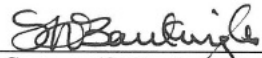




SO ORDERED.
SIGNED this 9th day of August, 2018

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


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

In re

NICHOLAS JEAN CONSTABLE HALL
fka NICHOLAS JEAN CONSTABLE CADDELL

Case No. 3:18-bk-32045-SHB
Chapter 13

Debtor

MEMORANDUM AND ORDER

On August 8, 2018, the Court held a hearing on the Court's Order entered July 6, 2018 [Doc. 5], directing Debtor to appear and show cause (1) why this Chapter 13 bankruptcy case should not be dismissed because he did not file obtain the required credit counseling briefing within the 180 days preceding the commencement of this case; and (2) why the Court should not impose a 180-day bar against Debtor filing a bankruptcy case under any chapter for his repeated and willful failure to abide by orders of this Court in his two prior cases filed within the last year.¹

¹ The July 6 Order also directed Debtor to file an amended Voluntary Petition using the correct form, containing all required signatures and certifications, and not including his social security number no later than August 9, 2018, and to file a motion requesting redaction of his social security number on Doc. 1 and shall pay the required fee to the clerk's office no later than July 20, 2018. Neither was filed.

Debtor did not file a response to any of the foregoing, appear, or otherwise defend the Court's Order.

I. FINDINGS OF FACT

The record reflects the following undisputed facts. Debtor has filed three Chapter 13 bankruptcy cases since November 2017. The histories of the two prior cases are summarized as follows:

A. Case No. 3:17-bk-33427-SHB was filed by and through counsel on November 13, 2017, and dismissed December 28, 2017, on the Chapter 13 Trustee's certification that a plan payment was not made within thirty days after the case was filed. The Trustee's Final Report reflects that \$0.00 was received and disbursed.

B. Case No. 3:18-bk-30602-SHB was filed *pro se* on March 6, 2018, and dismissed April 18, 2018, for failure to appear in compliance with the Court's show-cause Order entered on March 23, 2018, failure to sign and certify his Voluntary Petition, and failure to file all documents required by 11 U.S.C. § 521(a)(1), Rule 1007(b) and (c) of the Federal Rules of Bankruptcy Procedure, E.D. Tenn. LBR 1007-2, and E.D. Tenn. LBR 9036-1(b)(1). The Trustee's Final Report reflects that \$0.00 was received and disbursed. None of the \$310.00 filing fee was paid.

Debtor, once again acting *pro se*, filed this bankruptcy case on July 3, 2018. He filed a Certificate of Credit Counseling evidencing that he obtained the pre-petition credit counseling briefing required by 11 U.S.C. § 109(h)(1) on November 10, 2017, which is 228 days prior to the commencement of this bankruptcy case. Debtor also did not use the current Official Form for the Voluntary Petition commencing this case, which does not contain the required signature and certification page; included his social security number on the Voluntary Petition; and did not file

a verification of master address list of creditors as required by Rule 1007(a) of the Federal Rules of Bankruptcy Procedure and E.D. Tenn. LBR 1007-2(a) and (c).

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. 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 his 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 July 6 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 had not obtained the required credit counseling briefing within the 180 days preceding the July 3, 2018 petition date, as required by 11 U.S.C. § 109(h)(1), Debtor was not eligible to be a debtor under title 11 when he filed his petition

2. This Chapter 13 bankruptcy case is **DISMISSED**.

3. Because he has repeatedly and willfully failed to abide by orders of the Court or to appear before the Court as directed, Debtor Nicholas Jean Constable Hall 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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