

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

LARRY D. REYNOLDS,

Case No. 87-758-C

Debtor.

Chapter 12

ORDER ON APPLICATION TO PROCEED IN FORMA PAUPERIS

The debtor has appealed this court's orders of January 6, 1987 granting Federal Land Bank's motion to dismiss and imposing sanctions on debtor's counsel, Marlyn S. Jensen. He now applies to proceed in forma pauperis with respect to filing and docketing fees.

In March of 1987 the Judicial Conference revised fee schedules for the federal court system under the power conferred by 28 U.S.C. 1930(b). Pursuant to subsection 16 of the bankruptcy court fee schedules, a fee of \$100.00 is charged for docketing a proceeding on appeal. Under 28 U.S.C. 1930(c), a filing fee of \$5.00 is charged for the filing of an appeal. Accordingly, the clerk of the bankruptcy court charged the debtor \$105.00 to bring the appeal.

28 U.S.C. 1915 governs in forma pauperis proceedings and authorizes "any court of the United States" to permit commencement of actions without prepayment of fees. 28 U.S.C. section 451 defines a "court of the United States" as

one which is "created by Act of Congress the judges of which are entitled to office during good behavior." Bankruptcy courts do not fall within the ambit of section 451 because they are courts whose judges hold office for a specific term of years rather than for an unlimited number of years during good behavior. Matter of Becker's Motor Transportation, Inc., 632 F.2d 242, 247 (3rd Cir. 1980) cert. denied, Becker's Motor Transp., Inc. v. Dept. of Treasury, Internal Revenue Service, 450 U.S. 916, 101 S.Ct. 1358, 67 L.Ed.2d 341 (1981); In re Bauckey, Nos. 87-04743, 05067, 05088, 05360, 06917, 07030 (Bankr. N.J., Jan. 26, 1988) (LEXIS, Bkrtcy library, Bankr. file). Therefore, bankruptcy courts, not being "courts of the United States" under section 451, cannot utilize section 1915 to waive fees.

CONCLUSION AND ORDER

WHEREFORE, for the reasons discussed above, the court does not have the power to waive the filing and docketing fees required under 28 U.S.C. sections 1930(b) and (c).

THEREFORE, the debtor's application to proceed in forma pauperis is denied.

Signed and filed this 26th day of February, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE