filing fee accounting information is centrally located, and all corresponding information is available and accessible to the Financial Administrator.

- 10) Why have a "middle man"?

Cause more paperwork

Cause confusion

Would unjustly inflate the trustee's fee

If plan fails, how would court costs be paid?

Cause added work for already over-worked chapter 13 trustees

Not cost or time efficient

FRBP 1006 (b)(1) requires that court costs be paid before an attorney may receive any money. Many attorneys are paid their fees through the plan. Therefore, getting court costs through the plan would be contra to the said rule.

Plan payments are to pay "debts" of debtors. Court costs should not be classified as "debts". They are in a separate category and are not "debts" as such but are fees of the court and there seems to be no logical way they could be perceived as "debts".

Who thought this one up?

Because plan payments do not begin until 45 days after confirmation—and sometimes hearing on confirmation is continued—this would have the effect of allowing debtors all the benefits of bankruptcy without the responsibilities. Fees could already be paid in the 45 day period.

- 11) In our District, we have four chapter 13 trustees. They deal with their administrative responsibilities in singular fashion. Some are very good at the administration of their caseload and some are very poor. Presently, we have difficulty getting Orders of Dismissal from them. Claims are often overlooked—they rarely answer correspondence. I really prefer not to deal

with them in administrative areas of concern. Our U.S. Trustee never involves herself with them with either.

- 12) Monitoring and deadlines would be the main disadvantages to filing fees being paid through the trustee. It would be very difficult to monitor payments if some chapter 13 cases were being paid directly and some through the trustee. Deadlines would also be a problem. On a normal chapter 13 case the debtor is given 60 days to pay the filing fee. If it were to be paid through the plan, objections to the plan would hold up confirmation, therefore holding up the filing fee payment.

Who's responsibility would it be to send letters, make phone calls, etc. to try to get payments, the trustee or the clerk's office? If it's the clerk's office, we would need to coordinate with the trustee's office to determine that fees were indeed due before continuing with payment processes. Very awkward and time consuming.

- 13) It becomes confusing to debtors, attorneys and public. Who is responsible for collecting fees? If you have more people involved in the fee collecting process there is more opportunity for errors. Things fall through the cracks. Judges become upset. Fallout hits clerk's office.
- 14) It adds an extra step to the process, burdening the trustee with no obvious advantage—the only possible advantage might be that the debtors could spread fee over 3 years (or 5) of the plan—this would be unfair compared to debtors in other chapters.
- 15) More burden placed on the Chapter 13 Trustee.

Trustee would be required to file a motion to dismiss if the fee is not paid.

The Clerk is one step out of the loop in enforcing the fee paid.

The debtors would be paying an additional 10% surcharge on the filing fee if the installment fees count in determining the amount of compensation paid to the chapter 13 trustee.

- 16) Assuming modification to Rule 1006 includes relaxation or elimination of 1006(b)(3), a clear disadvantage results because a very disturbing and hazardous precedent is set. To subordinate the court's fee or to reduce this fee to equal standing with other costs of the chapter 13 case, subjugates the Court in collection of its costs and expenses. This development is both unwarranted and undesirable.

Also, presuming the chapter 13 debtor has sufficient ability to be a chapter 13 debtor, there is no reasonable explanation for this debtor not to meet the current \$160.00 filing fee requirement.

Finally, the additional time, costs, and processing of installment payments for chapter 13 debtors, including the coordination and duplication of effort in the Clerk's Office and Chapter 13 Trustee's Office is burdensome and unproductive. This practice would prove even more ominous in light of reducing resources available to Clerk's Offices.

- 17) Additional work for trustee.

Court loses some control over situation if installment is late...we would schedule show cause order to prompt the payment.

- 18) No response.

- 19) As informed above, we would be losing the control of the payment of filing fees in installments and would be delegating the duty to people outside the Clerk's office. The Clerk of Court will not be complying with Transmittal 45, Volume I, Chapter VII, Part A, Financial Responsibilities and Duties of Clerk of Court.

- 20) Debtors default on payments in chapter 13 all the time. The bankruptcy fee is the "entry" requirement for filing. Why are fees more likely to be paid to the trustee? The two step process seems awkward and unnecessary.

- 21) The Chapter 13 Trustee is not responsible for collection of filing fee installments for transmission to the Clerk, but allowing the Chapter 13 Trustee to collect the installments could create more processing steps that are unnecessary. The fees should not be collected by the Chapter 13 Trustee nor should filing fee installment payments count in determining the amount of compensation paid to standing or non-standing Chapter 13 Trustees. Every possible percent of the dollar that can be paid to the creditor should be disbursed to the creditor.

- 22) The disadvantages are that the proposal would increase the administrative burden on the clerk's office. Under the current rule, the clerk's office monitors the installment payments and is aware when payments are not made as those payments are made directly to the clerk. Under the proposed amendment, a third party, the Chapter 13 trustee, is added to the process. The clerk's office then would have to contact the trustee to determine if the filing fee payments are in fact being made. Also, a likely scenario (where installments are not timely made) will be that the debtor claims the payment was sent to the trustee and the trustee will claim he did not receive it. Under the current rule, payments are made to the clerk and, thus, it is easy to determine with certainty whether the filing fee installments are made timely. Under the proposed rule, it will require more work of the clerk's office to determine whether payments are made. The end result

would be an increased administrative burden on the clerk's office and the imposition of a new burden on the Chapter 13 trustee.

In addition, the proposal could result in instances of debtors paying their filing fee installments to the clerk's office instead of the trustee. Would such payments have to then be forwarded to the trustee so he could later pay it back to the court? This would only increase the work of the clerk's office and the trustee. Under the current rule, we do not have the problem of debtors paying their filing fee installments to the trustee.

In addition to the increased administrative burden on the clerk's office, the proposed amendment would increase the chances that payments would be misdirected and would create an opportunity that does not now exist, to dispute whether the trustee received the filing fee payment. The judge's time is too valuable to be spent deciding these disputes.

- 23) The debtor would be assessed a percentage fee paid to the trustee to distribute the installment payment unless it is intended that separate checks be issued as referred to above.

Payments may end up being made later than if the debtor paid directly depending on how timely disbursements are made by the trustee.

Could the court still require payment before confirmation if installment fees were paid to the chapter 13 trustee for transmission to the clerk? Would clerk have priority to be paid first before any distribution to other creditors?

The trustee in this district provided the following comment: The objective of the debtors filing bankruptcy is to eliminate and become current on all prepetition debts. We are not a collection agency for the clerk and should not be held responsible.

- 24) I discussed this with a few key people involved with chapter 13 cases and the general consensus is that we would lose control of tracking payments in relation to past due installments.
- 25) Requires audits of both clerk and chapter 13 trustees and which audits will be made by separate agencies.

Court does a lot of noticing in chapter 13 with multiple copies. If case is dismissed because debtors failed to pay, the court would not be paid for the work done.

Sets a bad precedent by treating court funds the same as creditor funds held by the chapter 13 trustee.

- 26) The proposal to amend the rule to explicitly allow payment of chapter 13 installment filing fee payments through the trustee would seem to impose an administrative burden on the trustee. The trustee would have to account for the filing fee separately and would have to insure that no other payments are made until the fee has been paid in full. The trustee would likely prepare another check to the clerk, adding to the trustee's administrative costs. The trustee would also need to take care that no payments are made to those rendering services for the debtor until the filing fee is paid in full.

The proposal introduces the likelihood of delay in receipt of payment by the clerk, possibly resulting in untimely payments and wasted efforts. If a fee were not timely paid, the court might schedule a hearing on an order to show cause why the case should not be dismissed, and have the clerk prepare and mail out such an order and docket the pleading. The court would then conduct a hearing, be informed that the fee was paid, spend time confirming payment (perhaps contacting both the trustee and the clerk), and perhaps prepare an order setting aside the order to show cause.

The proposal seems to place an unnecessary intermediary in the process.

Paying funds over to the trustee for different purposes might be confusing to some debtors—we can imagine the scenario where a debtor sends in a plan payment and thinks that all of his duties have been fulfilled.

It is the clerk's duty to collect the fees. We have a system set up for collection of these fees which works smoothly. The concept now is clear—in all cases and under all circumstances, the debtor pays the filing fee to the clerk. The proposal would muddle the concept—from whom shall we collect the fee in this case?

- 27) Who will monitor “non-payment” and initiate dismissal of case for failure to pay filing fee?

If debtor has little “disposable income” installments could cover a period longer than 120 (or 180) days.

If installments transmitted by chapter 13 trustee, they will be transmitted the month after the payment is received by the trustee.

What if debtor pays trustee timely, but trustee fails to transmit installments to Clerk timely? How will we know whether dismissal is proper or delay is the trustee's fault? What leverage do we have to insure timely transmission?

If payments are retained by trustee until confirmation or denial of confirmation, how will we know where payments will begin (plan confirmation or denial could take months).

What happens if case converts to another chapter before filing fee is paid in full and trustee has less money than needed to pay in full? Will a new "order" regarding installments have to be issued? If so, the period could be longer than 120 (180) days.

Debtor doesn't commence making the payments until 30 days after plan is filed. Again, delay. How will we know when payments began?

We have a local rule allowing trustee a payment of up to \$250 from funds available in a case that is closed prior to confirmation due to conversion or dismissal. Will the filing fee take precedent or be paid as a percentage of what money is available (i.e., does § 1326(b) differentiate between the two? If not, should it?)

If case converts to chapter 13 and debtor hasn't paid filing fee in full, what happens? Can payments remaining be made to trustee and transmitted to Clerk?

Will the \$30 administrative fee also be subjected to payment to chapter 13 trustee and transmission to Clerk?

Who will determine payment schedule? If trustee, will debtor have to meet with trustee to set up? Will a new/different application and order to pay in installments be necessary?

Will installment fees transmitted by chapter 13 trustee be subject to the trustee's percentage fee? If so, this will cost the debtor more and, consequently, may have an adverse effect on creditors. Should disclosure of this be made? If so, to whom and by whom, and where?

- 28) One of the major disadvantages in paying the filing fee through the trustee is that the debtor's plan provides usually for the maximum amount of disposable income available. In a small payment case involving small weekly or monthly payments, the collection of the fee through the trustee will result in a delay for payment to other creditors pursuant to the plan. In your small payment cases, this can be a significant delay resulting in unnecessary motions for relief from stay.
- 29) If the trustee was negligent in following up on the collection of the filing fees, the case may proceed until it is closed without the Clerk's Office being aware of the outstanding filing fees.

- 30) Additional work for the chapter 13 trustee in receiving, processing, receipting and transmitting funds.

Delayed dismissals of cases for failure to pay fees according to the installment order since Clerk's Office will not immediately know if fees are paid.

Possible errors in dismissals if the Clerk's Office is misinformed by the trustee.

Reduced interest income for the government. Since we will not receive the funds until a later date, they will be deposited later and the interest earned nationwide will be less.

- 31) If the tracking responsibility shifts to the trustee, does the accountability also shift? Who prompts a motion to dismiss for failure to pay fees? Will the fees be paid to the court with a trustee check, or would the trustee merely forward the debtor's check? Who will be responsible for the accounting associated with transmitting the money? Accountability for timely payment—is it timely when received by the trustee or the court?

- 32) Double accounting would result. Trustee and Clerk's office would have to keep track of payments.

Upon filing a chapter 13 petition a fee or portion of the filing fee must be paid. Would this result in no fee accompanying the petition upon filing?

See no advantage in turning over any financial duties or responsibilities to anyone other than court personnel.

- 33) Installment fee payments might be counted in determining chapter 13 trustee's compensation.

- 34) Expanding the authority of the chapter 13 trustee.

Clerk would remain liable for fee.

Clerk's office would continue to perform follow up functions as required by the Guide and internal controls.

- 35) If done on a regular basis, the major disadvantages are to the Chapter 13 Trustee who would have to adjust his payment schedule to make sure that the chapter 13 fees are paid as an administrative expense and within the 4 month deadline.

The major disadvantage to the clerk is that by adding a middle man a delay will be encountered in determining whether or not the filing fee has been paid prior to issuing any show cause or other collection action being taken.

(Comment from a divisional office.)

- 36) Difficulty in collecting the fee if case is dismissed.

Clerk time (and perhaps judicial show cause/dismissal time) in tracking payments to assure we do receive all costs and contacting debtor/counsel when installments are missed.

Perhaps problem with timeliness in trustee routing installments to the clerk.

Trustee bookkeeping costs in tracking payments which he/she will want to charge estate.

(Comment from a divisional office.)

Comments for districts that permitted the practice at one time but have discontinued its use:

- 1) By going through another party, an unnecessary delay is created.
- 2) No disadvantages.
- 3) No disadvantages.
- 4) A new procedure would need to be implemented to tell the trustee when a debtor is paying installments. Will the clerk's office reject payments from the debtor directly? What is the time frame for the transfers of the funds from the trustee? A new procedure will need to be implemented to inform the trustee of the status of the filing fee balance. We accept money orders, cashier's check or cash from a debtor. If the trustee wants to carryover cash or issue a check from their office will be the only way our office will accept payment. We do not give any change.
- 5) The introduction of a third party involved in collecting fees increases the possibility of error.

If filing fees are paid from the first monies paid into the plan, it might have the result of extending the plan, delaying payments to secured creditors and reducing the payout to unsecured creditors.

It would increase the duties and responsibilities of the trustee and staff.

- 6) Such a practice would violate the statutory law cited above requiring that filing fees be fully paid before the Court may confirm a plan.

The United States will lose all filing fees in cases that are dismissed before plans are confirmed and will lose fees in many cases that are converted to another chapter before the plan is confirmed.

Litigation arising out of objections to confirmation quite often will extend far beyond the 120 days normally permitted for fee installments payments or beyond the 180 days maximum installments payments time limits proscribed by court orders.

In typical automated Chapter 13 plan administration a Chapter 13 Standing Trustee is not as assiduous in collecting filing fees as is the Clerk of Court of a U.S. Bankruptcy Court, who by statute is the accountable officer. Additionally, the proposed amendment of Rule 1006, F.R. Bk.P. purportedly authorizing a standing trustee to collect such fees would be prejudicial against the statutory accountability responsibilities of the Clerk of Court.

- 7) Same problems as stated in 2(c) as well as additional communication and paperwork necessary between trustee's office and clerk's office in tracking fees.
- 8) Trustee may misdirect payments. Creditors could get paid before the court.

Payment to court from the trustee will not be immediate. Trustees will need to route the checks through their accounts and then prepare and mail a check for the court. This could be a time consuming and costly process for the trustee and the court.

Our Chapter 13 case history shows only about 25% of the cases having plans confirmed within 45 days from date of filing. If payments could not be paid until confirmation of a plan, the court will not have access to these monies until that time.

Not reviewing payments promptly could result in a motion to dismiss for failure to pay filing fees to be generated unnecessarily.

- 9) Having a middleman (the trustee) collect money would create additional steps, paperwork, and problems for the Clerk's Office, particularly if the trustee had problems collecting the money from the debtor.

The Clerk's Office would have less control over collecting the filing fees.

The Confirmation of the Plan would be delayed if the filing fee was not paid timely, as the filing fee must be paid in full before the Plan may be confirmed.

There are potential problems with figuring the filing fee in with the rest of the plan payments. If not figured accurately, the plan would extend beyond 36 months.

- 10) There was a delay in the Court receiving the fees.

In cases where the debtor failed to make payments to the Trustee or the plan was not confirmed, the filing fee in many cases was never paid into the Court.

The accounting for the Standing Trustee and the Court was burdensome.

With the automated cash register system, the delay in receiving the filing fees would cause duplication of entries and more accounting to be done by the Clerk's office as well as the Standing Trustee's office.

- 11) Generally it adds a step. If the fee is ultimately paid to the clerk, having it pass through the hands of the chapter 13 trustee seems to add a step.
- 12) It would cause the trustee to have to monitor cases for payment of filing fees, thereby creating yet another function for the trustee to perform. (Comment from a divisional office.)

Comments from districts that currently permit the practice in either an occasional case or on a routine basis:

- 1) See above (Q3). There would be more orders; more people handling the money; more tracking by both the clerk and trustee; etc.
- 2) See Question 3.
- 3) Slightly more for the trustee to handle. No other problems.
- 4) To the trustee: The trustee would have to hire additional staff and set up an accounting and bookkeeping system to keep track of payments, collect delinquent payments and transmit payments to the clerk's office.

To the debtor: The debtor would have to make additional payments (over and above the installment fee) to cover the trustee's additional percentage fee. The debtor would also bear the risk of payments made to the trustee not being transmitted to the clerk.

To creditors: To the extent the trustee's costs and expenses are taken out of payments to creditors, the amount distributed to creditors will be reduced.

To the court: The Court will be required to rely on the trustee for the status and collection of fee payments. Posting and credit to the various funds (including the Judiciary Fund) will be delayed. The clerk's office will still have to retain its current system of tracking installment payments, but will have to accommodate additional glitches in the trustee's system.

- 5) Delay in receipt of payment by court since chapter 13 distributions are monthly. Delay in payments to creditors as filing fee distributions come first.

No up-to-date court record of how much is paid toward filing or when.

- 6) The payment for fees can be mingled with payments under this plan, by the debtor.
- 7) There would be a delay in receiving the payments because the trustee makes disbursements once each month. After the checks are cut, he holds them two weeks while the debtors' checks clear. The cases may get dismissed for failure to pay filing fee timely.

Due to his caseload, the trustee may not realize he is to make installment filing fee payments, and he may disburse money to attorneys or creditors before filing fee is paid.

Will trustee expect allowance for services rendered prior to confirmation if case is dismissed or converted? Presently, when case is dismissed or converted, the chapter 13 trustee refunds monies on hand to debtor, if the plan is not confirmed.

- 8) The Chapter 13 trustee usually submits one check to the court for court costs, unclaimed funds, claims, etc. If the trustee is permitted to present one check for a large number of Chapter 13 installment fee payments, the receipt (both manual and automated systems) will become very long and will then need to be copied so each respective bankruptcy case installment payment can be filed with the respective case file.

Having third party handle payments can be detrimental.

Additional costs to the debtor or unsecured creditors because of trustee fees and increased plan payments to cover the filing fees.

- 9) Administrative burden
- 10) No disadvantages.
- 11) I know of no disadvantages.

- 12) No disadvantages.
- 13) No disadvantages.
- 14) Response from two districts: The disbursing or financial computer program in the trustee's office cannot breakdown the different filing fees. For example, one list of filing fees and one check will pay for filing fees for different time periods. Depending on the time period, the fund breakdown is different. This requires careful scrutiny of the 150 filing fees to separate the filing fees from each time period in order to correctly receipt all filing fees on a certain list. Of course, Arkansas is the only state with eleven divisions for which accounting is maintained in one office. With eleven different consecutive case number sequences, it is a definitely a more difficult task than an office with one set of case numbers. With one set of case numbers, the last case number used for a particular period of time when the filing fee was one amount can be easily separated by case number from a different time period and filing fee amount.
- 15) No response.
- 16) Minor cost for debtor due to application of trustee percentage fee.

Adds to administrative workload of chapter 13 trustee.

Fees not paid to court until after plan confirmation, resulting in minor lag.
- 17) Disadvantage: Accounting responsibilities that accrue to Clerk's office.
- 18) If a case is dismissed, the filing fee may not be paid in full. This does not occur with great frequency.

There may be a short delay in time between the chapter 13 trustee receiving filing fees installment payments and transmitting those payments to the clerk.
- 19) Many unpaid filing fees.

Have to wait for orders for administrative expenses to be paid in unconfirmed cases.

Some duplicate payments which have to be refunded.
- 20) No disadvantages.
- 21) The only possible disadvantage is if the debtor makes a partial filing fee payment to the clerk's office without knowing that the trustee is paying the filing fee. This happens very infrequently and when it does happen the

clerk's office is quick to notify the standing chapter 13 trustee so that an over payment is not made.

22) Comments from two divisions within the same district:

First division: Unless the payment of filing fees was to be made through the plan, there is no advantage in having the debtor make his installment payments to the trustee rather than the court.

The court would lose control of the filing fees.

Second division: There are no disadvantages to this method of paying fees to the court by the trustee.

23) The trustee is paid a percentage of monies collected and disbursed which creates an added burden to the debtor's estate.

Chapter 13 trustees have instructions to refund debtors any money on account at the time of dismissal. The collection responsibility then reverts to the Clerk's office with little or no chance of recovery.

24) Delay deposit of fees into treasury since no partial payments are forwarded to the court. The Chapter 13 trustee in this district forwards fees that are paid in full to the court twice each month.

The court would still have to track the deadline for final payment.

25) The clerk's office actively pursues the collection of all unpaid filing fees, and collection letters are sent to the debtors and the attorneys for the debtors advising them that unpaid filing fees are debts due the government. Therefore, a great deal of interaction is necessary between the clerk's office and the offices of the chapter 13 trustees so that the collection letters are accurate as to the balances due on the filing fees.

The clerk's office is required to return chapter 13 installment payments to debtors who have inadvertently mailed the payments to the court rather than to the trustee. In the alternative, the clerk's office is required to accept the balance of the filing fee if the application to pay filing fee in installments is denied by the court at the request of the trustee.

The clerk's office finds that a great deal of research time is necessary to track chapter 13 installment payments.

If, for any reason, the confirmation of the plan is continued or delayed due to modification, etc., the trustee could not disburse. It is possible that the filing fee could not be paid within the time specified in FRBP 1006 unless a

modification was made to 11 U.S.C. § 1326 to allow the trustee to pay the fee prior to confirmation.

- 26) None. I feel that since the chapter 13 trustees have the responsibility of receiving and disbursing all other monies from the estate of the debtor why not the installment filing fee payment(s).
- 27) No disadvantages.

ATTACHMENT 5

ADDITIONAL COMMENTS PROVIDED BY THE CLERKS

- 1) Frequently, the case is dismissed prior to installments being paid. The trustee will not have any better luck collecting fees than a clerk of court would.
- 2) I believe the clerk may require payment before confirmation. Even if it doesn't, I don't think this area is broken (i.e., and therefore does not need fixing in my opinion).
- 3) What is the objective of this amendment? Is it to permit the trustee to pay it out pro rata with other administrative fees, i.e., attorney's fees, so that the attorney could be paid something up front, but the court has to wait? And if the plan never is confirmed, then the court may never be paid even though the case is filed and remains pending for 2 or 3 months? I strongly recommend no change.
- 4) This is a foolish suggestion. Anything the U.S. trustee or trustees get in charge of just gets messed up.
- 5) The Order of Confirmation orders the standing chapter 13 trustee to pay the filing fees from the first monies that he receives. This method gets the full filing fee paid in a shorter time than if it was paid by installments to the clerk. Since the trustee has a programmed computer for disbursements it does not create any additional time on the part of his staff. One time each month the trustee makes a check payable to the clerk for the fees collected with a list of the debtor's name, case number, and amount paid attached to the check. This makes it easy for the clerk's office to credit the payment of filing fees and to monitor if any fees are unpaid.
- 6) Seventy percent (70%) of the cases filed in the Southern District of Georgia are chapter 13 cases. Permitting the chapter 13 debtors to pay filing fee installments to the chapter 13 trustee for transmission to the clerk probably saves us two staff positions.
- 7) Does Rule 1006 require amendment? I see nothing in this rule that would prohibit a debtor from making payments to the court through a trustee. This arrangement is always totally voluntary and is part of the plan proposed by the debtor. The debtor is still obligated to pay the fee based on the application to pay in installments and we treat nonpayment of this fee exactly the same as if the debtor were paying directly. As far as we are concerned the debtor is paying directly.

- 8) Unless you can explain something different to me—I see no purpose in the proposed amendment. The proposed change creates several potential problems that come to mind:

What are the logistics at the time of filing? Would the debtor be required to pay something, a \$1 for instance, when the case is presented for filing, or would the debtor only have to submit an application and be required to pay the trustee at some later date?

If no money is required and later the debtor does not pay the trustee, the trustee is burdened with the responsibility of notifying the court.

If payments are not received by the Court, does the court pursue the trustee or the debtor for payment? The question arises:

Did the debtor not make the payment? or Did the trustee neglect to forward the payment? I'm sure that the issue as to blame will quickly find its way to the courtroom - who's fault is it, the debtor or trustee?

Will the process of dismissing the case be delayed and adversely affect any creditors, while the trustee notifies the court that a payment was not made?

Are there any legal barriers to having the trustee receive the filing fees? Does the Code require payments be made directly to the court?

Since the Justice department oversees the trustees, are there any issues as to supervision?

What about financial audits? Would the AO have to expand the audit program to include the trustee. If not, who would oversee the handling of these funds?

Would this create any problems with the trustees' blanket bonds that they have, additional coverage or riders?

There are also logistical issues that would arise when a debtor requests an extension of time for the installment payment schedule. Currently, it is a straight forward issue since the only parties involved are the debtor and the court. Generally these are handled ex-parte. If payments were being made to the trustee, then the trustee should be given the opportunity to comment on the request for the extension.

Are payments to the trustee that would be forwarded to the court subject to the trustees percentage, and if so why? If the trustee gets 10% then the debtor ends up paying \$160. + \$16 = \$176 to file a chapter 13.

As a general comment, the current system seems to be very straight forward, any issues that arise are between the debtor and the court directly, no third parties are involved. The proposed change seems to create another system to monitor and police. And I would seriously question the change and immediately think of the additional workload that would be created for the clerk's office.

Although the concept of having the debtor pay the filing fee to the trustee seems clear and concise at first, I found it to be very ambiguous. Having no specific information about the proposed changes, it is difficult to develop clear cut arguments "for" or "against" the change.

Instead, I found myself asking more questions. I hope the questions raised provide you with some food for thought.

I look forward to hearing more about this proposed change and the issues that surround it.

- 9) Would there still be a limit on the number of payments and the length of time in which they have to be paid? It would be difficult for the court to maintain these requirements if payment were made directly to the chapter 13 trustee.

Generally, approve of permission to pay installments through trustee.

- 10) We don't have a problem collecting installment fees.

If this burden were placed on the Chapter 13 Trustee it probably should count in determining the amount of compensation paid to the Chapter 13 Trustee.

- 11) Late or missed installment payments of filing fees in any chapter are now handled administratively by the clerk's office (i.e., Order to Show Cause why case should not be dismissed for failure to pay filing fee). If trustee is collecting the installments, it could "grow" into a full blown judicial hearing—unnecessary added burden on court.
- 12) If the Chapter 13 debtor does not pay the filing fee in full at the time the petition is filed, the total filing fee is deducted from payments made to the Chapter 13 trustee. The Chapter 13 trustee then makes one payment to the clerk of court. This significantly reduces the amount of paperwork both offices must keep.

The only disadvantage to this or any other system which allows payment of fees in any amount less than the full amount due, is that the entire fee may not be paid if the case is dismissed.

Piecemeal payment of fees from the Chapter 13 trustee to the clerk of court would only result in additional paperwork.

- 13) I would be interested in knowing who proposed this procedure, and what advantages the proponent believes there are.
- 14) I feel it will create additional work on the part of the clerk's office. With the downsizing of the courts the additional manpower is not available to do this duty with all the other duties that are being required.

More and more installment plans are being filed every year and these additional procedures are a duplication of work.

- 15) The method of collection of the installment fee by the trustee and transmission to the clerk raises some concern. It seems logical that the fee would be included as a part of the plan and would be paid from the first monies coming into the plan. I am not in favor of receiving installment fees piece meal from the trustee. It would be less cumbersome to have the fee paid directly to the clerk by the debtor. It would instill in the debtor the idea that his or her case is still a judicial proceeding before the court.

The idea of allowing a chapter 13 debtor to pay filing fees in installments (or in forma pauperis as well) raises the question of feasibility. If the debtor cannot pay the filing fee when the case is filed, then how can he or she be expected to fund a plan.

- 16) This study illustrates the need for informed Clerks of Court of U.S. Bankruptcy Courts to be included in the voting membership of the Advisory Committee on Bankruptcy Rules. The problems with the proposed amendment that I have pointed out in responding to this questionnaire would be obvious to knowledgeable Bankruptcy Clerks of Court sitting on such committee, and the time effort and resources being expended to conduct this survey would be obviated by such representation. Furthermore, noting that the covering memorandum for this questionnaire was dated on February 11, 1994, that such communication was received by fax on February 16, 1994, and that responses are needed by February 17, 1994, a Bankruptcy Clerk of Court member could have pointed out that unreasonably restricted deadlines for important matters should not be imposed in the collecting of survey information. (Note: We had difficulty getting a fax through to 2-3 clerks -- this must be one of them. BW)
- 17) If someone tried paying their filing fee at the Clerk's office would they be sent to the Chapter 13 office?
- 18) There is no reason for a third party being involved in the collection process which is clearly a duty and responsibility of the Clerk of Court. There should be no change to Title 28 U.S.C. § 1930(a) which states:

“Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the court the following fees...”

It is inappropriate to allow the Chapter 13 Trustee (standing or non-standing) to count filing fees collected in determining the amount of compensation paid to the Chapter 13 Trustee.

- 19) It would be helpful to know the language of the proposed amendment.

How will the administrative fee of \$15.00 for notice fees be handled?

If the case is dismissed prior to payment of the filing fees, will the fee be paid from the balance on hand prior to refund to the debtor?

- 20) Bankruptcy Rule 1006 only allows debtors who have not paid an attorney to pay the filing fees in installments. Therefore, the suggested amendment would apply to Chapter 13 debtors not represented by an attorney. These are the cases which are the least successful Chapter 13 cases. As a result, the full filing fee may never be paid where the debtor makes no payments to the trustee.

It is not clear from the survey request whether the filing fee installments are to be paid from plan installments or are to be in addition to plan payments but merely routed through the trustee. In either event, the high failure rate of pro se Chapter 13 cases only increases the risk that the filing fee will never be paid.

Of 461 pro se Chapter 13 cases filed in 1992 in the Phoenix Division of the District of Arizona, 61 converted to Chapter 7 and 339 were dismissed. Thus, 87% of the pro se Chapter 13 cases were unsuccessful. Given the high rate of dismissals, the suggested amendment to Rule 1006 would only increase the risk that the filing fee would not be paid. (74% of the pro se Chapter 13 cases filed in 1992 were dismissed.)

Finally, why should a Chapter 13 debtor (who, because of Chapter 13 eligibility requirements should be in a better position to pay the filing fee) be given special treatment in regards to paying the filing fee not accorded Chapter 7 debtors?

- 21) If payments were made to the chapter 13 trustee, and the trustee could not make payments due to the plan not being confirmed, then the court may not be able to dismiss for untimely payment of the fee.
- 22) The chapter 13 trustees in this district have commented that they are opposed to this proposal.

- 23) No one that I spoke with could see any advantage to permitting chapter 13 filing fee installments to be handled by chapter 13 trustees.
- 24) Authority for a chapter 13 debtor to pay installment filing fees to the trustee for transmission to the clerk already exists. See part B-I-G-(1) of Chapter XII, Volume 5, *Guide to Judiciary Policies and Procedures*, which refers to a general counsel memorandum dated May 7, 1985. Given that authority, we question the basis for suggesting the amendment.
- 25) Our district is a high-volume chapter 13 court. It is to the benefit of both debtors and creditors to encourage chapter 13 filings because the debtors have an opportunity to pay all or a portion of their debts over a reasonable period of time as opposed to chapter 7 bankruptcy where all non-exempt estate assets generally are liquidated with any resulting assets being distributed to claimholders with allowed claims (our court, like most courts, have relatively few “asset” chapter 7 cases filed). Payment of filing fees in installments through standing chapter 13 trustees is a reasonable convenience to debtors.
- 26) As the Clerk of the Court has been doing in the past, they should continue to collect the filing fees from the debtors in advance or in installments, together with collecting all notices and claims fee.

In December 1992, the Clerk’s office began collecting for all notices but inadvertently forgot to collect for claims. Please note that, since the \$30.00 increase in notices is basically higher in most cases, the balance should be used to offset the claims fee.

Furthermore, the Clerk should not generate a statement of fees for notices.

- 27) Would the debtor be able to pay the installments through the plan?

Would it be the trustees responsibility to enforce Fed. R. Bankr. P. 1006 Filing Fee?
- 28) Bad Idea.
- 29) The system we use for installment filing fee payments works very well for our chapter 13 cases and our trustees are very comfortable with the responsibility of transmitting the payment to the clerk.
- 30) The best solution would be payment of entire filing fee when petition is filed. Otherwise, allowing payment through the plan seems to be the best alternative.

- 31) We would suggest that the debtor make the installment fee payments directly to the court. There is no reason these monies should go through the hands of the trustee first.

Installment fee payments made “through the Chapter 13 plan” would be the only time the debtor should be permitted to pay the filing fees to the trustee.

We do not have many applications to pay filing fees in installments. There have only been a couple of times when the filing fees have been paid through the chapter 13 plan. Whenever we have an application to pay fees in installments, these payments are made to the court and our intake department and case administrators calendar these payments. If payments are not received, the court enters an order to appear and show cause why the case should not be dismissed.

- 32) Allowing the filing fee to be paid through the Standing Trustee’s office would not only cause a delay in the Court receiving the fee but also would provide the opportunity for the debtor to abuse the system.

In our court, we have discouraged the payment of filing fees in installments. When there is a Chapter 13 case where the filing fee is being paid in installments, we require that the fee be paid in full before conducting the 341 Creditors Meeting. This policy ensures that the fee is paid into the Court before a great deal of work is done in the case by the Court or the Standing Trustee.

Also, allowing the payment of the filing fee to be deferred and paid through the Standing Trustee may encourage more pro se debtors to file, and in this district, the dismissal rate for Chapter 13 pro se cases is high.

- 33) This proposal definitely requires the cooperation of the Chapter 13 trustee. The chapter 13 trustee should collect the filing fee within the 120 day period and be allowed to disburse the filing fee to the court prior to plan confirmation.

The amended rule should include clear, concise direction in defining responsibilities and deadlines. The rule should also outline the liabilities for the Clerk and the chapter 13 trustee.

- 34) The clerk's liability is the key issue. As clerk, I would not be inclined to delegate this responsibility unless I can also delegate the authority. I don't believe the statute permits such a delegation.
- 35) It is my opinion that the collection of fees is the duty and responsibility of the clerk, whereas the collection and distribution of payments pursuant to chapter 13 plans is left to the chapter 13 trustee. To not keep these functions separate will cause more confusion than any time it may save, particularly

on the part of the trustees. We have found that the typical chapter 13 debtor is able to pay the fee in installments before the case is confirmed, since in most cases the debtor is proposing to make payments to the trustee for distribution through the plan. However to pass the proposed amendments would be helpful since it would take nothing away from this court, we would likely continue our present practice, and as I understand it would not require a change, but offer those who would see an advantage to make use of it.

- 36) This issue has never arisen in this district. However, in the event a debtor wished to pay the fee in this manner, I am certain the judge would permit it. I would think that the trustee could receive a commission since it takes an equal amount of time, effort, and expense to disburse and manage this money as any other money in his/her custody.