



**SO ORDERED.**

**SIGNED this 5th day of November, 2015**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.  
PLEASE SEE DOCKET FOR ENTRY DATE.**

  
Suzanne H. Bauknicht

UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 3:15-bk-32849-SHB

MATILDA ELIZABETH RATCLIFFE

Debtor

**MEMORANDUM AND ORDER**

On November 4, 2015, the Court held a contested hearing on (1) the Motion by Chapter 13 Trustee to Dismiss Case With Prejudice and Notice of Hearing (Motion to Dismiss) filed on October 16, 2015, by Gwendolyn M. Kerney, Chapter 13 Trustee, asking the Court to dismiss this bankruptcy case with prejudice and to impose a bar against Debtor re-filing any bankruptcy cases, under any chapter, for a period of two years; (2) the Court's Order entered on September 24, 2015, directing her to appear and explain the exigent circumstances that she contends merit, pursuant to 11 U.S.C. § 109(h)(3), a temporary waiver of the credit counseling briefing required by 11 U.S.C. § 109(h)(1); and (3) the Court's Order entered on October 7, 2015, directing her to appear and show cause why her case should not be dismissed for nonpayment of the \$310.00

filing fee. Debtor did not file a response to any of the foregoing, nor did she appear to respond or otherwise defend the Motion to Dismiss or either of the Court's Orders.

## **I. FINDINGS OF FACT**

The record reflects the following undisputed facts. The Chapter 13 Trustee's Motion to Dismiss is grounded on multiple bankruptcy cases – a total of seven – filed by Debtor since 2007. The histories of the six prior cases are summarized as follows:

A. Case No. 3:07-bk-33177-RS was filed on September 26, 2007, and dismissed January 15, 2009, on the Chapter 13 Trustee's certification of plan arrearage in the amount of \$6,794.00. The Trustee's Final Report reflects that \$15,302.00 was received and disbursed pursuant to Debtor's Chapter 13 Plan confirmed on December 3, 2007.

B. Case No. 3:10-bk-33581-RS was filed on July 27, 2010, approximately eighteen months after dismissal of Debtor's 2007 case, and dismissed August 31, 2011, on Debtor's motion to voluntarily dismiss. The Trustee's Final Report reflects that \$19,172.94 was received and disbursed pursuant to Debtor's Chapter 13 Plan confirmed on September 13, 2010.

C. Case No. 3:13-bk-30365-RS was filed pro se on February 6, 2013, eighteen months after dismissal of her 2010 case, and dismissed March 27, 2013, on the Chapter 13 Trustee's amended motion for failure to file statements and schedules, a Chapter 13 plan, the Chapter 13 means test calculation, payment advices, and/or the certification evidencing that Debtor had received the pre-petition credit counseling briefing required under 11 U.S.C. § 109(h)(1), failure to make the first plan payment within thirty days from the commencement of the case, and/or failure to appear at the meeting of creditors. The Trustee's Final Report reflects that \$0.00 was received and disbursed. Additionally, Debtor paid only \$100.00 of the \$281.00 filing fee.

D. Case No. 3:14-bk-30525-RS was filed *pro se* on February 25, 2014, eleven months after dismissal of Debtor's 2013 case, and dismissed March 20, 2014, on the Court's show cause order for failure to file the certification evidencing that Debtor had received the pre-petition credit counseling briefing required under 11 U.S.C. § 109(h)(1). Additionally, Debtor did not file statements and schedules, a Chapter 13 plan, the Chapter 13 means test calculation, or payment advices. The Trustee's Final Report reflects that \$0.00 was received and disbursed. Additionally, Debtor did not pay the \$281.00 filing fee.

E. Case No. 3:14-bk-32310-RS was filed *pro se* on July 21, 2014, four months after dismissal of Debtor's first 2014 case, and dismissed August 6, 2014, on the Court's show cause order for failure to file a certification under penalty of perjury describing the exigent circumstances to merit a waiver of the pre-petition credit counseling briefing required under 11 U.S.C. § 109(h)(1) as alleged in her Exhibit D - Individual Debtor's Statement of Compliance With Credit Counseling Requirement. Additionally, Debtor did not file statements and schedules, a Chapter 13 plan, the Chapter 13 means test calculation, or payment advices. The Trustee's Final Report reflects that \$0.00 was received and disbursed. Additionally, Debtor did not pay the \$310.00 filing fee.

F. Case No. 3:14-bk-33351-MPP, filed *pro se* jointly with Rondal Royce Ratcliffe, II, on October 14, 2014, two months after dismissal of Debtor's second 2014 case. The case was dismissed as to Mr. Ratcliffe on November 7, 2014, and dismissed as to Debtor on November 20, 2014, on the Court's show cause order for Debtor's failure to pay the \$310.00 filing fee and to appear at the show cause hearing. Additionally, Debtor did not file Schedules A, B, D, E, F, I, or J or the Statement of Financial Affairs. The Trustee's Final Report reflects that \$0.00 was received and disbursed.

Debtor, once again acting *pro se*, filed this bankruptcy case on September 23, 2015, some ten months after dismissal of her last case. She did not file statements and schedules, a Chapter 13 plan, the Chapter 13 means test calculation, payment advices, or a certification under penalty of perjury describing the exigent circumstances to merit a waiver of the pre-petition credit counseling briefing required under 11 U.S.C. § 109(h)(1), as alleged in her Exhibit D - Individual Debtor's Statement of Compliance With Credit Counseling Requirement. To date, Debtor has not filed a certification that she obtained the required pre-petition credit counseling briefing, nor has she filed a certification under penalty of perjury setting forth exigent circumstances to justify a temporary waiver of that requirement. Additionally, the Application to Pay the Filing Fee in Installments filed by Debtor on September 23, 2015, was denied by an Order entered September 24, 2015, and she was directed to pay the \$310.00 filing fee no later than October 5, 2015. Debtor, however, has not paid the filing fee as of this date.

## II. CONCLUSIONS OF LAW

Under § 1325(a)(3) and (7), debtors are required to file and proceed in their cases in good faith, and likewise, to propose their plans in good faith, with an almost identical standard as cases concerning good faith and dismissal under § 1307(c). *In re Hall*, 346 B.R. 420, 426 (Bankr. W.D. Ky. 2006). Whether a debtor has filed in bad faith requires examination of the totality of the circumstances and is based on past and present circumstances. *Laguna Assocs., L.P. v. Aetna Cas. & Surety Co. (In re Laguna Assocs. L.P.)*, 30 F.3d 734, 738 (6th Cir. 1994); *In re Glenn*, 288 B.R. 516, 519-20 (Bankr. E.D. Tenn. 2002).

In making the good faith determination, courts generally focus on following factors:

(1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as

unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

*Soc'y Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 592 (6th Cir. 1992). Other relevant factors include “the accuracy of the plan’s statements of the debts, expenses and percentage repayment of unsecured debt[,] and whether any inaccuracies are an attempt to mislead the court[.]” *In re Caldwell*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted). Courts also look to:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor’s motive in filing the petition; how the debtor’s actions affected creditors; the debtor’s treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

*Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002) (citation omitted). Weighing these factors, “which ‘may circumstantially reflect the debtor’s motivation, and ultimate his ‘good faith,’” in seeking relief under chapter 13[,]” assists courts in determining whether “the debtor’s purpose in filing for chapter 13 relief is consistent with the underlying purpose and spirit of chapter 13 – i.e., financial ‘rehabilitation through repayment of debt’ – [and if] the filing is likely in good faith.” *Condon v. Smith (In re Condon)*, 358 B.R. 317, 326 (B.A.P. 6th Cir. 2007) (internal citations omitted).

Although courts must find that imposition of a sanction “be commensurate with the egregiousness of the conduct,” the purpose of adding § 109(g) was to address abuse of the system including “the filing of meritless petitions in rapid succession to improperly obtain the benefit of the Bankruptcy Code’s automatic stay provisions as a means to avoid foreclosure

under a mortgage or other security interest.” *In re Cline*, 474 B.R. 789 (Table), 2012 WL 1957935, at \*7 (B.A.P. 6th Cir. June 1, 2012) (citations omitted). “While multiple filings are not, in and of themselves, improper or indicative of bad faith, a history of multiple filings and dismissals may be construed as bad faith.” *In re Cusano*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010) (citing *In re Glenn*, 288 B.R. at 520). Further, if there is sufficient cause, courts have the authority under §§ 105(a) and 349(a) to sanction abusive debtors with a prohibition against filing for more than the 180 days set forth in § 109(g)(1). *In re Cusano*, 431 B.R. at 737; *see also In re Henderson*, No. 12-50376, 2012 WL 4498887, at \*1 (Bankr. S.D. Ohio May 4, 2012) (stating that while “only egregious behavior that demonstrates bad faith and prejudices creditors will warrant a permanent bar from refiling,” a debtor who had filed four prior Chapter 13 cases that had been dismissed and had received discharges in two Chapter 7 cases was a serial filer whose bankruptcy cases “had the effect of staying creditor’s attempts to collect what they [were] owed repeatedly for almost two decades,” resulting in her being permanently enjoined from filing another case or receiving a discharge of the debts scheduled in that case).

Debtor here has a history of multiple filings and dismissals based on her failure to comply with the requirements of 11 U.S.C. §§ 109(h) and 521(a), the filing fee provisions of 28 U.S.C. § 1930 (in fact, Debtor has failed to pay the filing fee in her last five, resulting in a total of \$1,392.00 unpaid filing fees), the directives of Rule 1007 of the Federal Rules of Bankruptcy Procedure to file documents, and the orders of this Court concerning deficiencies. In this case, specifically, Debtor failed to appear and show cause as ordered by the Court and defend or otherwise respond to the Chapter 13 Trustee’s Motion to Dismiss, even though the Motion clearly sought a two-year bar on refiling.

For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, applicable to contested matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs the following:

1. The Motion by Chapter 13 Trustee to Dismiss Case With Prejudice filed by the Chapter 13 Trustee on October 16, 2015, is GRANTED.
2. This Chapter 13 bankruptcy case is DISMISSED.
3. Debtor Matilda Elizabeth Ratcliffe is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of two years from the date of entry of this Order.

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