

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK  
OLYMPIC TOWERS, SUITE 350  
300 PEARL STREET  
BUFFALO, NEW YORK 14202-2501**

Michael J. Kaplan  
U.S.B.J.

716-362-3270  
Website: [www.nywb.uscourts.gov](http://www.nywb.uscourts.gov)

January 27, 2012

Professor S. Elizabeth Gibson  
Reporter: Advisory Committee on Bankruptcy Rules  
Burton Craige Professor of Law  
5073 Van Hecke-Wettach Hall  
University of North Carolina at Chapel Hill  
C.B. # 3380  
Chapel Hill, NC 27599-3380

Re: Application for Waiver of Chapter 7 filing fee; Official Form 3B

Dear Professor Gibson:

In the course of reviewing applications for waiver of Chapter 7 filing fees, I have discovered an apparent disconnect between Official Form 3B (Application for Waiver of the Chapter 7 Filing fee . . . ) and the Judicial Conference Interim Procedures For Waiver of Chapter 7 Fees. The Interim Procedures (at II(A)(3)) provide, in pertinent part:

The income for comparison to the poverty guidelines is the "Total Combined Monthly Income) as reported (or as will be reported on Line 16 of Schedule I. Non-cash governmental assistance (such as food stamps or housing subsidies) is not included. (emphasis supplied).

On the other hand, Official Form 3B of the Official Bankruptcy Forms contains the following language, at Part A(2):

Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available.

Total combined Monthly Income (Line 16, if it is available.)

The Form does not indicate that "non-cash governmental assistance" is to be

excluded (in accordance with the JCUS Interim Procedures). I recently reviewed an application for waiver of the Chapter 7 filing fee. Official Form 3B (which reflected the debtor's "Total Combined Monthly Income" from Line 16 of her Schedule I) indicated that her income was more than 150 percent of the applicable poverty guidelines. Thus, it appeared that she was disqualified for a waiver of the filing fee.

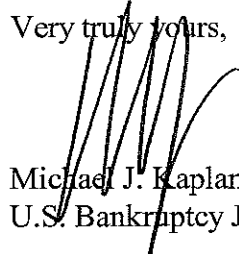
Upon closer examination, it became clear that the debtor's income on Schedule I, Line 16, included "non-cash governmental assistance." When those amounts were subtracted, the debtor's income fell below the 150 percent threshold and she was not disqualified.

My concern is that some debtors with non-cash assistance (and/or their attorneys) who rely upon the face of the Official Form, may wrongly conclude that they are disqualified from consideration for a fee waiver.

I offer a simple solution for consideration by the Advisory Committee on Bankruptcy Rules. Official Form 3B could be amended to include (at Part A(2)) the JCUS Interim Procedures language that, "Non-cash governmental assistance (such as food stamps or housing subsidies) is not included."

Thank you for your consideration.

Very truly yours,



Michael J. Kaplan  
U.S. Bankruptcy Judge

MJK/ck