

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

**IN RE:        CHERYL ANN MURPHY, Debtor**

**4:07-bk-12390 E  
CHAPTER 13**

**ORDER**

Now before the Court is a *Motion to Extend Time to Pay Filing Fee and to Pay Filing Fee Through the Chapter 13 Plan* filed by Jimmy D. Eaton, on behalf of the Debtor, on June 7, 2007 (the “**Motion**”). Also before the Court is a Response filed by the Chapter 13 Trustee (the “**Trustee**”). A hearing was held on July 24, 2007, at which Mr. Eaton and the Trustee made oral argument. The Court has reviewed the Motion, the Response, and the applicable law, and for the reasons stated herein, grants Debtor’s Motion in part.

The Debtor asserts that this Bankruptcy Court’s General Order 26 violates 28 U.S.C. § 1930 and Federal Rule of Bankruptcy Procedure 1006, and is therefore invalid. 28 U.S.C. § 1930(a) provides, “[a]n individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments.” Rule 1006(b)(2) provides:

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.

General Order 26, paragraph II, 1., modifying Interim Rule 1006 (hereinafter referred to as “**General Order 26, II.1.**”) provides that the filing fee may be paid in installments but that all installments must be paid in full by the date set for the First Meeting of Creditors. The

First Meeting of Creditors is typically set 20 to 40 days after a bankruptcy petition is filed. *See* Fed. Rule Bankr. Proc. 2003(a) (requiring the meeting of creditors to be scheduled “no fewer than 20 and no more than 40 days after the order for relief.”). Meanwhile, 11 U.S.C. § 1326(a)(1)(A) requires that a debtor begin making proposed plan payments to the Trustee within thirty days of filing his or her bankruptcy petition.<sup>1</sup> Debtor’s counsel pointed out that it is almost impossible for low-income debtors to both pay the filing fee and timely make their first plan payment 30 days after filing bankruptcy.

While Rule 1006(b)(2) allows for more time to pay installments of the filing fee than General Order 26, II.I., the Court does not find General Order 26, II.I. to be invalid. It is permissible for a court to set deadlines that are more restrictive than those provided by the Code or Rules unless prohibited from doing so under Fed. Rule Bankr. Proc. 9006. *See In re Dorn*, 315 B.R. 68 (Bankr. E.D. Ark. 2004). However, after hearing arguments in opposition to General Order 26, II.1., the Court believes the deadlines provided by Rule 1006(b)(2) are more reasonable than those provided by General Order 26, II.1.<sup>2</sup> Specifically, the Court finds that in this case, the requirement that the Debtor make the regular plan payment and also pay the \$274 filing fee within thirty days of filing her petition creates an

---

<sup>1</sup>The Court notes that § 1326(a)(1)(B) also requires a debtor to make certain lease payments within 30 days of filing, and § 1326(a)(1)(C) requires a debtor to make certain adequate protection payments within 30 days of filing. *See also* General Order 26, I.1.(a) and (b). These additional requirements were added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

<sup>2</sup>The Court has initiated the process of reviewing and possibly revising General Order 26, II.1. Until any such revisions are made, debtors’ counsel may continue to file motions requesting additional time in which to pay installments.

undue hardship for this Debtor given her monthly income. Accordingly, Debtor may pay the filing fee in up to four installments, and shall have until September 6, 2007, to pay the filing fee in full.

The Debtor also requests that the commencement of her plan payments (normally due 30 days after filing) be postponed thirty days. As that time period has now elapsed, and it was stipulated in this case that Debtor has commenced her monthly payments to the Trustee, this portion of Debtor's Motion is moot. The Debtor also asks that her filing fee be paid from payments made to the Trustee. Because it is stipulated that there are funds on hand, the Trustee should pay the Debtor's filing fee from payments on hand unless this presents a practical problem for the Trustee, or the Debtor's plan needs to be modified to adjust for the filing fee payment. If the Trustee and Debtor's attorney are not able to resolve these issues, the parties may file appropriate motions which will be set for hearing so the Court can consider this Debtor's unique circumstances. At this time, the Court is not altering General Order 26, II.1., and unless ordered otherwise, debtors must continue to pay the filing fee to the Court pursuant to existing General Order 26, II.1., and Interim Rule 1006.

For the reasons stated herein, it is hereby

**ORDERED** that the Motion is **GRANTED** in part; Debtor shall have until September 6, 2007, to pay the filing fee in full.

**IT IS SO ORDERED.**



---

HONORABLE AUDREY R. EVANS  
UNITED STATES BANKRUPTCY JUDGE

DATE: August 16, 2007

cc: Jimmy D. Eaton, attorney for Debtor  
Cheryl Ann Murphy, Debtor  
Trustee  
U.S. Trustee  
All parties per matrix