

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JOHN W. MCCONNELL,
Debtor.

Misc. Case No. _____
Chapter 7

ORDER ON APPLICATION TO PROCEED IN FORMA PAUPERIS

Debtor John McConnell has applied to proceed in forma pauperis with respect to the filing fees for commencing his Chapter 7 case. The application is denied.

28 U.S.C. section 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 Transp., Inc., 632 F.2d 242, 247 (3rd Cir. 1980) cert. denied, 450 U.S. 916 (1981). Therefore, bankruptcy courts, not being "courts of the United States" under section 451, cannot use-section 1915 to waive fees.

Additionally, 28 U.S.C. section 1930(a)(1) specifically exempts any possible application of section 1915 to the filing fees for commencing a Chapter 7 case. The right of Congress to statutorily deny in forma pauperis status to a debtor voluntarily seeking protection through bankruptcy laws was definitively established in United States v. Kras, 409 U.S. 434, 437 (1972). Accordingly, section 1930 prohibits this court from granting in forma pauperis status in this instance even if this court were otherwise authorized to use section 1915.

WHEREAS the court does not have the power to waive the filing fees necessary for the commencement of a Chapter 7 proceeding, debtor's application to proceed in forma pauperis is denied.

Signed and filed this 3rd day of March, 1989.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE