

UNITED STATES BANKRUPTCY COURT

MIDDLE DISTRICT OF GEORGIA
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JAMES D. WALKER, JR.
JUDGE

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January 22, 2013

12-BK-013

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544
email: Rules_Comments@ao.uscourts.gov

Re: Proposed Bankruptcy Form 3B

Dear Committee:

After reviewing Proposed Bankruptcy Form 3B, Application to Have the Chapter 7 Filing Fee Waived, I suggest two additions:

- First, add the following question as the first item on the form: "Is your current financial situation the result of unusual circumstances? If yes, explain."
- Second, add the following question in Part 4 of the form: "Has anyone assisted you in the preparation of this form? If yes, what is your relationship to that person?"

Is your current financial situation the result of unusual circumstances?

To be eligible for a waiver of the Chapter 7 filing fee an individual debtor must have "income less than 150 percent of the income official poverty line ... applicable to a family of the size involved" and must be "unable to pay that fee in installments." 28 U.S.C. § 1930(f)(1).

The proposed form does a good job of extracting data about the debtor's income and expenses and assets. This information, while relevant to the questions of whether the debtor is within the income limits and whether he has resources to pay the filing fee in installments, fails to tell the debtor's story.

Every debtor has a story, a story that explains the circumstances leading to the bankruptcy and indicates whether those circumstances are likely to be temporary or lasting. That story can be indispensable to the bankruptcy judge when deciding whether waiver of the filing fee is appropriate. Item 5 of Proposed Form 3B currently asks the debtor to: "Tell the court why you are unable to pay the filing fee in installments within 120 days." Although this question calls for a narrative answer, it is unlikely to elicit anything other than a claim of poverty in some variation. As a result, it contributes nothing to the big picture.

Collier on Bankruptcy cites nine factors that courts consider when deciding whether to grant an application to waive the filing fee. My suggested addition to the form is consistent with what I believe is the most useful prong of the fee waiver analysis set forth in Collier: "whether the debtor's current or anticipated expenses are the result of extraordinary circumstances." 1 Collier on Bankruptcy ¶ 9.05[1][d][i] (16th ed. 2012).

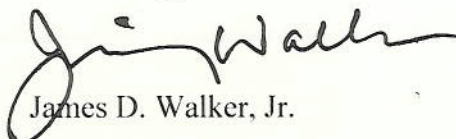
I do not believe the court can make an informed decision about waiving the filing fee without having this background information. Because of the importance of the information, I believe the question should be prominently placed at the top of the form and should be stated in plain, simple language. Often debtors fail to complete all items on the application for waiver of the filing fee because they do not have the information or do not understand what the question requires. By placing this question first, it is less likely to be overlooked and to go unanswered.

Has anyone assisted you in the preparation of this form?

The form currently asks multiple questions about whether the debtor has paid or intends to pay anyone for assistance in filing bankruptcy. However, it does not elicit any information about whether the debtor has received uncompensated assistance.

By adding a question about uncompensated assistance, the judge can have some information about the reliability of the information in the form. For example, a judge is likely to have less confidence in a form filled out by an unassisted debtor than by a debtor aided by an attorney working pro bono.

Yours truly,



James D. Walker, Jr.