

STATEMENT OF MARGARET DEE MCGARITY
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Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
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I would like to thank the members and staff for allowing me to address this subcommittee on the issue of the current antiquated level of trustee compensation. I wholeheartedly support just compensation for the men and women who are a vital part of the bankruptcy system, and I am here at my own expense because of my commitment to the court system I work for.

My name is Margaret Dee McGarity. I am the chief judge of the United States Bankruptcy Court for the Eastern District of Wisconsin. I have been a bankruptcy judge for slightly over twenty years, and before that I practiced law in Milwaukee, which included serving as a chapter 7 trustee in bankruptcy, the first time in January of 1978 under the former Bankruptcy Act.

Thirty years ago, trustees received \$10 per case. However, all that was necessary to be a trustee was a legal pad, a telephone, and the federal building law library. There were no audits, no U.S. Trustee meetings, no means test analysis, no mandatory electronic filing, no PACER court records access, and no notices to special claimants. Someone from the clerk's office ran the tape recorder at meetings of creditors. There was no specialized overhead, no unproductive time of significance. Other trustees in my district were experienced and generous with their knowledge and expertise. My best research tool was my telephone.

My experience as a trustee has no resemblance to what it means to be a trustee today. Offices require regular updates of hardware and software to manage their cases and to interface with the court system. This is the electronic age - we can't go back, and I am not suggesting we do. There is additional oversight now, with reports and audits - accountability is good, but it is not compensable. The 2005 Act requires additional duties for trustees, such as notifying domestic support obligation claimants about state agency services. These duties not only have nothing to do with the bankruptcy or adjudicative process, they are not compensated. They should be, but not at the expense of the courts.

The trustees I worked with long ago were at the top of our profession. Many are today. But as time has gone on, these experienced trustees have often told me, "I can't afford to do this anymore." With the changes in technology and the law since 1994, no one should be surprised at this. I have heard that nontrustee law practice, or other business for nonlawyer trustees, has had to support the trustee portion of the business. They can do this for a while, and they do because there are many very dedicated trustees who enjoy the work and believe it is valuable. Many experienced trustees are still working in the system, and the courts and creditors depend on them, but this situation cannot continue.

What happens when service to the courts becomes so unproductive that a good attorney or accountant reluctantly gives it up for more lucrative pursuits? Sometimes unfortunately, people who can't make more money at other pursuits move in to fill the void in trustee positions. Or if the trustees don't quit, more energy is spent on whatever makes money, and the trustee duties move to the back burner. Recently I received a letter from a wage claimant of a defunct corporation, who told me that the trustee was not answering phone calls. She had waited two years for wages owed by the former employer. I do not know what this trustee must do to administer this case, but I do understand that the trustee is more motivated to work on something that will pay the bills, as opposed to the trustee work that doesn't, but it causes work for the courts, and the legitimacy of the system in the eyes of the public suffers.

Bankruptcy is the only exposure many ordinary people have to the federal justice system. The trustees are on the front lines of contact with creditors and debtors. Failure to provide just compensation for those who represent the system means that dedicated trustees may prop up the system for a while, but soon only the mediocre - and worse - will work for us. This is not what I want for a system of justice that I have served for my entire career.

The current proposal is that filing fees will fund the increase in trustee compensation. But what about the 2005 provision for waiver of the fee? The trustee still has all of the duties prescribed by statute, but he or she is required to work for nothing. We do not do that to attorneys for the indigent accused, and we do not do that to jurors. But we do it to bankruptcy trustees. This is deplorable treatment of people who render a very valuable service to the courts and to creditors, and who are the face of the federal government to many citizens who have no other exposure to the courts.

I urge you to recognize the importance of bankruptcy trustees to the court system and to modify their compensation so talented, skilled, and experienced individuals will continue to serve it and make it work.

Thank you for your kind attention and consideration. I would be happy to answer any questions the subcommittee might have.