

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF FEE WAIVER REQUESTS
and ADDITIONAL DELEGATION TO THE
CLERK OF THE COURT.

GENERAL PROCEDURE ORDER NUMBER 2014-4(b)

This matter arises *sua sponte* based upon the increasing number of individual and consumer bankruptcy cases that suffer from filing deficiencies. Deficient filings require increased tracking and administrative action. The procedural changes described below are enacted to address some of the issues raised by deficient filings.

Federal Rule of Bankruptcy Procedure 1006 and Local Bankruptcy Rule 1002-1(3) require that every petition be accompanied by the filing fee. A debtor filing a voluntary petition will meet this requirement by paying the filing fee in full. In the alternative, an individual debtor may meet this requirement if the debtor files an application to pay the filing fee in installments; or files an application for waiver of the filing fee with the petition. Fed R. Bankr.P. 1006(b) and (c).

The Bankruptcy Court for the District of Colorado is experiencing an increase in the number of cases in which the debtor seeks a waiver of the filing fee in chapter 7 cases, and it is determined thereafter that the debtor has an ability to pay the filing fee, particularly where a fee greater than the current filing fee was paid to an attorney or bankruptcy petition preparer assisting the debtor in the case. This has resulted in increased motions to reconsider the order waiving the filing fee from Chapter 7 Trustees or in motions to vacate the order waiving the fee from debtors following the meeting of creditors. These additional motions, orders and changes in status create an administrative burden on the court. Accordingly, it is

ORDERED THAT for all cases filed on or after July 1, 2014, the following procedures for fee waiver applications shall be strictly enforced:

1. A fee waiver application shall include the following:
 - A) a completed and signed Official Form B 3B;

- B) copies of all pay advices, other evidence of income received in the 60 days prior to filing for bankruptcy or, if applicable, Local Bankruptcy Form 1007-6.1 Statement Under Penalty of Perjury Concerning Payment Advices;¹
- C) a complete and signed Supplement to Official Form B 3B Disposable Earning Worksheet for IFP Request in the format as attached to this GPO as an Exhibit; and
- D) completed Schedules I and J, even if not all other statements and schedules are filed at the time the petition is filed.

2. The failure to comply with the requirements listed in paragraph 1, subsections A), B) and C) above may result in the application being denied as deficient or set for a hearing on the application by the Court.

3. Any otherwise complete fee waiver application that is filed without Schedules I and J will be held in abeyance for fourteen (14) days. The failure to file timely the missing Schedules I and J may result in the application being denied or set for a hearing.

4. A fee waiver application will be evaluated under the totality of the circumstances. The circumstances under which an application may be denied include, without limitation, the following:

- A. The applicant, or a third party on behalf of the applicant, paid a fee in conjunction with the bankruptcy filing to an attorney or a bankruptcy petition preparer/typing service/paralegal.
- B. The applicant's disposable earnings for 60 days prior to the filing of the bankruptcy petition demonstrates the debtor has the ability to pay the filing fee in full or to pay the fee in installments, ;
- C. Any other information provided that demonstrates the debtor has the ability to pay the filing fee in full or to pay the fee in installments

5. In the event a fee waiver application is denied, an order will enter requiring the applicant, on or within 14 days of filing the petition or such later date as the order may direct, to either pay the filing fee in installments if the applicant is eligible for installment payments under General Procedure Order 2009-3 (SO-13) or, pay the filing fee in full if the applicant is ineligible for installment payments.

¹This information, similar to what would be presented at an evidentiary hearing, is to be considered to determine whether the debtor has met the burden of demonstrating under the "totality of the circumstances," that the debtor has total income which is below 150% of the Federal Poverty Guidelines and currently is unable to pay in installments. See, *Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* (Promulgated August 11, 2005), at § II.5, II. 6.

FURTHER ORDERED that any order granting a fee waiver application shall be *conditional* subject to the opportunity for further investigation by the trustee or parties in interest or to request a hearing for reconsideration of the order on notice, as may be appropriate.

FURTHER ORDERED that if it is found that the debtor has the ability to pay the filing fee or actually did not meet the income threshold, then, the Chapter 7 Trustee may file a paper or electronic stipulation with the debtor to vacate the order waiving the filing fee and establishing a fee installment payment period of no more than four payments that extends no longer than 180 days from the date the bankruptcy petition was filed.

FURTHER ORDERED that if the debtor was granted a waiver of the filing fee and subsequently files an application to pay the filing fee in installments, the application to pay the filing fee in installments shall also be deemed to be a motion to vacate the order granting the fee waiver.

FURTHER ORDERED that the clerk of court, and such deputies as the clerk may designate, are authorized to enter orders necessary to effectuate the provisions of this General Procedure Order regarding granting fee waivers, denying fee waivers and requiring payment in installments or in full, as applicable.

FURTHER ORDERED that the provisions of this Order shall be applied for applications filed to waive the fees for filing an appeal. See, 28 U.S.C. §1930(c) and (f)(2); and Bankruptcy Court Miscellaneous Fee Schedule, No. 14.

Dated: June 30, 2014

BY THE COURT:

S/_____
Howard R. Tallman, Chief Judge
Sidney B. Brooks, Judge
A. Bruce Campbell, Judge
Elizabeth E. Brown, Judge
Michael E. Romero, Judge

SUPPLEMENT TO OFFICIAL FORM B 3B

DISPOSABLE EARNINGS WORKSHEET FOR IFP REQUEST

1. Attach all pay advices received in the **60 days** prior to the bankruptcy filing date, as applicable, to this form and provide the following information for each pay advice (attach additional pages if needed): ¹

A	B	C	D	E
Pay Advice Date	Gross Pay	Total of Deductions for Health Care Benefits and Taxes	Column B minus C Equals Disposable Earnings	25% of Disposable Earnings²
Total of 25% of Disposable Earnings³:				

2. List the amount of each garnishment being collected from you and identify the creditor:

Garnishment Amount (per pay stub)

Name of Garnishing Creditor(s)

Attach additional pages if needed.

¹ See the attached Instructions for guidance if not otherwise addressed in the footnotes.

² Multiply the figure in the Disposable Earnings column by .25 **or** divide the figure by 4 to obtain this amount.

³ Add all of the figures in the 25% of Disposable Earnings column together.

3. For each applicable source of funds used to make the payments to an attorney, bankruptcy petition preparer/typing service/paralegal in connection with the filing of this bankruptcy, provide the following information:

<u>Source</u>	<u>Amount</u>
Wages	_____
Savings	_____
Sale of Property	_____

Identify Property Sold (type/location): _____

Other _____

Total Amounts from All Sources _____

Attach additional pages if needed.

By signing here under the penalty of perjury, I declare that the information provided in this supplement is true and correct:

Dated: _____

By: _____
Signature of Debtor

Dated: _____

By: _____
Signature of Debtor

Instructions

1. General Procedure Order 2014-3(b) requires all chapter 7 fee waiver applications to include, among other documents, copies of all pay advices received in the 60 days prior to the bankruptcy filing and a calculation of 25% of the total “disposable earnings” received by the applicants during this period.

2. “Pay Advice Date” boxes should have the date the pay advice/wage statement /pay stub was issued.

3. “Earnings” and “disposable earnings” as used in this form and in GPO 2014-3(b) have the same meaning as that set forth in Colo.Rev.Stat. § 13-54-104(1)(a) and (b)(I):

“Earnings’ means: (A) Compensation paid or payable for personal services, whether denominated as wages, salary, commission, or bonus; [and] (B) Funds held in or payable from any health, accident, or disability insurance.”

“Disposable earnings’ means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld and after the deduction of the cost of any health insurance provided by the individual pursuant to section 14-14-112, C.R.S.” “Colo.Rev.Stat. § 13-54-104(1)(b)(I). Calculation must be completed, even if earnings are exempt from garnishment under Colo.Rev.Stat § 13-54-104(2).

4. **All required pay advices must be attached to and submitted with this form, or, if applicable, Local Bankruptcy Form 1007-6.1 Statement Under Penalty of Perjury Concerning Payment Advices.**

5. Information regarding the applicant’s “disposable earnings” **must be prepared by the debtor applicant**. In the case of multiple debtor applicants, “disposable earnings” must be calculated based upon pay advices received from **both** debtors.

6. For each pay advice attached hereto, please provide the following in the table above: (A) the date of the pay advice; (B) gross pay for the period covered by the pay advice; (C) the total of health benefit deductions and tax deductions required by law for the pay period covered by the advice; (D) the disposable earnings remaining after subtracting (C) from (B); and (E) a calculation of 25% of the disposable earning for the period.

7. The 25% amount may be calculated by multiplying the disposable earnings by .25 or by dividing the disposable earnings by four.