

failed to request any extension of the original time period.

On August 21, 1998 the Clerk's Office processed a form order to show cause why the case should not be dismissed and any discharge entered in the interim revoked.¹ The order indicated the matter would be heard on September 1, 1998 at 3:00 p.m. and identified the court location.

On August 27, 1998 the debtor tendered the final installment payment of \$30.00 to the Clerk's Office. The debtor did not appear at the September 1, 1998 hearing.

On September 9, 1998 the Clerk's Office processed the form order granting the debtor a discharge of debts. On September 16, 1998 the court entered an order vacating the September 9, 1998 form order.

II. APPLICABLE LAW

11 U.S.C. section 707 provides in part:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including -

....

(2) nonpayment of any fees and charges required under chapter 123 of title 28; ...

Chapter 123 of Title 28 includes section 1930(a)(1) that mandates a filing fee of \$130.00, and paragraphs 8 and 8.1 of the Judicial Conference Schedule of Fees that require, respectively, a miscellaneous administrative fee of \$30.00 and a \$15.00 trustee fee pursuant to 11 U.S.C. § 330(b)(2).

Federal Rule of Bankruptcy Procedure 1006 provides:

(a) **GENERAL REQUIREMENT.** Every petition shall

¹As of that date, no discharge had been entered.

be accompanied by the filing fee except as provided in subdivision (b) of this rule. For the purpose of this rule, "filing fee" means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that the debtor is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney's Fees. The filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case.

Finally, Federal Rule of Bankruptcy Procedure 9006 provides in part:

(b) ENLARGEMENT.

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period

originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

....

(3) Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2) . . . only to the extent and under the conditions stated in those rules.

III. DISCUSSION

The law is clear. The debtor must pay the full amount of the filing fee in no more than four installments and not later than 120 days after filing the petition. For cause shown, the court may extend the time for full payment up to a maximum of 180 days after the petition date.

Dismissal is appropriate where the debtor fails to pay the filing fee before the deadline set by the court and fails to file a timely application for an extension of time or fails to establish excusable neglect for not filing such an application timely. *In re Sutton*, 43 B.R. 250 (Bankr. D. Conn. 1984). Furthermore, regardless of when the application is filed, Rule 9006(b)(3) does not allow the court to consider extending the time for paying the filing fee beyond the 180-day time frame set forth in Rule 1006(b)(2). Thus, the fact the debtor in this case tendered the balance of the fee on August 27, 1998 makes no difference. The maximum time within which he could pay the full fee under any circumstance expired on August 24, 1998.² *Goldrich v. Gart Property Management, Inc. (In re Goldrich)*, 1992 U.S. Dist. LEXIS 20079; 1992 WL 404725, at *5 (E.D. N.Y. December 23, 1992).

This conclusion is consistent with *Matter of Kreinbring*, No. 94-02211-C J (Bankr.

²Pursuant to Federal Rule of Bankruptcy Procedure 9006(a), the 180-day time period did not include Sunday August 23, 1998.

S.D. Iowa April 24, 1995)(LMJ Decision Books, # 187). In that case, the undersigned judge also ordered the Clerk's Office to return the installment payment that was made after the 180-day time period had expired. In this case, the Clerk's Office has asked the court to reconsider that portion of the Kreinbring ruling because there is a prohibition against waiving or refunding fees in the Guide to Judiciary Policies and Procedures promulgated by the Administrative Office of the U.S. Courts.

The court has found no change in controlling law that mandates it depart from its prior effort to balance the debtor's procrastination or inability to complete his payments on time with the court's role in securing the full payment despite the inevitable end result of dismissal without discharge.³ That is, the Clerk's Office usually notices an order to show cause hearing for a date before the 180-day time period expires. If the debtor makes the payment within the 180-day window and if the record otherwise establishes cause for payment beyond 120 days after the petition was filed, the undersigned judge permits the case to proceed. See Matter of McKee, No. 94-02788-W J (S.D. Iowa May 16, 1995)(LMJ Decision Books, # 188). Setting the order to show cause hearing on September 1, 1998 did not afford this debtor the same opportunity because the court lacked the authority to permit him to pay the full filing fee

³ In 1995, as part of the Prison Litigation Reform Act, Congress added section 523(a)(17) to Title 11. That section excepts certain filing fees, like the one in this case, from the general discharge of debts. As a result of the amendment, a debtor remains responsible for any unpaid portion of the fee even if a general discharge is granted. That is, such amount survives any subsequent non-asset bankruptcy case that debtor might file. Likewise, such amount might be entitled to share in a distribution in a subsequent asset case that debtor might file. (The amount would lose its administrative expense priority in a subsequent case.)

Though Congress did not amend section 727 of Title 11 to include nonpayment of the filing fee as a ground barring the entry of the general discharge, existing section 727(a)(6)(A) does indicate a debtor will not receive a general discharge if the debtor has refused to obey any lawful order of the court. It should also be noted that Congress approved the addition of subsection (c)(1)(f) to Federal Rule of Bankruptcy Procedure 4004 in 1996. That subsection prohibits the court from entering the discharge order if the filing fee has not been paid in full. The amendment, however, does not thereby authorize the court to enter a discharge order if the fee is submitted untimely. The amendment does not exist in a vacuum. Federal Rules of Bankruptcy Procedure 1006(b)(2) and 9006(b)(3) remain in full force and effect.

beyond August 24, 1998. Neither the debtor tendering the final installment on August 27, 1998 nor the Clerk's Office accepting such payment on that date could change the end result.⁴

In short, as of August 25, 1998, the "show cause" notice became a misleading misnomer.

IV. CONCLUSION

WHEREFORE, the court finds: the debtor has failed to comply with Federal Rule of Bankruptcy Procedure 1006(b)(2); the court may not extend the deadline set forth in that Rule because of Federal Rule of Bankruptcy Procedure 9006(b)(3); and the case must be dismissed pursuant to 11 U.S.C. section 707(a). The dismissal is without prejudice.

The court further finds the circumstances warrant the Clerk's Office returning the August 27, 1998 \$30.00 payment to the debtor if the debtor makes such a request in writing by October 26, 1998.⁵ Returning the payment, however, will not negate the debtor's liability for that amount.

Dated this 28th day of September 1998.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE

⁴ Federal Rules of Bankruptcy Procedure 1006(b)(2) and 9006(b)(3) counter any argument that an untimely payment is still a payment and should therefore satisfy 11 U.S.C. section 707(a)(2). The element of timeliness must be factored into that Code section and into Federal Rule of Bankruptcy Procedure 4004(c)(1)(f). To hold otherwise, perhaps by invoking the so-often elusive powers of equity under 11 U.S.C. section 105(a), would amount to an impermissible modification of Rules 1006(b)(2) and 9006(b)(3).

⁵ Given the changes noted in the first paragraph of footnote 3 *supra*, the debtor may prefer the Clerk's Office keep the payment tendered and accepted after the 180-day time period ran. Whether his filing another bankruptcy petition in the near future would result in the payment in issue being deemed a preferential transfer does not appear to be of any consequence given the amount is less than \$600.00. See generally 11 U.S.C. section 547.