

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: March 03 2011

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	Case No. 11-30921
	)	
Roger D. Hood and	)	Chapter 7
Catherine M. Hood,	)	
	)	
Debtors.	)	JUDGE MARY ANN WHIPPLE

**ORDER**

This case is before the court on Debtors’ Application for Waiver of the Chapter 7 Filing Fee (“Application”) [Doc. # 2]. The court has the discretion under 28 U.S.C. § 1930(f)(1) to waive the filing fee for a Chapter 7 case where the debtor has income less than 150 percent of the official income poverty line applicable to the size of family involved and is unable to pay the filing fee in installments. At Congress’ direction, the Judicial Conference of the United States promulgated interim procedures to assist in the implementation of this code provision. *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, August 11, 2005, available at <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/JCUSinterimProcedures.aspz> (“Interim Procedures”). In determining whether the debtor is unable to pay the filing fee in installments, bankruptcy court’s are directed to consider the totality of the circumstances. *Id.* at § II.A.5. According to the Interim Procedures, the debtor has the burden of showing that the application should be granted. *Interim Procedures* § II.A.6.

In this case, Debtors' current stated gross monthly income is \$1464 and their family size is 2. This meets the basic income requirement for waiver. However, the court finds other factors weigh against granting Debtors' Application. The court notes from the Application that Debtors have agreed to pay counsel \$1,100.00 as attorney's fees. Although under the Interim Procedures a debtor is not disqualified for a waiver solely because of the existence of an agreement to pay a bankruptcy attorney a professional fee, they do not prohibit a court from considering such payment or promise to pay as a factor to be considered in the court's determination of whether a debtor has the prospective ability to pay the filing fee in installments. *In re Nuttall*, 334 B.R. 921, 923 (Bankr. W.D. Mo. 2005); *In re Davis*, 372 B.R. 282, 285 (Bankr. W.D. Va. 2007); *In re Robinson*, 2006 Bankr. LEXIS 3359, \*7, 2006 WL 3498296, \*3 (Bankr. S.D. Ga. 2006). The court finds this factor particularly significant where debtors agree to pay what the court considers to be a full, non-discounted, professional fee to their attorney.

Each case in which a waiver of the filing fee is granted is essentially a "no-asset" case in which the Chapter 7 trustee will be paid nothing, notwithstanding that the trustee will have the same fiduciary duties as compensated trustees to administer the case, investigate the debtor's financial affairs, determine if the debtor has revealed all assets, and determine whether the debtor is entitled to a discharge. *See In re Robinson*, 2006 WL 3498296, \*2 (Bankr. S.D. Ga. July 19, 2006). This is so because the trustee's compensation is funded only if a filing fee is paid. While this court has waived the filing fee where debtors have paid attorney fees that have been discounted to reflect the equities of the situation, in this case, Debtors ask the court to waive the filing fee and require the Chapter 7 trustee to work without compensation while their attorney will be fully compensated. In this circumstance, the court finds it is inappropriate to waive the \$299 case filing fee.

Moreover, Debtors' Application and Bankruptcy Schedule A show that they own real estate in which they have approximately \$50,000 of equity. In addition, their debts appear to include a home equity line of credit that they state an intention to reaffirm. The existence of assets available to assist in paying the fee is also a relevant factor in the court's determination. *See In re Kauffman*, 354 B.R. 682, 685 (Bankr. D. Vt. 2006).

The circumstances of this case taken together make it inappropriate in the court's view for waiver of the \$299 case filing fee. The court will allow the filing fee to be paid in installments, as set forth below. The fee will be owed even if the case is dismissed. Failure to pay the fee may result in dismissal, and the court will not enter a discharge unless and until the whole fee is paid even if the case is not dismissed.

**IT IS THEREFORE ORDERED** that Debtors' Application for Waiver of the Chapter 7 Filing Fee [Doc. # 2] is **DENIED**. Debtors must pay the filing fee in installments, as follows:

\$75.00 due by April 4, 2011

\$75.00 due by May 4, 2011

\$75.00 due by June 3, 2011

\$74.00 due by June 29, 2011

The filing fee must be paid in full before Debtors make any further payments to their attorney.