

VBA BANKRUPTCY LAW SECTION
Bench-Bar Brown Bag Lunch Meeting
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge
United States Bankruptcy Court, Burlington
Wednesday, June 17, 2015 ~ 12:00 - 1:00 PM

AGENDA

1. Introduction of Michael Pantzer, Summer Extern Judge Brown
2. CRBBA/VBA Joint CLE: Judge Brown/Doug Wolinsky
 - The CRBBA has inquired whether this should be a recurring bi-annual event
 - What does the Vt bankruptcy bar think of this possibility?
3. A 5-Minute Tax Tip for Bankruptcy Practice Melissa Rinaldo
4. Best Practice Tip(s): Judge Brown
 - Service on a corporation under FRBP 7004(b)(3) requires the mailing to be addressed **to the attention of an officer, a managing or general agent, or to any agent... authorized to receive service....**
 - Best practice is to include BOTH the name and title of the person being served.
 - Similar issue for service on an insured depository institution under 7004(h): should be addressed to include both the name and office of addressee.
 - Certificate of service for both types of service, in turn, should specify both the name and title of person served.
 - This makes it easier for the Court to verify service and reduces likelihood of challenges to service in the future.
5. Fee Waiver Procedures: Kathleen Ford
 - The Administrative Office of U.S. Courts has issued new, permanent guidance to replace the interim guidance re Ch 7 fee waivers (*copy attached*).
 - The new guidance can be found on the AO's public website and a link is on the VTB web page under "Other Resources."
6. Courtroom Deputy Duties: While Terri Satterlee is out on leave, chambers staff will fulfill the courtroom deputy's duties: Judge Brown
 - law clerk, Daniel Bogatz, will handle motions to continue, and all calendaring/scheduling questions, and
 - judicial assistant, Maria Dionne, will take requests, and handle arrangements, for phone and video appearances. *Reminder: requests for phone and video appearances must be made 1 full business day prior to the hearing and phone appearances must be from a land line. See VT. LBR 9074-1 and VT. LBR 7016-1.*
 - Maria and Daniel will also manage courtroom hearings until Terri returns.
7. Update re Clerk's Office Move to Burlington and Consolidation Judge Brown
 - Kathy Ford and Kevin Plew have decided to retire this fall, by 12/31/15.
 - Consolidation planning moving forward; effective date expected to be 7/1/16.
8. Any Other Topics for Today? Suggested Topics for our Next Meeting?

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court
Have a question about them? Contact Kathy Ford at 802-776-2003 or kathleen_ford@vtb.uscourts.gov
No fee and no pre-registration required. Bottled water will be provided.

At its September 2013 meeting, the Judicial Conference of the United States adopted Final Procedures for Waivers of Chapter 7 Filing Fees, to implement the fee waiver provisions set forth in § 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Those Final Procedures were subsequently published in the Guide to Judiciary Policy, and are available to the public and the bar through the website of the Administrative Office of U.S. Courts. While the Final Procedures generally mirror the Interim Procedures, there are five significant additions as well as the deletion of any reference to the burden of proof.

The first addition is found in the section entitled “Waiver of Additional Debtor Fees” and provides:

- (a) In addition to fees due at filing, other fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived, in the discretion of the court, for an individual debtor whose filing fee has been waived, or for whom the totality of circumstances during the pendency of the case and appeal warrant such waiver upon request.
- (b) Courts may consider whether to extend a waiver of filing fees to all fees under 28 U.S.C. §§ 1930(b) and (c) for the duration of the case and any initial appeal from a decision of the bankruptcy court or to limit any waiver accordingly. An order granting such waiver should set forth the extent of the waiver. If a debtor moves to extend a fee waiver to other fees under 28 U.S.C. §§ 1930(b) and (c), the debtor must show that he or she still meets the standard of eligibility defined in Guide, Vol. 4, § 820.30(a)(1).
- (c) If the filing fee has not been waived, a debtor may still move to seek a waiver of other fees under 28 U.S.C. §§ 1930(b) and (c) by demonstrating that he or she meets the standard of eligibility defined in Guide, Vol. 4, § 820.30(a)(1).
- (d) Courts may establish local rules to address the application of a fee waiver to other fees under 28 U.S.C. §§ 1930(b) and (c).

The second significant addition is found in the section entitled “Revocation or Vacation of Order on Fee Waiver.” The Interim Procedures addressed only the court’s vacating or revocation of an order granting the filing fee waiver, when developments in the case demonstrated the waiver was unwarranted. The Final Procedures also describe the court’s authority “to vacate or revoke an order denying a request to waive the filing fee if developments in the case or administration of the estate demonstrate either that the factors leading to the denial of the waiver no longer exist or that denial of the waiver was not warranted.” It also goes on to state that “The court may make these determinations either on motion by a party in interest or sua sponte.”

The third addition continues the theme of expanding the courts’ discretion to grant fee waivers. The Final Procedures state that if the debtor files an application to pay the filing fee in installments and subsequently files a motion to waive the filing fee, the court the court may waive the unpaid balance of the filing fee, “if the circumstances warrant.” This authority was not addressed in the Interim Procedures and might not have been obvious from the statute.

The fourth component of this expansion of court discretion arises in the context of the waiver of additional fees. The Final Procedures provide that a debtor whose filing fee was not waived may nonetheless be eligible for a waiver of other fees scheduled under 28 U.S.C. §§ 1930(b) and (c) if “the totality of circumstances during the pendency of the case and appeal warrant such a waiver” and the debtor requests such a waiver. Though this relief may not be granted by the court sua sponte, it is nonetheless an opportunity for debtors whose circumstances have changed since they filed their case to demonstrate they meet the two requirements of § 1930(f) at a later date in the case and obtain relief from fees that are due as of the time of their request.

Finally, the Final Procedures articulate the courts’ authority to dismiss a case if the debtor is granted the right to pay the filing fee in installments and then fails to pay the filing fee in accordance with the court’s order. While this has been the practice since creation of the bankruptcy filing fee waiver in 2005, the Interim Procedures did not include this declaration.

Taken together, the new provisions in the Final Procedures appear to grant the courts greater discretion to waive fees pursuant to 28 U.S.C. § 1930(f), and grant individual chapter 7 debtors more opportunities to obtain waivers of filing fees and of other bankruptcy case fees.