

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

IN RE:)
)
DEAN ROSS MARTIN and) Case No. 05-63445
RAYLEEN ANN MARTIN,)
)
Debtors.)

JENNIE L. CRAIN,)
)
Plaintiff,)
)
vs.) Adv. No. 06-6020
)
DEAN ROSS MARTIN,)
)
Defendants.)

ORDER DENYING PLAINTIFF'S REQUEST
TO PROCEED IN FORMA PAUPERIS

Plaintiff Jennie L. Crain filed a Complaint objecting to the discharge of Debtor Dean Ross Martin on the ground that his debt to her is the result of his fraudulent actions in connection with a contract to build a house for her. In her Complaint, Crain states that she cannot afford an attorney to pursue the matter on her behalf, nor can she pay the required filing fee. She states she therefore submits her objection to discharge *pro se* and requests the court to “give it full consideration and provide a just resolve.”

I interpret this request as a request to waive the filing fee for the adversary action and to proceed *in forma pauperis*. There is a split of authority as to whether bankruptcy courts

can waive fees in adversary proceedings.¹ However, I need not reach that issue because the Plaintiff has not complied with the technical requirements for proceeding *in forma pauperis* in this district in any event.

The United States District Court for the Western District of Missouri has mandated certain rules and requirements for individuals seeking to commence a civil action without being required to prepay fees or costs. Among other things, the individual must file with the complaint an affidavit requesting to proceed *in forma pauperis*.² The affidavit must either be in the form provided by the Court or contain the same information called for by the Court-approved form.³ Based on the information contained in the affidavit, the Court or Clerk of the Court then determines, among other things, whether the request to proceed *in forma pauperis* should be granted.⁴

The Plaintiff in this case did not file an affidavit in accordance with local rules. Accordingly, her request to proceed *in forma pauperis* is DENIED. In the event that the Plaintiff fails to either pay the filing fee or submit an affidavit as required under the local

¹ *Barham v. Barham (In re Barham)*, 197 B.R. 319, 320 (Bankr. W.D. Mo. 1996) (citing *In re Perroton*, 958 F.2d 889 (9th Cir. 1992) (holding that a bankruptcy court is not a “Court of the United States” and therefore cannot waive fees under 28 U.S.C. § 1915); *In re Melendez*, 153 B.R. 386 (Bankr. D. Conn. 1993) (holding that bankruptcy courts have the authority to waive fees under 28 U.S.C. § 1915); *In re Shumate*, 91 B.R. 23 (Bankr. W.D. Va. 1998) (same); *In re Palestino*, 4 B.R. 721 (Bankr. M.D. Fla. 1980) (same). See also *In re Lassina*, 261 B.R. 614 (Bankr. E.D. Pa. 2001); *In re Merritt*, 186 B.R. 924, 930 n. 10 (Bankr. S.D. Ill. 1995).

² Local Rule 83.7(a).

³ *Id.* The form may be obtained from the Clerk of Court’s office located at the Charles Evans Whittaker United States Courthouse.

⁴ *Id.*

rules, within fifteen days from the date of this Order, this adversary action will be dismissed.

IT IS SO ORDERED.

/s/ Arthur B. Federman
Bankruptcy Judge

Date: