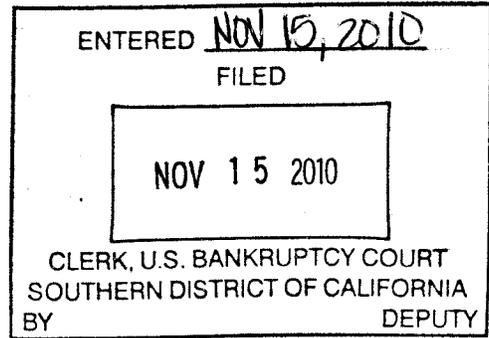


1 WRITTEN DECISION - NOT FOR PUBLICATION



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6 UNITED STATES BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 10-10571-PB7
 12)
 12 ARMANDO OROZCO,) ORDER ON MOTION TO
 13) RECONSIDER WAIVER OF
 13 Debtor.) CHAPTER 7 FILING FEE
 14)

15 The Congress of the United States has provided an *in forma*
16 *pauperis* procedure for waiving filing fees in Chapter 7 cases by
17 enactment of 28 U.S.C. § 1930(f)(1). It provides:

18 Under the procedures prescribed by the Judicial
19 Conference of the United States, the district court or
20 the bankruptcy court may waive the filing fee in a case
21 under chapter 7 of title 11 for an individual if the
22 court determines that such individual has income less
23 than 150 percent of the income official poverty line
(as defined by the Office of Management and Budget, and
revised annually in accordance with section 673(2) of
the Omnibus Budget Reconciliation Act of 1981)
applicable to a family of the size involved and is
unable to pay that fee in installments. . . .

24 Courts are in agreement that the statute calls for a
25 two prong test. See, e.g., In re Nuttall, 334 B.R. 921, 923

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1 (Bankr. W.D. Mo. 2005); In re Stickney, 370 B.R. 31, 36 (Bankr.
2 D.N.H. 2007).

3 Debtor filed his Chapter 7 petition on June 17, 2010, and
4 simultaneously applied for a waiver of the filing fee. The
5 application was prepared by his attorney, claims a family size
6 of 2, a combined monthly income of \$1,302.50 and expenses of
7 \$1,848.48. Both income and expense figures were supported by
8 Schedules I and J, respectively. The applicable poverty
9 guideline for a family of 2 in California, multiplied by 150%,
10 exceeds \$1,800. So Mr. Orozco has met the first prong of the
11 test.

12 Reading the cases on the issue of the second prong - whether
13 under the totality of the circumstances debtor is able to pay the
14 filing fee in installments - yields views that cover the
15 spectrum. In the present case, the trustee's concerns center on
16 1) the debtor's failure to list any cash on hand or money in an
17 account, as called for in items 8 and 9 of the application; 2)
18 failure to list the debtor's vehicle as a personal property asset
19 in item 10; and 3) the amount debtor paid his attorney.

20 The vehicle is the easiest to address because, as noted,
21 debtor filed his Schedules with his petition and
22 contemporaneously with submitting the application for waiver.
23 In his motion for reconsideration, the trustee appears to believe
24 the debtor "owns a motor vehicle free and clear valued at
25 \$9,865.00". Schedule B does list such a vehicle and "without
26 Deducting any Secured Claim or Exemption". Schedule C reflects

1 the debtor's value of an exemption at \$0, and Schedule D
2 reflects a credit union creditor with a claim for \$15,028 for
3 the vehicle the debtor values at \$9,965. Because the vehicle is
4 significantly overencumbered, there is no occasion to discuss
5 whether a debtor with equity in an illiquid asset is obliged to
6 sell or borrow against that asset to pay the filing fee.

7 The trustee is correct that in the initial application for
8 waiver debtor did not list the amounts of cash on hand or on
9 deposit in items 8 and 9. As the trustee also notes, debtor did
10 disclose amounts for both those items in Schedule B, items 1 and
11 2. There, debtor stated he had \$100 in cash on hand, and \$1,000
12 in his Chase Checking Account. He also had \$5.27 in a savings
13 account at the Credit Union that made his car loan. Schedule I
14 makes clear that Mr. Orozco is retired and his sole income is
15 Social Security. His spouse is listed as a homemaker with no
16 income.

17 The trustee's continuing concerns about the accounts is that
18 at the § 341a meeting the debtor provided the statement for his
19 Chase account showing a balance on the petition date of
20 \$1,335.18, not \$1,000. Depending on the quality of debtor's
21 maintenance of his checking account, debtor may or may not have
22 known the actual balance on June 17 because the statement ran
23 beyond that date.

24 Where Schedules have been filed by the time the Court
25 reviews an application for fee waiver, the Court generally looks
26 at selected Schedules, including B, C, D, I and J. In this case,

1 the Court would have noted the nominal account balances on
2 Schedule B, and would have recognized debtor could have paid the
3 fee. However, the Court remains persuaded that debtor's sole
4 income of \$1,302 from Social Security assessed against spartan
5 monthly expenses of over \$1,800 per month would deplete those
6 tiny reserves in 2 - 2½ months, leaving nothing. The Court is
7 persuaded it would have made no difference if it had known the
8 balance on the Chase account was \$1,335 instead of \$1,000 in
9 terms of granting the fee waiver.

10 The remaining mystery is the changing fees which were paid
11 to debtor's attorney, Mr. Stacy. The initial fee waiver
12 application stated \$1,100 had been paid and, curiously, item 13
13 states there was also a promise to pay \$1,100, which is either a
14 redundancy or a promise to pay an additional \$1,100, which the
15 Court would not countenance. In his Statement of Financial
16 Affairs, debtor states he paid "Atty Fee \$1000 plus fee waiver
17 application", whatever that latter phrase is intended to mean.
18 Mr. Stacy's Rule 2016 form filed with the petition states that
19 \$1,100 was the agreement and had been received. Then, on
20 August 9, 2010 Mr. Stacy filed a revised 2016, stating the amount
21 was increased to \$1,200. Then, on August 19, 2010 a revised
22 Statement of Financial Affairs was filed, stating in item 9 that
23 debtor had paid "Atty Fee \$1200.00 plus fee waiver application",
24 with no explanation for the change. Another waiver application
25 was filed, this time disclosing the account balances stated in
26 Schedule B, but not the cash on hand. Also, the vehicle and its

1 secured debt was listed. The application stated \$1,200 had been
2 paid and had been promised.

3 Then, if the foregoing is not confusing enough, on
4 August 23, 2010 a further amended Statement of Financial Affairs
5 was filed, this time stating "Atty Fee \$1250.00 plus fee waiver
6 application", again without explanation. Also filed the same
7 date was an amended 2016 stating \$1,250 was the agreed upon and
8 paid fee. Finally, also filed was yet another waiver
9 application, identical to the August 19 version except that the
10 promised and paid fee was now \$1,250.

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Conclusion

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For the foregoing reasons, the Court finds and concludes that the trustee's Motion to Reconsider should be, and hereby is denied. With respect to the conflicting statements by debtor and debtor's counsel regarding what fees were agreed upon, what were paid, and when, the Court will issue a separate Order to Show Cause to endeavor to find out what actually occurred.

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IT IS SO ORDERED.

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DATED: NOV 15 2010

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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court