

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re: SHAMASH S. JAFFER,  
Debtor.

No. 7-15-11535 JA

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MARIA MARTINEZ,  
Plaintiff,

v.

Adversary No. 16-1054 J

SHAMASH S. JAFFER,  
Defendant.

**ORDER DEFERING FILING FEE**

This matter is before the Court on Plaintiff Maria Martinez's Motion to Waive Filing Fee. See Docket No. 2. Plaintiff requests the Court to waive the filing fee of \$350.00 in accordance with 28 U.S.C. § 1930(f). Section 1930(f)(3) of Title 28 authorizes the bankruptcy court to waive certain fees for debtors and creditors consistent with Judicial Conference policy.<sup>1</sup> Waiver of a filing fee is generally dependent upon the applicant's income status. See 28 U.S.C. § 1930(f)(1) (providing for a waiver of the filing fee upon a determination that the applicant "has income less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments."); 28 U.S.C. § 1915 (*in forma pauperis* statute applied to determine whether to waive fees in federal courts).

After taxes, Plaintiff earns roughly \$190.00 per week. See Affidavit and Verification attached to the Motion to Waive Filing Fee affirming ¶ 4 of the Motion to Waive Filing Fee.

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<sup>1</sup> Section 1928(f)(3) provides:

This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for debtors and creditors.

28 U.S.C. § 1930(f).

Plaintiff's annual income is approximately \$9,120.00. *Id.* Plaintiff's regular monthly expenses are roughly \$600.00, plus \$244.00 per month that she pays toward an outstanding credit card debt. *Id.* at ¶¶ 7 and 8. Plaintiff also supports a son. *Id.* at ¶ 5. For 2016, 150 percent of the official annual income poverty guideline for a family of two is \$24,030.00. *See* [www.uscourts.gov/file/document/150-percent-hhs-poverty-guidelines](http://www.uscourts.gov/file/document/150-percent-hhs-poverty-guidelines). Plaintiff's income is well below the 150 percent threshold. Based on her monthly expenses, it also appears that she is unable to pay the filing fee.

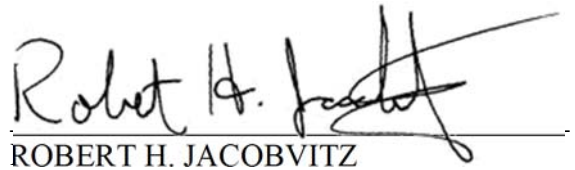
Despite the language of 28 U.S.C. § 1930(f), the Judicial Conference has not yet issued a policy regarding creditor fee waivers. *See* Bankruptcy Fee Compendium III, p. 63, n. 265 ("The Judicial Conference has not yet issued a policy concerning waiving fees for other debtors and creditors."). Plaintiff directs the Court to *Galey v. Boydston (In re Boydston)*, 2013 WL 211128 (Bankr. D.N.M. Jan. 18, 2013), a case decided by Judge Thuma. In *Boydston*, Judge Thuma determined that 28 U.S.C. § 1930 permits the bankruptcy court to waive filing fees for creditors. *Boydston*, 2013 WL 211128 at \*2. Judge Thuma reasoned further that because the waiver provisions contained in 28 U.S.C. § 1930(f) serve essentially the same function as the *in forma pauperis* provisions found in 28 U.S.C. § 1915, a creditor's request to waive the adversary filing fee is dependent upon both the applicant's inability to pay the fee, and a sufficient showing that the complaint is neither frivolous nor malicious. *Id.* at \*3. Finally, instead of waiving the filing fee, Judge Thuma ruled that the filing fee should be deferred pending plaintiff's recovery of a substantial portion of a money judgment awarded in the adversary proceeding. *Id.*

This Court generally agrees with this approach. Plaintiff has demonstrated that she is eligible to waive the filing fee based on income and family size and that she is currently unable to pay the filing fee. The complaint, requesting a non-dischargeability determination under 11

U.S.C. § 523(a)(2)(A) based on Defendant's alleged intentional misrepresentations regarding payment of wages, does not appear on its face to be frivolous or malicious.<sup>2</sup> Deferral of the filing fee is also consistent with the Bankruptcy Court's local rule authorizing trustees with insufficient funds in the bankruptcy estate to defer the filing fee pending recovery of estate assets. *See* NM LBR 2015-2 (authorizing a trustee to defer the fee for filing an adversary proceeding in connection with a chapter 7 or 13 case with insufficient funds available to pay the fee and requiring the trustee to "pay the fee if and when estate funds become available.").

WHEREFORE, IT IS ORDERED that the filing fee for this adversary proceeding is deferred.

ORDERED FURTHER, that if Plaintiff obtains a money judgment against Defendant and collects sufficient funds to pay the filing fee, the filing fee in the amount of \$350.00 shall become due and payable within ten days of receipt of the funds.

  
ROBERT H. JACOBVITZ  
United States Bankruptcy Judge

Date entered on docket: November 18, 2016

COPY TO:

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<sup>2</sup> This finding does not constitute a ruling on whether the complaint states a plausible claim for relief sufficient to withstand a motion to dismiss under Fed.R.Civ.P. 12(b)(6).