

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE:	)	CASE NO. 03-50176
	)	
ETHEL L. LOVE,	)	CHAPTER 7
	)	
DEBTOR(S)	)	JUDGE MARILYN SHEA-STONUM
	)	
	)	ORDER DENYING APPLICATION
	)	TO PAY FILING FEES IN
	)	INSTALLMENTS AND SETTING
	)	DEADLINES

This matter came to the attention of the Court on the debtor's Application to Pay Filing Fee in Installments (the "Application"), filed on January 14, 2003, the same day as the filing of the voluntary Chapter 7 petition. The debtor proposed to pay her filing fee in four installments of \$50.00, the last scheduled installment to be paid on April 13, 2003, 90 days following the filing of the petition. In his Statement Pursuant to Rule 2016(b), David C. Perduk, counsel for the debtor stated that he had been paid \$800.00 by the debtor "prior to the filing of this statement" for "legal services rendered or to be rendered in contemplation of and in connection with this case."

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. It is determined to be a core proceeding pursuant to 28 U.S.C. § 157(B)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b), 157(a) and 157(b).

**I. DISCUSSION**

Fed. R. Bankr. P. 1006(b) (1) and (b)(3) provide as follows:

(1) *Application for Permission To Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

...

(3) *Postponement of Attorney's Fees.* The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

There is a considerable body of case law holding that it is highly proper for this Court to regulate the practices and compensation of attorneys who practice before it pursuant to 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016 and 2017. *In re Campanella*, 207 B.R. 435, 443 (Bankr. E.D. Pa. 1997). *See also In re Fleet* 95 B.R. 319, 337-38 ( E.D. Pa. 1989); *In re Glad*, 98 B.R. 976, 977 (9<sup>th</sup> Cir. BAP 1989).

In this case the debtor certified in her Application that she had “not paid any money or transferred any property to an attorney for services in connection with this case and that I will neither make any payment nor transfer any property for services in connection with this case until the filing fee is paid in full.” The Application was signed by Perduk and the debtor on January 13, 2002. In the Statement Pursuant to Rule 2016(b), also signed on January 13, 2003, Perduk stated that his entire fee of \$800.00 had been paid and that the “unpaid balance due and payable is \$0.00”

In *In re Latham*, 271 F. 538 (N.D.N.Y. 1921) the court held that it was “unable to see why a confessed bankrupt on filing his petition to be discharged from all his debts in bankruptcy proceedings should be permitted to pay his attorney and have the benefit of the law without paying the other officers of the court the compensation which they are entitled to have deposited by the bankrupt as preliminary to and a condition of being permitted to file the petition at all.” In *Latham* the court ordered that the filing fee be paid within 30 days or the petition would be dismissed. In *In re Darr*, 232 F. 415 (N.D. Cal. 1916) the court held that the debtor should not be able to pay his attorney and not pay the required fees “because in the order of priority established by the statute the clerk’s fee takes precedence over the fees of his attorney, and a bankrupt cannot reverse this order . . .”

The language of Fed. R. Bankr. P. 1006(b)(3) codifies the rule declared in *In re Latham*, and *In re Darr*. Advisory Committee Note, 2000 Collier Bankruptcy Rules, Part 2

at 19.

## **II. CONCLUSION**

Accordingly the debtor's Application is DENIED and debtor's counsel, based on his signing of the two inconsistent pleadings, shall pay the filing fees in full within 7 days of this Order, or this case shall be dismissed. Such fees shall be paid from the proceeds Purduk received from the debtor. The debtor may then reaffirm her pre-petition obligation for that portion of her attorney's fees if such reaffirmation is consistent with 11 U.S.C. § 524(c).

**IT IS SO ORDERED.**

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MARILYN SHEA-STONUM  
Bankruptcy Judge

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this \_\_\_\_ day of February, 2003, the foregoing Order was sent via regular U.S. Mail to:

David C. Perduk  
3603 Darrow Road  
Stow, Ohio 44224

Ethel L. Love  
4212 Klein Avenue  
Stow, Ohio 44224

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Marjorie H. Kitchell, *Law Clerk*