

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PAMELA J. DAVIS and)
RAYMOND R. DAVIS,) CASE NO. 10-25555
) Chapter 7
Debtors.)

ORDER STRIKING PETITION/CASE

This case was sought to be initiated by a voluntary petition filed on December 2, 2010. On the first page of the petition, the case is designated as a case under Chapter 7; certain other filings on December 2, 2010, also indicate a case under Chapter 7, while several pages in those filings indicate a case under Chapter 13. The case was down loaded by the filer with a code designating it as a case under Chapter 7. Thus, the case was opened as a Chapter 7 case.

A filing fee of \$274.00 accompanied the filing of the case; however, the filing fee for a Chapter 7 case is \$299.00. The court issued an order on December 7, 2010 ordering the payment of the additional \$25.00 of the filing fee by December 10th, additionally stating that the "failure to do so will result in the current filing being stricken without further notice." The additional filing fee was not paid by December 10th. The minimum requirements for filing a case are stated in N.D.Ind.L.B.R. B-1002-1. These requirements include the payment of an appropriate filing fee, or the filing of an application to pay the fee in installments or waive the fee. N.D.Ind.L.B.R. B-1002-1(b) states that if a case is accepted without adherence to the minimum filing requirements, the case may be stricken without further notice. This case, having been initiated as a Chapter 7, did not comply with the foregoing Rule.

In apparent recognition of the problems with the designation of the case, on December 10, 2010 counsel for the debtors filed an amended Chapter 13 petition, seeking to change the designation of the case to a case under Chapter 13. A debtor cannot change the designation of

a case once it is filed by merely filing an amended petition. The case was commenced as a Chapter 7, and it would remain a Chapter 7 until a motion to convert it to another chapter was filed and properly processed. That is a long involved process for a case which is irregular from its inception.

The court finds that the above-designated case should be stricken.

IT IS ORDERED that Case No. 10-25555 is Stricken, without prejudice to seeking appropriate relief under the Bankruptcy Code by a subsequent case.

Dated at Hammond, Indiana on December 22, 2010.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
All creditors and parties-in-interest