

**TESTIMONY OF THE HONORABLE ALAN C. STOUT,  
UNITED STATES BANKRUPTCY JUDGE  
FOR THE WESTERN DISTRICT OF KENTUCKY**

**BEFORE THE HOUSE JUDICIARY COMMITTEE**

**SUBCOMMITTEE ON REGULATORY REFORM,  
COMMERCIAL AND ANTITRUST LAW**

**HEARING ON CHAPTER 7 BANKRUPTCY TRUSTEE  
COMPENSATION AND H.R. 3553, THE "BANKRUPTCY  
ADMINISTRATION IMPROVEMENT ACT OF 2018"**

**SEPTEMBER 26, 2018**

Chairman Marino, Ranking Member Cicilline and members of the Subcommittee, I am Alan C. Stout, United States Bankruptcy Judge for the Western District of Kentucky. Let me preface my remarks here today to say that I am here testifying on my own behalf as a Judge and these comments reflect my own opinions. I do not represent other members of the Judiciary, The Judicial Council, The Administrative Office of the Courts (AOC) or the National Conference of Bankruptcy Judges (NCBJ) here today.

Prior to being appointed to the bench in 2011, I was a bankruptcy practitioner for 30 years, primarily representing consumer debtors. I also served as a chapter 7 panel trustee for 25 years. Based upon my prior practical experience along with my time in the Judiciary, I feel I have a unique perspective to provide testimony in support of the need to increase the compensation of chapter 7 bankruptcy trustees by \$60. Trustees currently receive \$60 for each “no-asset” case they administer. This amount has been fixed and unchanged since 1994. Yet the responsibilities of trustees have increased substantially over this period of time, especially since adoption of Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) in 2005.

One way to fund the much needed increase is to simply raise the chapter 7 filing fee by the \$60 amount.

With this increase, chapter 7 trustees would then receive a total of \$120 per case. A modest increase in the cost to file a bankruptcy is not unreasonable given the benefits incurred by a debtor in receiving a bankruptcy discharge. Indeed the proposed increase would merely account for inflation over the past 24 years. I support passage of H.R. 3553, the “Bankruptcy Administration Improvement Act of 2018.”

Bankruptcy confers great relief and provides a safety net for individuals in financial distress. Indeed, one of the basic tenants of bankruptcy is to provide a “fresh start” to honest but unfortunate debtors. Some of the most common reasons for consumer bankruptcies are medical bills, unemployment, under employment, or home foreclosures.

It is critical to note that the discretion of judges to waive the bankruptcy filing fee in its entirety is fully maintained in the proposed legislation. Fee waivers may be granted in cases where the debtor’s income is less than 150% of the poverty guidelines. The procedure for seeking waiver of the case filing fee is referred to as “In Forma Pauperis.” In fact, fee waivers were granted in about 4.5% of the chapter 7 cases nationwide in FY 2017. The percentage of fee waivers has trended upward in the past decade. Many of the cases where a fee waiver is granted, the debtors are “pro se” which means they are representing themselves without an attorney. Often these cases take up more of the court’s and trustee’s

time, yet the chapter 7 trustee receives nothing for administering the case.

In addition to fee waivers, as an accommodation to debtors, courts routinely allow payment of the filing fee in installments. Thus, if the filing fee is increased, payment of the fee over a period of time will lessen the burden on debtors.

It is also important to note that the proposed legislation will be at no cost to the government or the taxpayers.

I am grateful for the opportunity to testify in support of the proposed increased trustee compensation which is equitable given all the duties and responsibilities imposed upon trustees. Over the course of my career as a chapter 7 trustee, I administered over 11,000 bankruptcy cases. As a bankruptcy lawyer, I was involved with about 3,000 cases, usually representing debtors. As a bankruptcy judge, I have presided over chapter 7 cases for almost seven years. I am acutely aware of the critical role that chapter 7 trustees play in maintaining the efficiency and integrity of the bankruptcy system.

Chapter 7 trustees are at the heart of the bankruptcy system. Most individuals who file for bankruptcy relief never appear before a judge in bankruptcy court. Their sole official appearance is in front of the bankruptcy trustee at the 341 meeting of creditors which is presided over by the trustee. The trustee is the “face” of bankruptcy for most debtors. The trustee assigned to a bankruptcy case performs almost all of the work necessary for the administration of the case, including reviewing the debtor’s sworn schedules, the claimed exemptions, and the debtor’s statement of financial affairs.

In 2005, additional duties were imposed on trustees with the adoption of The Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). The following are among the additional duties that were mandated on trustees: the trustee must ensure that the debtor has correctly stated his intention regarding encumbered property; ensure that the debtor has filed all appropriate tax returns; review the most recent tax returns, pay statements and bank statements; provide notices to holders of domestic support obligation that the debtor has filed bankruptcy; and makes sure that the debtor qualifies under the means test for chapter 7 relief, among other responsibilities as provided by law.

In health care bankruptcies, trustees also have obligations to transfer patients from facilities that are being closed and to safeguard patient privacy and sensitive healthcare records. The trustee also must be vigilant and investigate any misconduct by the debtor, including the hiding or transferring of assets in contemplation of the bankruptcy filing. Debtor misconduct, including criminal activity, must be reported to the United States Trustee for possible referral to the appropriate United States Attorney.

This work, which often takes more than an hour per case, even in the simplest of cases, is undertaken for just \$60. Additionally, in the many cases where the bankruptcy judge waives the filing fee for indigent individuals, the trustee works for free.

Compensation is periodically increased for a host of others involved in our legal system including debtor's counsel, court appointed lawyers, and even judges. The trustee fee of \$60 has been frozen for over 24 years - it needs to be increased for the good of the bankruptcy system.

Thank you.

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