

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: November 02 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 05-0312
)	
Doris Helen Oberlin,)	Miscellaneous Proceeding
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER

This matter is before the court on a “Declaration That Party Was Unable to File in a Timely Manner Due to Language of General Order 03-1” filed by counsel on behalf of Doris Helen Oberlin (“Movant”). The court construes the document as a motion to deem Movant’s bankruptcy petition as filed on October 16, 2005, the date the petition was delivered to the United States Postal Service. For the reasons that follow, the motion will be denied.

This court’s General Order 03-1, *In re Provisions for Mandatory Electronic Case Filing*, provides, in relevant part, as follows:

- All pleadings and other papers filed in all cases and proceedings, whether pending or new, shall be filed electronically according to the procedures established by the Court, except as follows:
- a. Parties without legal representation (*pro se* parties) shall file all pleadings and other papers conventionally and not electronically.

Movant states that she interpreted this language to permit filing by placing her petition in the U.S. Mail. She attempted to file a Chapter 7 petition *pro se* and submits a receipt indicating delivery to the United

States Postal Service at 9:02 p.m. on Sunday October 16, 2005. The clerk did not receive the petition, however, until Monday October 17, 2005.

The court finds no reasonable basis for interpreting General Order 03-1 to provide that filing is completed simply by placing the document in the U.S. mail. The Federal Rules of Bankruptcy Procedure provide that “[a] petition commencing a case under the Code *shall be filed with the clerk.*” Fed. R. Bankr. P. 1002(a). Similarly, Rule 5005(a) provides that “papers required to be filed by these rules . . . *shall be filed with the clerk*” or, if the judge permits, with the judge, “in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk.” Interpreting similar language in Federal Rule of Civil Procedure 5(e), the Sixth Circuit explained that if mailed, filing with the clerk of the court “‘is accomplished only when actually received by the clerk or when placed in the clerk’s post office box.’” *Torras Herreria y Construcciones v. M/V Timur Star*, 803 F.2d 215, 216 (6th Cir. 1986) (citing *Lee v. Dallas County Bd. of Educ.*, 578 F.2d 1177, 1178, 1179 (5th Cir. 1978)). “Filings reaching the clerk’s office after a deadline are untimely, even if mailed before the deadline.”¹ *Id.* (finding that motion was not timely filed where last extension of time to file was to November 30, and district court did not receive motion, which was mailed on November 30, until December 5); *see also Scott v. United States Veteran’s Amin.*, 929 F.2d 146, 147 (6th Cir. 1991) (finding the relevant date for purposes of a statutory time limitation is the date a complaint is received by the clerk). The court finds nothing in General Order 03-1 that would mislead Movant into believing that filing is complete on mailing of documents filed conventionally rather than electronically.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the motion to deem the bankruptcy petition submitted by Doris Helen Oberlin to have been filed on October 16, 2005, is **DENIED**.

¹ Although the Supreme Court has demonstrated a willingness to extend a special "mailbox rule" to persons who are incarcerated and are filing their legal documents pro se, *see Houston v. Lack*, 487 U.S. 266, 276 (1988), that rule is inapplicable in this case.