

Survey of Bankruptcy Clerks of Court Regarding Applications for Administrative Expenses

Final Report

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FEDERAL JUDICIAL CENTER

Executive Summary

This report contains preliminary tables of results of the survey titled *Survey of Bankruptcy Clerks of Court Regarding Applications for Administrative Expenses*. The results analysis includes answers from all respondents who took the survey in the 81-day period from Friday, December 03, 2010 to Monday, February 21, 2011. Seventy completed responses to the survey were received during this time.

Preliminary results indicate:

- More than half of respondents (54%) indicated that their district has no district-wide procedures or forms regarding the payment of administrative expenses. Of those that do, they most commonly have a local rule (30% of respondents overall), followed by guidelines (10%) or standardized forms (7%). (Table 1).
- Of the district-wide procedures, 86% cover requests for *all* types of administrative expenses listed in 11 U.S.C. § 503(b). (Table 2 and Table 3, which provides more information about the types of expenses covered).
- Over 90% of respondents said that no judges in their district had *written* chambers-specific procedures, and most also reported no *unwritten* chambers-specific procedures (78% said there were none, while 15% couldn't say, and 7.5% said at least one judge in their district had such procedures). (Table 6).
- Only two respondents (3%) said that the procedures for requesting administrative expenses varied among the judges in their district, while 80% said this was not the case, and 17% couldn't say. (Table 7 and Table 8, which provides more detail about how procedures vary).
- About three-quarters (74%) of respondents said their district encounters very few difficulties with requests for payment of administrative expenses. Ten percent said their district could benefit from more standardization of procedures, and 11% said their district could benefit from more standardization of the forms used for requesting payment of administrative expenses. (Table 9 and Table 10, which contains explanations of their responses).
- With respect to whether national changes are necessary, the greatest support was for nationally-available procedural forms (which could be adapted for use by districts or attorneys), followed closely by national rules to govern how applications for administrative expenses were handled. Neither of these changes, however, was seen as "very necessary" by more than 8% of respondents. (Table 11).

- When asked which procedural aspects would be most important to address if the Committee decided national rules or forms were necessary, respondents most frequently indicated *noticing requirements* (selected by 70% of respondents); *manner of filing* (e.g., motion, application; selected by 66% of respondents); and *hearing opportunities* (e.g., negative notice; selected by 64% of respondents). (Table 12 and Table 13, which contains additional suggestions and explanations).
- When asked which types of administrative expenses would be most important to address if the Committee decided that national rules or forms were necessary, respondents most frequently indicated *administrative expenses in Chapter 11 cases* (selected by 69% of respondents); *administrative expenses in Chapter 7 cases* (selected by 57% of respondents); and *payments for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7* (selected by 57% of respondents). (Table 14 and Table 15, which contains additional suggestions and explanations).
- Table 16 provides miscellaneous additional comments the clerks of court provided.
- Appendix A provides examples of existing court procedures for requesting payment of administrative expenses.

Tables of Responses

Table 1

Does your district have any district-wide procedures or forms for handling requests for payment of administrative expenses in bankruptcy cases? (Please check all that apply)

Response	Count	Percent
Yes, the district has a local rule governing requests for payment of administrative expenses.	21	30.0%
Yes, the district has a general order governing requests for payment of administrative expenses.	1	1.4%
Yes, the district has guidelines governing requests for payment of administrative expenses.	7	10.0%
Yes, the district has a standardized form or forms to be used in making requests for payment of administrative expenses.	5	7.1%
No.	38	54.3%

Table 2

Does the district-wide procedure (rule, order, guideline, and/or form) cover requests for all types of administrative expenses listed in 11 U.S.C § 503(b)? (Please check one)

Response	Count	Percent
Yes.	25	86.2%
No.	4	13.8%

Table 3

Please specify the types of administrative expenses covered by the district-wide procedure(s), including the chapter(s) to which such procedures apply:
The administrative expense categories included below apply to Chapter 11 cases: office overhead, word processing, computerized research, paraprofessional services, professional services, photocopies (internal and outside), postage, overnight delivery, messenger service, facsimile transmission, long distance telephone, parking, air transportation, hotels, meals (travel), meals (working), amenities, filing fees, court reporter fees, witness fees, process service, and UCC searches.
Our local rule 3002-1 applies to all chapters, claims for administrative expenses and reclamation of goods.
"All applications for allowance of administrative expenses in the original chapter 11 case, other than those of a governmental unit...." (BK Local Rule 1019.1)

Table 4

Do any judges in your district have written, chambers-specific policies, guidelines, or forms for requesting payment of administrative expenses? (Please check one)

Response	Count	Percent
Yes, at least one judge has written chambers-specific policies, guidelines, or forms for requesting payment of administrative expenses.	3	4.5%
No.	61	91.0%
I can't say.	3	4.5%

Table 5

Please specify the types of administrative expenses covered by the judge(s)' procedure(s), including the chapter(s) to which such procedures apply:
One judge has a section in his "Research Binder" detailing his decisions on requests for Administrative Expenses.
Bankruptcy Code Section 503; Chapter 11 cases

Table 6

Do any judges in your district have informal (unwritten), chambers-specific procedures for requesting payment of administrative expenses? (Please check one)

Response	Count	Percent
Yes, at least one judge has informal (unwritten), chambers-specific procedures for requesting payment of administrative expenses.	5	7.5%
No.	52	77.6%
I can't say.	10	14.9%

Table 7

To your knowledge, do the procedures for requesting administrative expenses vary among the judges in your district?

Response	Count	Percent
Yes.	2	3.0%
No.	53	80.3%
I can't say.	11	16.7%

Table 8

Please briefly explain how the procedures for requesting administrative expenses differ among the judges in your district:
Bases on the type of expenses (estate property maintenance versus taxes for example), some judges generally notice the application for objections and others generally sign without notice
Judge A requires a 21 day negative notice; Judge B sets motion for hearing and noticed to all creditors.

Table 9

To your knowledge, which of the following statement(s) best reflects your district's experience with how requests for payment of administrative expenses are handled? (Please check all that apply)

Response	Count	Percent
Our district encounters very few difficulties with requests for payment of administrative expenses.	52	74.3%
Our district could benefit from more standardization of our procedures governing requests for payment of administrative expenses.	7	10.0%
Our district could benefit from less standardization of our procedures governing requests for payment of administrative expenses.	0	0.0%
Our district could benefit from more standardization of the forms used to apply for payment of administrative expenses.	8	11.4%
Our district could benefit from less standardization of the forms used to apply for payment of administrative expenses.	1	1.4%
I can't say.	6	8.6%

Table 10

For this table, we aggregated comments according to which answer respondent selected for the question displayed in Table 9. Because that question permitted attorneys to select all responses that applied, some comments appear in multiple categories below.

Please explain your answer:

Clerks who indicated their district encounters few difficulties:
No feedback from chambers or our local Bench-Bar Committee on this issue.
It is the attorney's responsibility to insure that admin. expenses are teed up and filed prior to the confirmation hrg. so that all items can be addressed at that hearing.
Our local rules provide general guidance on this matter.
Most practitioners/trustees have a practical understanding of § 503 and interrelations with plans and various chapters in our district such that § 503(b) hearings do not bog down the dockets.
Such requests are treated and generally filed as separate applications. 21 day objection period is set.
We devised a procedure several years ago which is incorporated into our local rule and works very well.
Usually, at the debtor's request (by motion or as part of the plan), the Court will set a deadline for filing a request for administrative expenses. The Court usually orders that the requests either be filed with the Court or sent to the debtor, depending on the request and the circumstances of the case (size, etc.). This process runs smoothly, and we don't encounter very many (if any) problems with it.
Most of these requests come from experienced trustees or Chapter 11 DIP attorneys. They are generally standard in form and are usually granted without a hearing (although we may do a negative notice for objections and the Judge grants them after no objections are filed)
We just created a new procedure and optional form based on Delaware's. We don't know yet whether it will be successful.
The issue we face (although infrequently) is that some creditors assume that filing an administrative claim will result in immediate payment when in fact an application is needed.
Requests are received and processed with no issues or problems. Guidelines are informal
All requests for payment of administrative expenses are handled through motion practice

Requests for payment of administrative expenses are filed as motions and scheduled on the standard order setting date certain directing the moving party to make service.
Although all judges agreed with this reply, one judge commented that a national rule might be useful in retail cases with a number of 503(b)(9) claimants.
The requests flow through the process with ease.
If problems arise re: administrative fees, they are handled by chambers and the clerk's office is not aware of these issues.
Requests for payment of administrative expenses are made by motion in accordance with our local rules governing motions practice.
Not many are filed. However, uniform procedures or guidelines would be very beneficial for the Clerk's office
In Syracuse requests for payment of administrative expense claims are handled consistent with regular motion practice. Specifically, they are noticed for a hearing (21days notice) and must be served in accordance with Fed. R. Bankr. P 9014 and LBR 9013-1. Matters are considered on a case by case basis. In Utica very few chapter 11 cases are pending so exposure to this issue is necessarily limited.
We rarely receive many of these requests.
Very few are filed.
We very rarely have requests for payment of the types of administrative expenses that this survey covers. On the few occasions when we do the trustee will usually just file a motion to request payment of these expenses such as the taxes incurred in the administration of the estate. The usual motion practice guidelines are followed when these are filed. Since it is a rare occurrence in our court my answers on the scale below will reflect our courts view but I certainly think that for a court that has many requests for the administrative expenses the development of an official form could be helpful
Our existing district-wide procedures and forms have proven sufficient. These expenses are included in any plan for Chapter 11 or Chapter 13 cases. Our District provides court-approved forms for the plan and disclosure statement for these chapters. Local Bankruptcy Rules forms such as Form 2016.2-1 with General Order 2016-2.1A, and Form 2016-2.2 with General Order 2016-2.2A are also available, as applicable, in addition to Forms 9013-1.1 and 9013-1.2 for general motions. Finally, the proof of claim process also addresses these expenses.
Our Court has procedures for Ch 11 and Ch 7 cases, which adequately address the issue
Chambers gives additional instructions when necessary.

Clerks who indicated their district could benefit from more standardization of procedures:
Anytime we can standardize procedures and forms on a national level only helps the bankruptcy bar that practice in multiple districts. Courts may still elect to adopt local practices if necessary.
Perhaps there should be a separate proof of claim form specifically for administrative expenses.
Pursuant to DNJ LBR 3003-2, the filing of a request for payment of administrative expense by local form results in registry of the claim on the claims docket. It does not result in the scheduling of a hearing on the request. A claimant must file a motion to compel payment in accordance with DNJ LBR 9013-1.
Our guidelines are contained in a Procedures Manual. Compliance is spotty and we issue many notices of deficient filing as to administrative expense claim matters.
A nationally standardized procedure would eliminate the difficulties we've witnessed even with our limited experience. A difficulty witnessed includes applications for administrative expenses filed via proofs of claim.
We have local rule and form but national rule and forms would be best
Clerks who indicated their district could benefit from more standardization of forms:
Frequently request for admin. expenses are filed via the proof of claim form and can cause them to be mis-docketed.
Perhaps there should be a separate proof of claim form specifically for administrative expenses.
My response is not really a strong request. Our local rule allows counsel to make an admin. expense claim on a form similar to the proof of claim form. Requesting immediate payment must be pursued by motion. It works fine for us.
By standardization, we would suggest a Director's Form or a District Specific Form that could be used (but is not necessarily mandatory for all districts). This would alleviate an issue we have seen with the filing of requests on Claim Forms.
Our guidelines are contained in a Procedures Manual. Compliance is spotty and we issue many notices of deficient filing as to administrative expense claim matters.
Requests come in either as some form of a pleading or a form similar to a proof of claim. It would be helpful if there was a standard form.
We have local rule and form but national rule and forms would be best

Clerks who indicated their district could benefit from less standardization of forms:
The judges have not expressed any concern or preference with these requests.
Clerks who selected the response "I can't say":
The judges have not expressed any concern or preference with these requests.
It is my belief that if we were encountering difficulties, we would have already taken the steps to correct them. We recently revised/adopted our Local Rules. More than likely we would have addressed it with a new Local Rule.
Handled on a case by case basis
As far as I know, this hasn't been a problem for this district.

Table 11

For each item listed below, please indicate on a 5-point scale the extent to which you believe it is necessary.

	1 Not at all necessary	2	3	4	5 Very necessary	Can't say
National rules to govern how applications for administrative expenses are handled.	32.4% (22)	14.7% (10)	14.7% (10)	22.1% (15)	5.9% (4)	10.3% (7)
Nationally-mandated Official Form(s) for applications for payment of administrative expenses.	37.9% (25)	15.2% (10)	16.7% (11)	13.6% (9)	9.1% (6)	7.6% (5)
Nationally-available Procedural Form(s) for applications for payment of administrative expenses, which districts and attorneys might adapt and use.	16.2% (11)	20.6% (14)	23.5% (16)	25.0% (17)	7.4% (5)	7.4% (5)

If the Bankruptcy Rules Committee were to determine that national rules or forms are necessary for handling payment of administrative expenses, which procedural aspects and which types of expenses would be most important to cover? (See Bankruptcy Code sections 503, 348, and Bankruptcy Rule 1019(6)). (Please check all that apply and provide any additional explanation that might help the Committee in its work.)

Table 12

Procedural Aspects

Response	Count	Percent
Time frame for filing	41	58.6%
Manner of filing (e.g., motion, application)	46	65.7%
Form of filing	30	42.9%
Place of filing (e.g., claims register, docket)	37	52.9%
Noticing requirements	49	70.0%
Hearing opportunities (e.g., negative notice)	45	64.3%
Other (please specify)	3	4.3%

Table 13

Additional Suggestions and Explanation on Procedural Aspects:
While the procedures are contained in the Code/Rules in some form, it seems more useful if this information could be contained in a single place, i.e. such as a standard form containing instructions for filing and include code/rule references.
To our knowledge, procedures relating to payment of administrative expenses are not an issue in our court.
Would be most effective to invite input from the UST and US Atty (re tax claims)
The Court does not believe that any such national rules or forms are necessary and, therefore, does not believe it is important to create a national standard for these procedural aspects. Courts with relatively few Ch. 11 cases should retain flexibility and discretion in these areas. Courts with a high volume of Ch. 11 cases (which we believe are relatively few courts) can adopt their own

rules/procedures if they deem it necessary.

For most administrative expenses, we don't have any issues, but it would be helpful to have guidance on the claims of 7 trustees when a case is converted. Our judges are consistent with these and they are noticed with opportunity for hearing, but more specific guidance on these would be helpful to our staff attorneys and operations staff

The majority of our judges responded that there is not a need for a national rule and/or forms.

All beneficial for instructional purposes.

Clarifications needed regarding the noticing requirement for administrative fees applications. We get numerous telephone calls from attorneys asking if a 14 day or 21 day notice is required.

To the extent the application pertains to an expense incurred in the ordinary course of business, there should be notice and the opportunity for a hearing with an objection deadline. Only if an objection is filed should a hearing be conducted, otherwise the expense should be paid without a hearing or order of the court.

While existing procedures for payment of administrative expenses have not presented a difficulty in our District, we are in the process of developing new forms with regard to Chapter 11 individual debtors. This approach may be useful on a national level as well.

Table 14

Types of Expenses (Please check all that apply and provide any additional explanation below)

Response	Count	Percent
Administrative expenses in Chapter 7 cases	40	57.1%
Administrative expenses in Chapter 11 cases	48	68.6%
Administrative expenses in Chapter 12 cases	32	45.7%
Administrative expenses in Chapter 13 cases	30	42.9%
Claims of Chapter 7 trustees when a case is converted from a Chapter 7 to a Chapter 11, 12, or 13	33	47.1%
Taxes incurred in the administration of the estate	34	48.6%
Payment to suppliers that delivered goods to the debtor within 20 days before the petition	31	44.3%
Payments for goods and services furnished in the ordinary course of business in a Chapter 11 case prior to conversion to Chapter 7	40	57.1%
Expenses incurred by a creditor for the benefit of the estate	34	48.6%
Other (please specify)	6	8.6%

Table 15

Additional Suggestions and Explanation on Types of Expenses:
I think if it's decided to go the route of rules and/or forms they should apply to an administrative expense claim. Period.
If rules or forms were to be adopted, general application to all types of administrative expenses would be sufficient
these are the ones we encounter most frequently - I see value in addressing all categories, though
Perhaps national guidelines would be most appropriate for filing and allowance of reclamation claims. Little, or no, national assistance is needed on other administrative expense areas.
Because we do not currently have difficulties with applications for administrative expenses, it is hard to determine the type of expenses would benefits from national rules/forms.
Administrative expenses are often part of the Order Confirming Plan in Chapter

13 cases.

Types of Expenses: NA – existing procedures address all of the above.

Table 16

Please use this space to provide any other comments you may have about procedures governing the payment of administrative expenses.

The need for nationally-adopted rules or forms for the payment of administrative expenses is not generally perceived in this district to be a problem in need of a solution. The Bankruptcy Code and the general rules governing motion practice and evidentiary standards are adequate to address the issue.

This is an area of great confusion for many practitioners and clerk's offices. As more attorneys develop multi-district practices, having uniformity nationwide would be very helpful.

Please see the Court's comments for question #11.

Staff are thrilled we might get some national guidance in this area!

Please be advised that we only get about two or three of these a year.

Judges currently have the ability to rule quickly when they deem it appropriate (e.g. an estate matter such as an application to pay an auctioneer whose employment was approved and the dollar amount is not significant), to set the application for hearing in a big ch. 11, or to notice the opportunity for hearing or response. This flexibility has worked well.

I wonder if this survey shouldn't also be directed at trustees. It seems that they might be better able to answer these questions. Because we are not experiencing problems with these types of applications, the survey doesn't make a whole lot of sense. Unless of course, other districts are experiencing difficulties with them.

Indiana Northern has a low volume of administrative expense applications. A copy of local rule B-2002-2 has been sent by email.

N/A

I notice that the survey uses the words "Application" for administrative expenses. We prefer the word "Motion" in this district. We are trying to get away from the word "Application", which is obsolete. The noticing procedures for granting an "Application" are the same as for a "motion", we we like the uniformity of the word "motion". We don't turn down "applications", but when possible, we try to discourage the use of that term.

None