

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA

In re:  
ROSALYN CARROLL WYCHE,  
Debtor.

Case No. A09-00542-DMD  
Chapter 7

Filed On  
8/14/09

**MEMORANDUM ON MOTION FOR RECONSIDERATION**

The debtor has filed a motion for reconsideration of this court's order denying her request for waiver of the filing fee. She asks the court to again look at the financial income she has provided, because she contends her monthly income does not exceed the sum of \$4,031.25, the applicable poverty level guideline for a family of five. I have taken a second look at the debtor's motion for waiver of the fee application and her Schedules, and conclude that I cannot grant her request.

The debtor's Schedule I states that she is a self-employed hairdresser. Based upon the information listed on Schedule I,<sup>1</sup> the debtor's regular income from operation of her business is \$11,661.04 per month. The debtor also receives \$1,800.00 from real property and \$658.75 in tuition per month. Line 16 on Schedule J lists "combined average monthly income" of \$14,119.79. The debtor's Schedule J itemizes monthly expenses totaling \$11,300.57.<sup>2</sup> The net monthly income amount reflected, \$2,819.22, is the remainder *after* expenses.

The bankruptcy court's ability to waive a chapter 7 debtor's filing fee is very limited. The court can only waive the fee as permitted by statute, 28 U.S.C. § 1930(f)(1). Section 1930(f)(1) provides:

(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has

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<sup>1</sup> See Sched. I, filed Aug. 3, 2009 (Docket No. 1-2), at p. 19.

<sup>2</sup> See Sched. J, filed Aug. 3, 2009 (Docket No. 1-2), at p. 20.

income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved *and* is unable to pay that fee in installments.<sup>3</sup>

In other words, there are two conditions that a chapter 7 debtor must satisfy to qualify for a fee waiver: 1) the debtor has income less than applicable poverty guideline amounts and 2) the debtor is not able to pay the fee in installments. And the court must apply procedures established by the Judicial Conference of the United States to evaluate whether a debtor qualifies for the waiver. The Judicial Conference has specified that the amount a debtor lists on Line 16 of Schedule I is the figure the court must use to determine whether a debtor's income is below the applicable poverty level guideline.<sup>4</sup> In this case, that number is \$14,119.79, well in excess of the applicable poverty guideline amount.

Even assuming the debtor's monthly income were less than \$4,000.00, as is stated in her motion for reconsideration, she still would not qualify for the waiver. The second condition that must be met to qualify for a fee waiver is that the debtor doesn't have the ability to pay the fee in installments. The debtor's Schedule B indicates that she has \$1,150.00 in a checking account and \$150.00 in savings.<sup>5</sup> Given these numbers, it appears she has the ability to pay the fee in installments.

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<sup>3</sup> 28 U.S.C. § 1930(f)(1) (emphasis added).

<sup>4</sup> The guidelines state: "The income for comparison to the poverty guidelines is the 'Total Combined Monthly Income' as reported (or as will be reported) on Line 16 of Schedule I." See Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, promulgated Aug. 11, 2005, located at: <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html> (visited Aug. 14, 2009). A copy of this page is attached.

<sup>5</sup> See Sched. B, ¶ 2, filed Aug. 3, 2009 (Docket No. 1-2), at p. 4.

The court is required to follow the statute which allows a fee waiver in chapter 7 cases. The waiver can only be granted to an individual debtor who satisfies two conditions: the debtor's income is less than the applicable poverty level guideline *and* the debtor doesn't have the ability to pay the fee in installments. Both conditions must be satisfied. They are not in this case. Under the circumstances, the best the court can offer the debtor is the ability to pay the filing fee in installments. The statute provides no other alternative.

For the foregoing reasons, the debtor's motion for reconsideration will be denied. An order will be entered accordingly.

DATED: August 14, 2009

BY THE COURT

/s/ Donald MacDonald IV  
DONALD MacDONALD IV  
United States Bankruptcy Judge

Serve: R. Wyche, Pro Se Debtor  
L. Compton, Trustee  
U. S. Trustee  
Case Manager

08/14/09



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### Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Promulgated August 11, 2005

The Judicial Conference of the United States promulgates these interim procedures to assist district courts and bankruptcy courts with implementing the fee waiver provisions set forth in Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8, 199 Stat. 23), and codified at 28 U.S.C. § 1930(f)(1-3).

#### I. The Filing Fee Waiver Application and Initiation of the Chapter 7 Case

**A.** In lieu of paying the filing fee or filing an installment application, an individual chapter 7 debtor may file an application for waiver of the filing fee along with the bankruptcy petition. The application must conform substantially to Official Form 3B. [\(1\)](#) A defective or otherwise deficient filing fee waiver application should be processed according to the court's standard operating procedures for processing defective or otherwise deficient pleadings and papers.

**B.** When a chapter 7 petition in an individual debtor case is accompanied by a filing fee waiver application, the court should initiate and process the case in the same manner as other individual chapter 7 cases.

#### II. Judicial Determination of Filing Fee Waiver Applications

##### A. Standard of Eligibility

1. The district court or the bankruptcy court may waive the chapter 7 filing fee for an individual debtor who: (a) has income less than 150 percent of the poverty guidelines last published by the United States Department of Health and Human Services (DHHS) applicable to a family of the size involved; [\(2\)](#) and (b) is unable to pay that fee in installments.

2. The DHHS guidelines defines poverty guidelines separately for: (a) the 48 contiguous states and the District of Columbia; (b) Alaska; and (c) Hawaii. It does not define guidelines for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. For these areas, the guidelines for the 48 contiguous states and the District of Columbia should be used. The Administrative Office of the United States Courts will post the last published guidelines and the 150 percent comparison levels on the J-Net.

3. The income for comparison to the poverty guidelines is the "Total Combined Monthly Income" as reported (or as will be reported) on Line 16 of Schedule I. Non-cash governmental assistance (such as food stamps or housing subsidies) is not included. [\(3\)](#) The income of a spouse is included whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. The income of any other family member listed on Schedule I as a dependent also is included.

4. "Family size" is defined as the debtor(s), the debtor's spouse (unless the spouses are separated and a joint petition is not being filed), and any dependents listed on Schedule I. [\(4\)](#)

5. The district court or the bankruptcy court should consider the totality of the circumstances in determining whether the debtor is unable to pay the fee in installments as provided for in amended Section 1930(f)(1) of title 28, United States Code. Official Form 3B elicits information relevant to this determination. A debtor is not disqualified for a waiver of the filing fee solely because the debtor has paid (or promised to pay) a bankruptcy attorney, bankruptcy petition preparer, or debt relief agency in connection with the filing. [\(5\)](#)

6. In any determination regarding a filing fee waiver application, the debtor has the burden of showing that the application should be granted.

### **B. Initial Court Procedures**

1. The court should promptly determine whether the application should be granted, denied, or set for early hearing, on notice to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor. The order should be transmitted to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor.

2. Any order denying a filing fee waiver application should give the debtor a reasonable time (generally, 10 days) in which either to pay the fee in full or begin making installment payments. An order denying the fee waiver application should set forth an installment payment schedule to eliminate supplemental work for the clerk's office. It also should advise the debtor that failure to pay the fee or make timely installment payments may lead to dismissal of the case. A standard order is included with the Official Form.

3. If a debtor files an application to pay the filing fee in installments and later applies for a waiver of the filing fee, the court may waive any unpaid balance of the filing fee, if the circumstances so warrant.

4. If a case is converted from chapter 13 to chapter 7, the court may waive any unpaid balance on the filing fee, if the circumstances described in II. A. are present. Note that Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 defines "filing fee" to include any fee prescribed by the Judicial Conference under 28 U.S.C. § 1930 (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7, and therefore includes the \$15 chapter 7 trustee fee in the miscellaneous fee schedule.

### **III. Developments in the Chapter 7 Case**

**A.** If the filing fee of an individual chapter 7 debtor is waived and that debtor's case is later converted to a case under chapter 13, the debtor must pay the full chapter 13 filing fee. The conversion order should give the debtor a reasonable time (generally, 10 days) in which either to pay the fee in full or begin making installment payments.

**B.** The court may vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver was unwarranted. See Fed. R. Bankr. P. 9023 and 9024; section 105(a) of the

Bankruptcy Code.

#### IV. Waiver of Additional Fees Under 28 U.S.C. §§ 1930(b) and (c)

Other fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived in the discretion of the bankruptcy court or district court for individual debtors whose filing fee has been waived.

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<sup>1</sup> In its Interim Rule package responding to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Advisory Committee on Bankruptcy Rules amended Bankruptcy Rule 1006 to add a new subdivision (c), which sets forth the following basic procedure for filing an application for waiver of the filing fee.

**(c) Waiver of filing fee.** A voluntary petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.

<sup>2</sup> The statute provides, in part, that the court may waive the filing fee "if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved ...." These procedures interpret this statutory language to refer to the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). The phrase "*income official poverty line as defined by the Office of Management and Budget*" refers to the poverty thresholds set by the Census Bureau. OMB has never issued poverty thresholds or guidelines, but in August 1969, the Bureau of the Budget (the predecessor of OMB) did issue a document designating the Census Bureau poverty thresholds as the federal government's official statistical definition of poverty. *Section 673(2) of the Omnibus Budget Reconciliation Act of 1981* (codified in 42 U.S.C. § 9902(2)) requires the Secretary of Health and Human Services to update the poverty guidelines annually. The thresholds are mentioned in that legislative section because they are the starting point from which the poverty guidelines are calculated. The Bureau of Census poverty thresholds are typically used for statistical purposes whereas the DHHS poverty guidelines are used administratively to determine program eligibility.

<sup>3</sup>The DHHS does not publish a standard definition of income, leaving the determination of that definition to individual program administrators. Some programs use before-tax income and others use after-tax income. These procedures adopt the definition that is reasonable for the bankruptcy context.

<sup>4</sup> Similarly, the DHHS does not publish a standard definition of "family unit," so these JCUS procedures adopt a definition that is reasonable for the bankruptcy context.

<sup>5</sup> In its Interim Rule package responding to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Advisory Committee on Bankruptcy Rules amended Fed. R. Bankr. P. 1006(b)(1) to delete the sentence requiring a statement in the installment fee application that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver. If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. Deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver. The Advisory Committee also amended

Fed. R. Bankr. P 1006(b)(3) to conform with the changes to Fed. R. Bankr. P 1006(b)(1). The change is meant to clarify that subdivision (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, that subdivision may conflict with the intent and effect of the amendments to subdivision (b)(1). In the installment application, debtors must certify they will not make additional payment or transfer any additional property to an attorney or other person for services in connection with the case until the filing fee is paid in full.

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