

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: KAREN LEE KING, Debtor

**No. 5:07-bk-72115
Ch. 7**

ORDER

Before the Court is the Application For Waiver of the Chapter 7 Filing Fee filed by the debtor on July 10, 2007, and the Objection to Application to Proceed *In Forma Pauperis* filed by the chapter 7 trustee on July 11, 2007. The gravamen of the trustee's objection is that the debtor paid \$300.00 to her attorney, which, according to the trustee, indicates the debtor had disposable income at the time of filing with which to pay the filing fee. The Court heard the debtor's application and the trustee's objection on August 14, 2007. At the conclusion of the testimony, the Court took the matter under advisement. For the reasons stated below, the Court grants the debtor's application and overrules the trustee's objection.

Prior to the enactment of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [BAPCPA], an individual debtor could only make an application to the court for permission to pay the filing fee in installments. According to the Supreme Court, a waiver of the filing fee was not permitted. *United States v. Kras*, 409 U.S. 434 (1973) (finding that the filing of a bankruptcy petition was not a fundamental right that required a compelling governmental interest prior to regulation and that there is no constitutional right to obtain a discharge of debts; bankruptcy is a legislatively created benefit). In declining to extend *in forma pauperis* relief to indigent debtors, the Court stated in the last sentence of its opinion that "[t]hat relief, if it is to be forthcoming, should originate with Congress." *Id.* at 450. This has been the law since *Kras* was decided in 1973, and remained the law until BAPCPA was enacted on October 17, 2005, when Congress accepted the Court's invitation.

Simply put, an *in forma pauperis* petition is no longer prohibited in bankruptcy. Congress effectively overruled *Kras* by adding subsection (f) to 28 U.S.C. § 1930. Now, a

bankruptcy court may waive the filing fee for an individual in a chapter 7 case “if the court determines that such individual has 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.” 28 U.S.C. § 1930(f)(1). Four conditions must be met: (1) the debtor must be an individual, (2) the petition must be a chapter 7 petition, (3) the debtor’s income must be less than 150 percent of the income official poverty line, and (4) the debtor must be unable to pay the filing fee in installments. The statute clearly vests the bankruptcy court with the discretion to waive the filing fee if these conditions are met.

In this case, the debtor is an individual who filed a chapter 7 petition. Thus, the first two elements are met. Additionally, the parties stipulated at trial that the debtor’s income is less than 150% of the income official poverty line, as required by the statute. The only issue before the Court is whether the debtor is unable to pay the filing fee in installments. In making this determination, interim procedures adopted by the Judicial Conference of the United States specifically provide:

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.¹

The determination of the debtor’s ability to pay the filing fee in installments (the fourth element) must be made on a case by case basis under a totality of the circumstances standard.

The debtor testified that prior to contacting her present attorney, she contacted the local legal aid group for pro bono assistance. The group provided her with information about filing a petition, but was unable to assist her with filing a petition. She then contacted her

¹ <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html>

present attorney and paid her \$300.00 when they first met (\$240.00 that she had saved and \$60.00 that she received from her daughter). She testified that her only source of income is a monthly Social Security check in the amount of \$949.00, out of which she pays \$405.00 for rent. According to her Schedule J - Current Expenditures of Individual Debtor, which is attached to her application for waiver, she has average monthly expenses totaling \$1183.00, including \$405.00 for rent, \$200.00 for food, \$230.00 for automobile payment, \$93.00 for automobile insurance, and \$180.00 for utilities. She also testified that she needed her car to make trips to Ozark Guidance Center to visit her case manager and to take her 45 year old mentally impaired daughter to Little Rock occasionally for treatment. The debtor is currently on a waiting list for government assisted housing.

Based on the debtor's testimony and the information included with her application for waiver of the filing fee [Official Form B3B], under a totality of the circumstances standard, the Court finds that the debtor is unable to pay the filing fee in installments. Because the other elements for fee waiver are met, the waiver of the chapter 7 filing fee is warranted.

For the above reasons, the Court grants the debtor's application for waiver of the chapter 7 filing fee and overrules the trustee's objection to the application. This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

IT IS SO ORDERED.

August 29, 2007

DATE



BEN T. BARRY

UNITED STATES BANKRUPTCY JUDGE

cc: Donna Phillips
William M. Clark Jr.
United States Trustee