

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE:

DIANE KARP

CASE NO. 13-52293

DEBTOR

ORDER

This matter is before the Court on the Application for Waiver of the Chapter 7 Filing Fee for Individuals Who Cannot Pay the Filing Fee in Full or in Installments [Doc. 5] (the “Application”), which came on for hearing November 21, 2013. Subsequent to the hearing, the Debtor filed the Supplement to the Record in Support of Debtor’s Motion to Waive Filing Fee [Doc. 23] (the “Supplement”).

A party commencing a bankruptcy case must pay a filing fee. 11 U.S.C. § 1930(a). In the right circumstances, a party may seek to pay the filing fee in installments, *id.*, or may request a waiver of the fee in a chapter 7 case, 11 U.S.C. § 1930(f)(1). Subsection (f)(1) provides in part:

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 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 and is unable to pay that fee in installments.

Id.

Section 1930(f) is a two-part test. The debtor must satisfy the income condition and then the debtor must not have the ability to pay the filing fee in installments. The information in the record is sufficient to confirm the Debtor qualifies for waiver under the § 1930(f)(1) income criteria. Therefore, it is necessary to determine if the Debtor still could pay the filing fee in installments.

The few courts that have performed this analysis look at the totality of the circumstances. *See* Supplement, p. 3, *citing In re Johnson*, Case No. 06-02555, 2006 Bankr. LEXIS 4279, *3 (Bankr. M.D. Tenn., Oct. 4, 2006); *see also In re Stickney*, 370 B.R. 31, 40 (Bankr. N.H. 2007). The Supplement and cases point the court to instructive, but not binding¹, Guidelines issued by the Judicial Conference of the United States that confirm a “bankruptcy court should consider the totality of the circumstances in determining whether the debtor is unable to pay the fee in installments.”²

The court in *Stickney* lists seven factors a bankruptcy court may consider when evaluating the totality of the circumstances for a waiver request. The issue that gives pause in this case is the fact that the Debtor paid \$1,000 in fees to legal counsel. *See* Disclosure of Compensation of Attorney for Debtor. Counsel argues that this fee is reduced from its standard rates and that prohibiting fees would have a chilling effect on representation leading to more pro se debtors. Supplement, pp. 2-3. Both are legitimate arguments. *See, e.g., Stickney*, 370 B.R. at 44 (payment of lawyer does not preclude waiver of the fee); *Johnson*, 2006 Bankr. LEXIS 4279 at *2 (same, quoting the Judicial Conference Guidelines).

¹ *See Stickney*, 370 B.R. at 41.

² *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 August 11, 2005) § II.A.5, available at <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html>.

It is also reasonable to expect a debtor that takes advantage of the federal bankruptcy system to pay a fee for that privilege. It is known that some courts apply a blanket rule denying any waiver request if the debtor's lawyer receives a fee. Other courts find value and do not count this fact against a debtor. Still others might consider this issue, but do not apply a blanket prohibition. A case by case analysis required by a totality of the circumstances review favors the last option.

The facts of this case weigh against granting the waiver request. In this case, the Debtor's counsel indicates the \$1,000 fee is less than his firm usually charges for similar matters. That is accepted as true, but fees around this amount are not uncommon in chapter 7 proceedings in this District. The Court has also granted many fee waivers with no (or reduced) legal fees. The lack of any previous order of this nature in this District suggests that more lawyers than not charge no or a reduced fee when a waiver request is made.

Counsel also argues that the majority of its fee was paid by a relative. Apparently, counsel believes that it is okay to find a way to pay its fees at the expense of the bankruptcy court system. This self serving attitude may find justification in the free market, but it weighs against counsel's client when evaluating the totality of the circumstances.

It is hard to accept the argument that failure to allow the fee in this case will "de-incentivize" bankruptcy attorneys from helping out indigent debtors. Supplement, p. 3. As provided, the Court has entered many fee waiver orders with no (or substantially reduced) legal fees. Further, this statement from a firm with a long history serving debtors in this Court is baffling. It is not unreasonable to expect both lawyers and the system to assist a deserving debtor.³

³ The Court cannot force a lawyer to take pro bono or reduced fee cases, but that does not mean it is not something that is anticipated based on past history or experience. Even if a negative ruling will "de-incentivize" this firm, it is

It is appropriate to evaluate a request for waiver on the totality of the circumstances. This analysis does not justify a blanket denial of all requests where a lawyer is paid a fee. This is true even if the fee is a standard rate for the lawyer or the local market. However, a debtor may have difficulty convincing the Court that the totality of the circumstances merit waiver of the filing fee when legal counsel is not sharing in the cost of assisting an indigent debtor to the same level as the bankruptcy court system.

Therefore, in this case and on these facts, the Application is DENIED. The Court will consider a request for payment in installments or an adjusted request that addresses the concerns raised herein.

hard to accept that the lawyers in this District who have historically assisted indigent clients with no (or substantially reduced) legal fees will suddenly stop that practice.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Gregory R. Schaaf**  
**Bankruptcy Judge**  
**Dated: Monday, December 02, 2013**  
**(grs)**