

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :
YVONNE L. FOLEY, : Case No. 92-02967-D J
Debtor. : Chapter 7
- - - - -

RULING ON ORDER TO SHOW CAUSE

On October 5, 1992 Yvonne L. Foley filed a petition for relief under Chapter 13 of the Bankruptcy Code. On the same date the debtor filed an application to pay the \$120.00 filing fee in one installment on or before November 13, 1992. On October 8, 1992 the court found that the application met the requirements of Federal Rule 1006(b) (2) of Bankruptcy Procedure and entered an order granting the application.

The debtor filed a Chapter 13 plan on October 5, 1992. No objections to confirmation of the plan were timely filed. The bankruptcy clerk's office did not enter an order confirming the plan because the filing fee had not been paid.

On January 14, 1993 the court entered an order to show cause why the case should not be dismissed for failure to pay the filing fee as previously ordered. On January 21, 1993 the debtor filed a motion to convert the Chapter 13 case to one under Chapter 7. On January 25, 1993 the court entered an order upon conversion. The court directed the Chapter 13 trustee to turn over to the Chapter 7 trustee all records and property of the estate remaining in the Chapter 13 trustee's custody and control in accordance with Federal Rule 1019 of Bankruptcy Procedure.

On February 4, 1993 the court heard the order to show cause matter in Davenport, Iowa. Michael A. Williams, attorney for the debtor, requested that the filing fee for the Chapter 13 case be paid from the funds held by the Chapter 13 trustee. Elizabeth E. Goodman, attorney for Albert C. Warford, the Chapter 13 trustee, indicated the Chapter 13 trustee had funds available and would pay the filing fee if the court found it appropriate under 11 U.S.C. section 1326(a)(2).

The court declines to approve the procedure proposed by debtor's counsel. Section 1930(a)(1) of Chapter 123 of Title 28 of the United States Code provides that a party commencing a case under Chapter 13 of Title 11 must pay a filing fee of \$120.00. Federal Rule 1006(b)(2) of Bankruptcy Procedure permits a bankruptcy court to grant an application to pay the filing fee in installments as long as the number of installments does not exceed four and the final payment is made not later than 120 days after filing the petition. only if cause is established may the court extend the time for the final installment to not later than 180 days after the petition date. 11 U.S.C. section 1325(a)(2) requires full payment of the filing fee before the order of confirmation is entered. Additionally, section 1326(a)(2) indicates the trustee shall distribute payments in accordance with the plan after the plan is confirmed.

Debtor's counsel and the trustee's counsel focus on the last sentence of section 1326(a)(2) which provides 11[i]f a plan is not confirmed, the trustee shall return any such payment to the debtor,

after deducting any unpaid claim allowed under section 503(b) of this title. ". Neither attorney indicated which section 503 (b) category would encompass the filing fee mandated by section 1930(a)(1). The focus of section 503 and underlying 11 U.S.C. section 502 appears to be on claims defined and contemplated by Title 11. The fee in issue is required under Title 28. Section 503(b) administrative expenses and section 1930 fees are not the same. See In re Juhl Enterprises, Inc., 921 F .2d 800, 803 (8th Cir 1990).

Accordingly, the court concludes section 503(b) does not encompass filing fees mandated by 28 U.S.C. section 1930(a)(1), meaning the debtor continues to be responsible for the filing fee in the converted case.¹ Though debtor's counsel did not seek an extension of the time originally requested, the court concludes under the circumstances of this case cause exists to permit the debtor to pay the \$120.00 filing fee in full within 45 days of the February 4, 1993 hearing.²

WHEREFORE, the court finds that cause exists to permit the debtor to satisfy the order to show cause within 45 days of the

¹ Section 1930(a) (1) of Chapter 123 of Title 28 also provides that a party commencing a Chapter 7 case must pay a filing fee of \$120.00. A Chapter 13 debtor converting to Chapter 7 does not incur an additional filing fee. See generally 28 U.S.C. section 1930(a).

² At the time of the February 4, 1993 hearing, the court indicated the debtor still owed \$60.00 with respect to the filing fee. That was based on information contained in the court file. The court has subsequently discovered that the \$60.00 was paid by a creditor for filing a motion for relief from stay.

February 4, 1993 hearing.

Dated this 17th day of February, 1993.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF: Yvonne L. Foley

Ch. 13 Bankr. No. 92-02967-DJ

Hearing On: Order to Show Cause Why Case Should Not be Dismissed And Any Discharge Entered in the Interim Revoked.

Appearances: Trustee _____	Trustee's Atty. _____
Debtor's Atty. _____	Plaintiff's Atty. _____
Creditor's Atty. _____	Defendant's Atty. _____
_____	_____

Court Rptr. <u>Shelley Lincoln</u>	Disposition _____ Settled
	_____ Under Advisement
	_____ Now
	_____ Briefs (___/___/___)
Tape No. (Tel Hg.) _____	_____ Other
Not Recorded _____	<u>X</u>

Special Instructions to Clerk: Converted to Chapter 7 on January 25, 1993.

ORDER

Based on the ruling filed on February 17, 1993, it is hereby ORDERED that: the debtor shall pay the \$120.00 filing fee within forty-five days of the hearing date. The provisions in the October 8, 1992 order otherwise remain in full force and effect in the converted case.

Hearing Date: **February 4, 1993.**

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE