

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: BETH WIGGINS AND FORMS SUBCOMMITTEE
RE: APPLICATION FOR WAIVER OF CHAPTER 7 FILING FEE
DATE: JULY 24, 2005

Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (codified at 28 U.S.C. § 1930(f)(1-3)) provides that under procedures prescribed by the Judicial Conference of the United States, the district court or bankruptcy court may waive the filing fee in a case under chapter 7 for an individual “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.”

To implement this provision, the Consumer Subcommittee proposes to amend Bankruptcy Rule 1006 to add a new subdivision (c).

(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.

And, in turn, the Forms Subcommittee developed new Official Form 3B as the fee waiver application. In doing so, it relied heavily on the application used in the Chapter 7 Filing Fee Waiver Pilot Program, which was operative from 10/1/94 through 9/30/97. The draft official form is somewhat simpler, however, in response to what was learned in the pilot program and other considerations.

The Committee on the Administration of the Bankruptcy System is developing interim procedures for implementing the filing fee waiver provision and plans to forward the procedures

to the Executive Committee for expedited consideration. Official Form 3B was drafted so as to implement and be consistent with the current draft of those procedures. It is possible that the Bankruptcy Administration Committee will revise the procedures between now and the August 3-4 meeting, which could necessitate changes to the draft official form. An oral report on any such changes will be given at the meeting. (The most current draft of the procedures will be distributed at the August 3, 2005, meeting.)

The draft official form elicits information about income and family size that the court will need to determine whether an individual has income less than 150 percent of the official poverty line, and elicits additional information relevant to whether the debtor is unable to pay the fee in installments.

The Forms Subcommittee tried to strike a balance between (1) giving debtors who seek a waiver of the filing fee the customary 15 days post-petition to complete the schedules, and (2) providing the court with information at the time of filing that is needed to make the fee waiver determination. The draft official form requires debtors to state the income reported or to be reported on Schedule I, to submit a copy of Schedule J or to provide an estimate of monthly expenses, to submit Schedules A and B or to answer simplified questions based on these forms. It also inquires about previous bankruptcy filings and payments to attorneys and others in connection with the case.

A standard order is included with the draft official form. It is consistent with the procedures developed by the Bankruptcy Administration Committee, which provide that:

“Any order denying a filing fee waiver application should give the debtor a reasonable time (generally, 10 days) in which to either 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. . . .”

In developing the official form, the Forms Subcommittee considered the following issues, which are also addressed in the Bankruptcy Administration Committee procedures:

- Should the standard for comparison be the Census Bureau Poverty Thresholds or the Department of Health and Human Services Poverty Guidelines?
- How should family size be defined?
- How should income be defined and should gross or net income be compared to the poverty level?
- What procedure should be followed if a fee waiver application is denied?
- What effect should payments to attorneys and other entities in connection with the case have on the fee waiver determination?

Outstanding issues include:

- Whether the application should inquire as to the debtor’s employment status (employed/unemployed, name of current employer, length of employment). Chief Judge Diane Sigmund (E.D. Penn.) noted that this information was requested in the application form used during the pilot program, and found it useful if Schedule I was unavailable, which it often was.
- Whether the form should request the name of entities whom the debtor has paid in connection with the case. The Forms Subcommittee thought the amount of payment was relevant to the fee waiver determination, but tentatively agreed that whom received the payment was not.