

1
2 **NOT FOR PUBLICATION**
3
4

5
6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 10-63324-A-7
9 JOSEPH PERRY, JR. and
10 ROBIN L. PERRY

11 Debtor.
12 _____/

13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**
RE ORDER TO SHOW CAUSE DIRECTED TO RANDY J. RISNER

14 A hearing was held April 6, 2011, on an Order to Show Cause
15 directed to Randy J. Risner. After the hearing, the court took
16 the matter under submission. This memorandum contains findings
17 of fact and conclusions of law required by Federal Rule of
18 Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.
19 This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A).

20 On November 17, 2010, Randy J. Risner filed a chapter 7
21 bankruptcy petition on behalf of Joseph Perry, Jr. and Robin L.
22 Perry, debtors herein. The petition was accompanied by an
23 Application to Pay Filing Fee in Installments, and an Order
24 Approving Payment of Filing Fee in Installments was issued
25 November 18, 2010. That order set out a payment schedule of
26 \$74.75 on each of December 20, 2010; January 3, 2011; January 31,
27 2011; and February 28, 2011.

28 On December 1, 2010, a payment was made by a check from Mr.

1 Risner in the amount of \$75.00. None of the remaining payments
2 were made, and on March 1, 2011, the court issued its "Notice of
3 Intent to Close Chapter 7 Case Without Entry of Discharge Due to
4 Failure to Pay Filing Fee and Administrative Fee."

5 The court held a reaffirmation agreement hearing on March 1,
6 2011, the same date the Notice of Intent issued, at which both
7 debtors appeared. Mr. Risner did not appear at the hearing. At
8 that hearing, debtors were informed that their installment
9 payment schedule had not been completed and that they could not
10 receive a discharge until the fee had been paid in full. Robin
11 Perry was sworn in and testified that they had paid the full
12 filing fee to Mr. Risner, who then represented to them that he
13 was unable to pay the full filing fee to the court and requested
14 that they sign an application to pay in installments, which they
15 did. The debtors did not know until the reaffirmation agreement
16 hearing that the filing fee installment payments had not been
17 made, as Mr. Risner had assured them he would make the payments.
18 Based on that testimony, the court issued an Order to Show Cause
19 directed to Mr. Risner.

20 At the hearing on the Order to Show Cause on April 6, 2011,
21 both debtors appeared, as did Mr. Risner. The debtors said that
22 they had been referred to Mr. Risner by a friend, and that they
23 understood that the \$975.00 fee paid to him included both Mr.
24 Risner's fee and the \$299 filing fee. They understood that Mr.
25 Risner was discounting his fee because of the referral from the
26 friend. Mr. Risner was hesitant to produce a copy of the fee
27 agreement with debtors because of the attorney/client privilege.
28 The debtors then gave Mr. Risner permission to disclose the

1 contents thereof.

2 Mr. Risner asserted that the \$975 paid by debtors was his
3 fee and did not include the filing fee. Robin Perry was sworn in
4 and testified that she and her husband were under the impression
5 that everything, including the filing fee, was included in that
6 \$975 payment, because of the "discount" they were receiving from
7 the referral by a friend. She then described how Mr. Risner had
8 asked that they sign the application to pay in installments and
9 said that Mr. Risner told them not to worry, that he would take
10 care of it. She testified that she did not receive a copy of the
11 installment payment order but was told not to worry, that it
12 would be taken care of. Ms. Perry testified that they learned of
13 the failure to pay the installment payments at the reaffirmation
14 agreement hearing on March 1, 2011. She testified that because
15 they were worried that they would not get their discharge, they
16 came to the clerk's office to pay the remaining balance, and were
17 told that Mr. Risner had come in on March 4, 2011, and paid the
18 balance by check, along with the balance due in several other
19 cases.

20 After the payment of the filing fee in full, on March 7,
21 2011, the debtors received their chapter 7 discharge, and the
22 case is now ready to close.

23 Here, Mr. Risner took the case for a reduced fee. He did,
24 however, get paid by the debtors the entire amount of the filing
25 fee before he filed the case. He did cause the debtors to file
26 an application to pay the filing fee in installments, after they
27 had already paid him the amount necessary for him to pay the
28 filing fee. He then failed timely to pay the filing fee

1 installments. In the court's view, receiving the amount of the
2 filing fee from the debtors before the case was filed and then
3 causing the debtors to file an application to pay the filing fee
4 in installments is tantamount to a fraud on the court. The
5 problem is only exacerbated when the installment payments are
6 then not made. The debtors here faced the serious consequence of
7 not receiving their discharge due to Risner's failure timely to
8 pay the filing fee. This is not the only case in which Risner
9 paid the filing fee in installments, as evidenced by his payment
10 in several cases on March 4, 2011, of the balance of the filing
11 fees.

12 This is a very serious problem. The court found credible
13 Ms. Perry's testimony that they paid Mr. Risner the amount of the
14 filing fee before the case was filed. However, the Perrys have
15 now received their discharge. Because of the seriousness of the
16 problem, Randy Risner is sanctioned \$200, payable to the Clerk of
17 the Court within ten (10) days of the entry of the order that
18 accompanies these findings of fact and conclusions of law.

19 DATED: May 27, 2011

20 /S/

21 _____
22 WHITNEY RIMEL, Judge
23 United States Bankruptcy Court
24
25
26
27
28