

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re

CURTIS PIGRAM,

Case No. 89-27689-K
Chapter 7

Debtor.

**MEMORANDUM RE DEBTOR'S "MOTION FOR WAIVER OF [CASE]
FILING FEE"**

This core proceeding¹ came on to be heard upon the motion of the above-named chapter 7 debtor, Curtis Pigram ("Debtor"), seeking an order waiving the prescribed \$120.00 fee for the filing of a petition commencing a case under the Bankruptcy Reform Act. For the reasons to be mentioned below, the Court concludes that the case filing fee required to file a petition for relief under §301, 302, or 303 of the Bankruptcy Code cannot be waived and further that a petition commencing a case under the Bankruptcy Code cannot be filed in forma pauperis.

The following shall constitute findings of fact and conclusions of law in accordance with F.R.B.P. 7052.

The relevant background facts are not in dispute and may be very briefly summarized as follows: Debtor filed a petition for relief under §301 of the Bankruptcy Code and now seeks an order waiving the payment of the prescribed chapter 7 case filing fee. Debtor essentially contends, inter alia, that he is unable to pay the prescribed case filing fee,

but that he is otherwise entitled to a discharge under chapter 7 of the Bankruptcy Code. Thus, the debtor

¹28 U.S.C. §157(b)(2)(A).

seeks to obtain a chapter 7 bankruptcy discharge in forma pauperis.

11 U.S.C. §101(42) defines the term "petition" as follows:

"[p]etition' means petition filed under section 301, 302, 303, or 304 of this title...commencing a case under this title...." (emphasis added.)

F.R.B.P. 1002 provides as follows:

"A petition commencing a case under the Code shall be filed with the clerk." (emphasis added.)

The term "case" as used in the Bankruptcy Code and Federal Rules of Bankruptcy Procedure is a term of art and comprises the entire chapter 7, 9, 11, 12, or 13 case that is commenced pursuant to §301, 303, or 303 of the Bankruptcy Code by the filing of a "petition" - another word of art. Particular disputes that often arise during the pendency of a bankruptcy case requiring judicial resolution are referred to as "proceedings" or "contested matters". See, e.g., F.R.B.P. 7001 and 9014 for illustrations of various adversary proceedings and contested matters which may occur within a given bankruptcy case. 28 U.S.C. §§1334(a) and (b) carefully distinguish between the words "case" and "proceeding," recognizing that a case commenced under the Bankruptcy Code differs substantially from a typical civil action or proceeding commenced in state or federal court to resolve a two-party dispute. In re Pioneer Inv. Services Co., 946 F.2d 445, 448, n. 2 (6th Cir. 1991) citing King, "Jurisdiction And Procedure Under The Bankruptcy Amendments of 1984," 38 Vand. L Rev. 675, 676-77 (May, 1985).

Filing a "civil action" or "proceeding"² in the district court without prepayment of fees and

²F.R.B.P. 9002(1) provides as follows:

"'Action' or 'civil action' means an adversary proceeding or, when

costs is expressly authorized by 28 U.S.C. §1915(a) which provides in part as follows:

"(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil, or criminal or appeal therein, without prepayment of fees and costs or security therefore, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense, or appeal and affiant's belief that he is entitled to redress."

28 U.S.C. §1930(a), *infra*, specifies the prescribed fees for a petition filed under section 301, 302, or 303 commencing a case under chapter 7, 9, 11, 12, and 13 of the Bankruptcy Code. The requirement to pay a case filing fee is dealt with in F.R.B.P. 1006(a) which provides as follows:

"Every petition shall be accompanied by the prescribed filing fee except as provided in subdivision (b) of this rule." (emphasis added.)

F.R.B.P. 1006(b)(1) permits the payment of the case filing fees in installments by individual debtors.

F.R.B.P. 1006 does not deal with the related problem which involves in forma pauperis relief. The former Bankruptcy Act of 1898, §14(c)(8), and former Bankruptcy Rule 404(d)(4) provided for a denial of the general discharge on the basis of the debtor's failure to pay the required case filing fee. The former Bankruptcy Act and Rules did not provide for in forma pauperis bankruptcy cases.

In United States v. Kras, 409 U.S. 434 (1973), a case decided under the former Bankruptcy Act of 1898, the Supreme Court held, *inter alia*, that an indigent debtor who was unable to afford to pay the case filing fee was not entitled to a bankruptcy discharge. In Kras the Supreme Court considered the earlier in forma pauperis statute, 28 U.S.C. §1916(a), and its applicability to bankruptcy cases. The Supreme Court further held in Kras; first, that the former Bankruptcy Act contained no provision for the waiver of the case fee imposed for the filing of a bankruptcy petition, and that 28 U.S.C. §1916(a), which is the provision for

appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter."

filing a suit in forma pauperis in any court of the United States, was not applicable to bankruptcy cases under the former Act; and second, that the requirement that the case filing fee be paid before a discharge could be granted, was not a denial of due process or of the equal protection of the laws so as to be unconstitutional.

It indeed appears that the Bankruptcy Reform Act of 1978 continues the policy of not permitting in forma pauperis bankruptcy cases³. See, e.g., Weakland v. Avco Financial Servs., Inc., (In re Weakland), 4 B.R. 114, 115 (Bankr. D. Del. 1980). Under the Bankruptcy Reform Act of 1978, §246(a), Congress amended 28 U.S.C. by adding §1930 which provides in part as follows:

"(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the court the following filing fees:

"(1) For a case commenced under chapter 7 or 13 of title 11, \$120.

"(2) For a case commenced under chapter 9 of title 11, \$300.

"(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, \$600.

³It is noted that the 1970 Congressionally established Commission on the Bankruptcy Laws of the United States, 84 Stat. 468, in its subsequent Report, Appendix 2 Collier On Bankruptcy II (15th Ed.), recommended in relevant part here that Kras be completely overruled as follows:

"(1) Indigent debtors be authorized to file in forma pauperis petitions in bankruptcy without payment of filing fees, and failure to pay the fee be eliminated as a ground for denying discharge."

However, Congress did not accept this recommendation. See §246(a) of the Bankruptcy Reform Act of 1978.

"(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, \$1,000.

"(5) For a case commenced under chapter 12 of title 11, \$200.00....

"(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title."

This change in the statutory language contained in 28 U.S.C. §1930(a) makes it clear that the prior Kras holding is still valid under the Bankruptcy Reform Act. Thus, the prescribed fee required to file a petition commencing a case under chapter 7, 9, 11, 12, or 13 of the Bankruptcy Code cannot be waived⁴ or otherwise filed in forma pauperis pursuant to 28 U.S.C. §1915.⁵

In summary here, in forma pauperis civil actions or proceedings in district courts are authorized by 28 U.S.C. §1915, but Section 246(a) of the Bankruptcy Reform Act created 28 U.S.C. §1930(a), which requires the payment of the prescribed filing fees in bankruptcy cases "notwithstanding section 1915" of Title 28. See also F.R.B.P. 1006(a), supra. Accordingly, case filing fees pursuant to 28 U.S.C. §1930(a)(1) - (5) must be paid regardless of the in forma pauperis provisions of 28 U.S.C. §1915.

It is interesting to note, in conclusion, that the Bankruptcy Reform Act, as well as the Federal Rules of Bankruptcy Procedure, unlike their predecessors, §14(c)(8) of the former Act and former Bankruptcy Rule 404(d)(4), do not list the nonpayment of the prescribed case filing fee as a ground for objection to discharge. See 11 U.S.C. §727; F.R.B.P. 4004(c). In view of the absence of the failure to pay the prescribed case filing fee as a §727 objection to the general discharge, coupled with the fact that the in forma pauperis relief is not available under these circumstances, the Bankruptcy Court must dismiss the case for nonpayment

⁴It is observed that "[t]here is no constitutional right to obtain a discharge of one's debts in bankruptcy." Kras, supra, p. 446. Bankruptcy is a privilege and not a right. See, e.g., In re Tabibien, 289 F.2d 793, 795 (2nd Cir. 196); In re Krohn, 886 F.2d 1149 (6th Cir. 1989).

⁵Cf., e.g., In re Palestino, 4 B.R. 721 (Bankr. M.D. Fla. 1980); Weakland v. Avco Financial Servs., Inc. (In re Weakland), supra.

of the filing fee required by 28 U.S.C. §1930(a)(1) and F.R.B.P. 1006(a). See 11 U.S.C. §707(a)(2); F.R.B.P. 1017(b)(1).

Based on the foregoing, a separate order shall be entered denying the debtor's instant "Motion For Waiver Of [Case] Filing Fee."

BY THE COURT

DAVID S. KENNEDY
CHIEF UNITED STATES BANKRUPTCY JUDGE

DATE: January 14, 1992

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