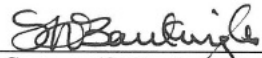




SO ORDERED.
SIGNED this 24th day of April, 2019

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


Suzanne H. Bauknicht
UNITED STATES BANKRUPTCY JUDGE

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

In re

DONNA W. HALE

Case No. 3:19-bk-30813-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

On April 24, 2019, the Court held a hearing on its Order entered on April 5, 2019 [Doc. 9], directing Debtor to appear and show cause (1) why this Chapter 13 bankruptcy case should not be dismissed because she did not comply with 11 U.S.C. §§ 521(a)(1) and 1321; Rules 1007(b) and 3015(b); and the Notice of Additional Documents to Be Filed by filing the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Summary of Assets and Liabilities and Certain Statistical Information; Declaration About Schedules; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); and/or Chapter 13 Plan; and (2) why the Court should not impose a 180-day bar against Debtor filing a bankruptcy case under any chapter for her repeated

and willful failure to abide by orders of this Court in his two prior cases filed within the last year. Debtor did not file a response or appear at the April 24, 2019 hearing.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three Chapter 13 bankruptcy cases since June 2018. The histories of the cases are summarized as follows:

A. Case No. 3:18-bk-31872-SHB was filed *pro se* on June 19, 2018, and dismissed on August 9, 2018, for failure to appear for a show cause hearing as directed by an Order entered on July 17, 2018, and to file the documents required by 11 U.S.C. § 521(a)(1) within 45 days after the filing of the petition [*see* 11 U.S.C. § 521(i)(1)].

B. Case No. 3:18-bk-33408-SHB was filed *pro se* on November 5, 2018, and dismissed December 19, 2018, for failure to appear in compliance with the Court's amended Order entered on November 28, 2018, and to file the documents required by 11 U.S.C. §§ 521(a)(1) and 1321; and Rules 1007(b) and 3015(b) of the Federal Rules of Bankruptcy Procedure, E.D. Tenn. LBR 1007-2.

C. Debtor, once again acting *pro se*, filed this bankruptcy case on March 19, 2019, and once again did not file the Certificate of Credit Counseling; Statement Regarding Payment Advices; Schedules A/B through J; Summary of Assets and Liabilities and Certain Statistical Information; Declaration About Schedules; Statement of Financial Affairs; Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1); and/or Chapter 13 Plan.¹

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

¹ In each of the foregoing cases, the Chapter 13 Trustee filed a motion to dismiss for failure of Debtor to comply with 11 U.S.C. § 521(b)(1) by filing a certification that she had received the credit counseling briefing required by 11 U.S.C. § 109(h)(1). The respective motions to dismiss were scheduled for the same hearing dates as the Court's show-cause hearings.

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. Ltd. P'ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 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 the 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[.]” *Hardin v. Caldwell (In re Caldwell)*, 851 F.2d 852, 859 (6th Cir. 1988) (citation omitted).

Courts also look to the following:

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 ultimately 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. Brady (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 of avoiding foreclosure under a mortgage or other security interest." *In re Cline*, 474 B.R. 789 (Table), No. 11-8075, 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." *Cusano v. Klein (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). *Id.* at 737; *see also In re Henderson*, No. 12-50376, 2012 WL 4498887, at *1–2 (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 [sic] 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 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 directives of Rule 1007 of the Federal Rules of Bankruptcy Procedure to file documents, and the orders of this Court concerning deficiencies. Most recently, Debtor did not appear and show cause as ordered by the Court in the April 5 Order, even though the order expressly referenced imposition of a 180-day 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. Because Debtor did not obtain the required credit counseling briefing within the 180 days preceding the March 19, 2019 petition date, as required by 11 U.S.C. § 109(h)(1), Debtor is not eligible to be a debtor under title 11.

2. This Chapter 13 bankruptcy case is DISMISSED.

3. Because she has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Debtor Donna W. Hale is BARRED from filing another bankruptcy petition under any chapter of Title 11 of the United States Code for a period of 180 days from the date of entry of this Order. *See* 11 U.S.C. § 109(g)(1).

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