

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: August 26 2009

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re: Linda Lavonne Rogers,	)	Case No.: 09-35256
	)	
Debtor.	)	Chapter 7
	)	
	)	Hon. Mary Ann Whipple
	)	
	)	
	)	

**ORDER**

This case is before the court on Debtor’s Motion Requesting Refund of Filing Fees for this case (“Motion”).

Absent in forma pauperis status and certain other limited situations not applicable here, parties in bankruptcy cases must pay the filing fees prescribed by Congress and the Judicial Conference of the United States. 28 U.S.C. § 1930(a), (b). Congress and the Judicial Conference have prescribed fees due at filing of a Chapter 7 case totaling \$299.

On July 31, 2009, counsel’s office filed duplicate Chapter 7 cases for Debtor and as a result incurred two filing fees of \$299. This is the second of the two cases filed, with the first being Case No. 09-36255 in this court filed 4 minutes before this case.

The basis for the Motion is that counsel’s staff filed this second case after encountering problems with electronic filing and transmission of the first case.

Under § 1930(f)(3), bankruptcy courts are permitted to “waive” fees required under the statute on

grounds not otherwise specified therein by Congress “in accordance with Judicial Conference policy.”  
Judicial Conference policy limits fee refunds as follows:

The Judicial Conference prohibits refunding the fees due upon filing. The Conference prohibits the clerk from refunding these fees even if the party filed the case in error, and even if the court dismisses the case or proceeding. Nevertheless, the clerk must refund any fee collected without authority. For example, the clerk has no authority to collect a fee to reopen a case unless the case is closed. Consequently, the clerk must refund a fee to reopen if the parties discover later that the case was open.

Bankruptcy Fee Compendium III (August 2007), ¶ A.9, p11. Recognizing that the electronic filing environment in which all bankruptcy courts now operate raises different administrative issues as to the no refund policy than the traditional manual filing environment, the Judicial Conference has also authorized courts to develop local procedures as follows:

**Develop Local Procedures.** Although the Judicial Conference still prohibits refunds generally, judges, in conjunction with their clerks, may develop procedures addressing CM/ECF refunds.

*Id.*, ¶ A.9.A.(1), p. 12. In this district, the court has adopted General Order 05-2 addressing filing fee refund procedures, as follows:

Upon review of the Judicial Conference policy, neither the Clerk of the Bankruptcy Court nor the Bankruptcy Judge(s) has the authority to permit refund of fees due upon filing except for fees collected without authority or due to administrative error on the part of the clerk’s office....IT IS ORDERED that refunds will not be permitted on fees due upon filing, even if the party files the document in error and even if the court dismisses the case or pleading.”

Under the statute, Judicial Conference Policy and local procedure, the standard for court authorization to allow the refund of a filing fee is twofold: the fee was collected without authority or the fee was collected due to administrative error on the part of the clerk’s office.

The filing fee for this case was not collected without authority, as Debtor’s counsel’s office filed duplicate cases and thus incurred two sets of filing fees.

Nor was the payment of the fee for filing the second case due to administrative error on the part of the clerk’s office. The court inquired of its IT staff whether there were any court problems with its ECF filing system at the time of the two case filings in issue, at 5:24 p.m. and 5:28 p.m. respectively on July 31, 2009. IT staff reports that there were no court system problems. In fact, after the first case was electronically transmitted for filing at 5:24 p.m., and before this duplicate case was electronically filed at 5:28 p.m., the judge had already been assigned and the meeting of creditors docket entry had already been generated at 5:25 p.m. confirming that the first filing had occurred. This case was filed in error by counsel’s

office, not due to court system problems or administrative error by the clerk's office.

Since the court finds that the filing of this second case and the payment of the filing fee therefor did not result from either its unauthorized collection or court system problems or administrative error by the clerk's office, the court lacks authority to permit refund of the \$299 filing fee paid for this case. The Motion will be denied.

**THEREFORE**, based on the foregoing reasons and authorities,

**IT IS ORDERED** that the Motion Requesting Refund of Filing Fees [Doc. # 3] is **DENIED**.