

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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ENTERED 4/25/07  
FILED  
**APR 24 2007**  
CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

8 UNITED STATES BANKRUPTCY COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10  
11 In re ) Case No. 07-00213-B7  
12 DANIELLE MARIE DAVIES, )  
13 ) ORDER ON MOTION  
14 Debtor. ) TO RECONSIDER  
15 )

16 The Chapter 7 Trustee has moved this Court to reconsider its  
17 order authorizing a waiver of payment of the Chapter 7 filing fee  
18 under 28 U.S.C. § 1930(f).

19 The Court has subject matter jurisdiction pursuant to  
20 28 U.S.C. 1334 and General Order No. 312-D of the United States  
21 District Court for the Southern District of California. This is  
22 a core proceeding under 28 U.S.C. § 157(b) (2) (A).

23 The context of the trustee's motion presents a circumstance  
24 unfair to Chapter 7 trustees because under current provisions  
25 Chapter 7 trustees receive a nominal statutory fee for processing  
26 a case from the filing fee itself. If the filing fee is waived

1 pursuant to the provisions of 28 U.S.C. § 1930(f), they do not  
2 receive the fee, but are still expected to do the work. That is  
3 unfair to Chapter 7 trustees.

4 Because of that situation, some Chapter 7 trustees around  
5 the country have asked the courts to reconsider fee waivers  
6 granted in certain cases. This of one of those.

7 In this Court's view, the motion inappropriately conflates  
8 the problem of the unfairness to trustees with application of  
9 § 1930(f) and seeks to refine the statutory test in § 1930  
10 because of the problem for the trustees. The two are separate  
11 issues, connected only by the share of the fee trustees would  
12 otherwise receive.

13 Section 1930(f)(1) provides in relevant part:

14 [T]he bankruptcy court may waive the filing  
15 fee in a case under chapter 7 of title 11 for  
16 an individual if the court determines that  
17 such individual has income less than 150  
18 percent of the income official poverty line  
19 . . . applicable to a family of the size  
20 involved and is unable to pay that fee in  
21 installments.

22 Judicial Conference procedures implement that statutory policy.

23 There is no dispute that debtor's income is well below the  
24 threshold, nor is there any dispute about her inability to pay  
25 the filing fee in installments based on her own income. She is  
26 not married and does not have any other known source of income.  
Rather, her parents have been providing for her as she goes  
through a rough patch in her life. The rub in this case comes  
from the fact that her parents have provided to her the funds to

1 pay her lawyer, with the expectation his efforts will result in a  
2 discharge of her obligations. The lawyer is paid, but the system  
3 issuing the discharge is not, nor is the Chapter 7 trustee who  
4 does the work to maintain the integrity of the public's  
5 bankruptcy process.

6 In a case involving a *pro se* debtor, one court has denied a  
7 waiver request, indicating that debtor's support system might be  
8 able to pay the fee and absent debtor making a showing that was  
9 not possible, the debtor did not meet her burden. In re Burr,  
10 344 B.R. 234 (Bankr. N.D.NY 2006). This Court disagrees with  
11 that decision. First, the Court notes that Congress provided if  
12 the debtor's income was below 150% of the established poverty  
13 line, and if the debtor was unable to pay in installments, then a  
14 court may approve a waiver. Those are the criteria. Second,  
15 requiring a debtor to borrow the filing fee from her support  
16 system - in this case, her parents - runs counter to Congress'  
17 mandate in 11 U.S.C. § 526(a)(4) (constitutionally challenged on  
18 other grounds) which prohibits a "debt relief agency" to advise a  
19 debtor to incur more debt "in contemplation of such person filing  
20 a case under this title . . . ."

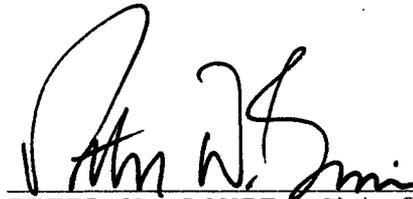
21 This Court is persuaded the appropriate authorities need to  
22 fix the problem of requiring Chapter 7 trustees to work for free  
23 in cases where a fee waiver has been granted under § 1930(f)(1).  
24 But that does not mean statutorily eligible debtors should be  
25 required to go out and borrow the filing fee, especially since  
26 the loan would be dischargeable in the subsequently filed Chapter

1 7. Nor has Congress or the Judicial Conference made employment  
2 of an attorney a disqualifying factor for resort to the fee  
3 waiver provision of § 1930(f).

4 For the foregoing reasons, the Chapter 7 Trustee's motion  
5 shall be, and hereby is denied.

6 IT IS SO ORDERED.

7 DATED: APR 24 2007

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10 PETER W. BOWIE, Chief Judge  
11 United States Bankruptcy Court  
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