

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

Nelson Dunn, Jr.
Debtor.

Chapter 13
Case # 14-10237

Allan Pelrine,
Plaintiff,
vs.
Nelson Dunn, Jr.,
Defendant.

Adversary Proceeding
14-1009

ORDER
DENYING PLAINTIFF'S MOTION FOR WAIVER OF FILING FEE

Allan Pelrine (the "Plaintiff") commenced this adversary proceeding seeking a determination that the debt owed by debtor Nelson Dunn is non-dischargeable. Instead of paying the filing fee, Mr. Pelrine filed a motion to waive the filing fee (doc. # 2) (the "Motion"). The Motion raise the issue of whether the Court may waive the filing fee in an adversary proceeding commenced by a creditor, and permit the creditor to proceed *in forma pauperis* ("IFP").

Section 1930 of Title 28 of the United States Code specifies various bankruptcy fees. The filing fees for commencing bankruptcy cases are set forth in § 1930(a). Under § 1930(b), the Judicial Conference of the United States has been vested with authority to prescribe additional fees. Pursuant to that authority, the Judicial Conference has established the Bankruptcy Court Miscellaneous Fee Schedule, which requires the payment of a \$350 fee for filing an adversary complaint, with certain exceptions not applicable here. See 28 U.S.C. § 1930, Bankruptcy Court Miscellaneous Fee Schedule attached as a note thereto, ¶ (6).¹

¹ (6) For filing a complaint, \$350, except:

If the trustee or debtor-in-possession files the complaint, the fee must be paid only by the estate, to the extent there is an estate.

This fee must not be charged if -

- the debtor is the plaintiff; or
- a child support creditor or representative files the complaint and submits the form required by § 304(g) of the Bankruptcy Reform Act of 1994.

subsection (f) to § 1930, which addresses fee waivers. Section 1930(f)(1) permits waiver of the bankruptcy case filing fee for Chapter 7 debtors. Section 1930(f)(2) further authorizes, for Chapter 7 debtors, waiver of other fees prescribed under subsection (b). Finally, subsection (f)(3) clarifies that nothing in subsection (f) restricts courts from waiving fees prescribed under § 1930 "for other debtors and creditors." 28 U.S.C. § 1930(f)(3). However, any such waiver must be "in accordance with Judicial Conference policy." See id.; Smith v. LeGare, Slip op. No. 13-3093, 2013 WL 5417212, at *1 (Bankr. N.D. Ohio, Sept. 26, 2013).

The Judicial Conference policy on filing fees is set forth in the Bankruptcy Fee Compendium, which specifically states that "[t]he Judicial Conference has not yet issued a policy concerning waiving fees for other debtors and creditors." See Smith, 2013 WL 5417212, at *2; Bankruptcy Fee Compendium III, Part K, § 3 at p. 78 (June 1, 2014 Edition). Therefore, the Court concludes that it lacks authority to waive the filing fee for a creditor who initiates an adversary proceeding. See Smith, 2013 WL 5417212, at *2.

Accordingly, IT IS HEREBY ORDERED that the Plaintiff's Motion is denied.

IT IS FURTHER ORDERED that if the filing fee of \$350 is not paid by September 5, 2014, this adversary proceeding shall be dismissed without further hearing.

August 27, 2014
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge