

The Bankruptcy Court Gives Some Debtors a Break on Fees

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For those of you who do not practice in the bankruptcy area, you may not know that the bankruptcy court is required to charge a filing fee when a debtor files for bankruptcy. In keeping with the theme of this month's *Paraclete*, pro bono work, we wanted to provide some insight into the pertinent federal statutes, requiring the bankruptcy filing fee to be charged and authorizing the bankruptcy court to waive the filing fee in certain instances, which may present themselves when you are representing a debtor pro bono. This article is intended to be illustrative only, and not an exclusive list of all permissible fees to be waived.

Rule 1006(a) of the Federal Rules of Bankruptcy Procedure requires that every bankruptcy petition be accompanied by a pre-determined bankruptcy filing fee, with limited exceptions. These filing fees are set forth in the United States Code, 28 U.S.C. § 1930(a)-(b), and vary depending on the chapter of relief sought under the Bankruptcy Code.

An individual debtor may file with his or her bankruptcy petition an application to pay the filing fee in installments, pursuant to Rule 1006(b) of the Federal Rules of Bankruptcy Procedure. The application must be signed by the debtor and assert that the debtor is unable to pay the filing fee except in installments. Prior to the 341 Meeting of Creditors, scheduled approximately thirty to forty days after the bankruptcy petition is filed, the bankruptcy court will review the application and make its determination. Upon its review of the application, either the bankruptcy court will order that the filing fee be paid in full to the clerk or the bankruptcy court will grant the debtor leave to pay the filing fee in installments. If the bankruptcy court allows the debtor to make installment payments, the bankruptcy court will set forth the number of installments to be made, not to exceed four, the amount of each installment, and the date for each installment to be made. The final installment may not be paid later than 120 days after the filing of the petition, unless cause is shown, in which case, the bankruptcy court may order that the final installment be paid no later than 180 days after the filing of the petition. *See*, Fed. R. Bankr. P. 1006(b)(1)-(2).

Alternatively, an individual debtor, filing for chapter 7 relief, may file with his or her bankruptcy petition an application requesting a complete waiver of the filing fee, pursuant to 28 U.S.C. § 1930(f). *See*, Fed. R. Bankr. P. 1006(c). Section 1930(f)(1) of title 28 states that the bankruptcy court may waive the filing fee altogether if it is determined by the court that the debtor is unable to pay the filing fee in installments and has an income of less than 150 percent of the income official poverty line, as defined by the U.S. Government's Office of Management and Budget, with respect to the family size involved. *See*, 28 U.S.C. § 1930(f).

In conclusion, despite the fact that many people are surprised to learn that it costs money to file bankruptcy, it is important to recognize that the bankruptcy court has the ability to waive the bankruptcy filing fee in special circumstances for those individuals truly in need.

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