ORIGINAL

U S BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
DEC - 4 2001
TAWANA C. MARSHALL, CLERK
By
Deputy

IN THE UNITED STATES BANKRUPTCY COURT
FORT THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
DAVID STOW	§	CASE NO. 01-40065-DML-13
PATRICIA GAIL LAY	§	CASE NO. 01-40380-DML-13
PAUL & JEANNE LAMB	§	CASE NO. 01-40623-DML-13
JOHN & LORRAINE COURTROUL	§	CASE NO. 01-40655-DML-13
THOMAS & KIMBERLY WILLIAMS	§	CASE NO. 01-40657-DML-13
RICK & KAREN WILLIAMS	§	CASE NO. 01-40752-DML-13
MICHAEL HOLT	§	CASE NO. 01-40774-DML-13
JESUS GARAY	§	CASE NO. 01-40902-DML-13
JIMMY RAY COKER	§	CASE NO. 01-41093-DML-13
DONALD EUGENE JOHNSON	§	CASE NO. 01-41160-DML-13
SAMANTHA K. McDONALD	§	CASE NO. 01-41191-DML-13
LOUISE GUTHRIE RILEY	§	CASE NO. 01-41198-DML-13
MONICA RENEE CRAWFORD	§	CASE NO. 01-41232-DML-13
BETTY & CHARLES ROBERT	§	CASE NO. 01-41245-DML-13
ANTHONY DEXTER MALONE	§	CASE NO. 00-41267-DML-13
MICHAEL & KATHLEEN REEVES	§	CASE NO. 01-41288-DML-13
JAIME & PATRICIA HAGER	§	CASE NO. 01-41381-DML-13
ERIC & MARSHA HERBERT	§	CASE NO. 01-41386-DML-13
JEFFREY COLLAN SMELCER	§	CASE NO. 01-41407-DML-13
ERIC ODELL HANSEN	§	CASE NO. 01-41413-DML-13
CHAD DONALD BISHOP	§	CASE NO. 01-41422-DML-13
DAVID ANTHONY ADAMS, SR.	§	CASE NO. 01-41463-DML-13
ARCHIE LAMART SMALL	§	CASE NO. 01-41552-DML-13
BENITO F. GOMEZ, JR.	§	CASE NO. 01-42258-DML-13
JESSE VICTOR MUNIZ	§	CASE NO. 01-42262-DML-13
TERESO MONREAL	§	CASE NO. 01-42417-DML-13
MERIS LEET WHITE	§	CASE NO. 01-42563-DML-13
PHILLIP V. DAVIS	§	CASE NO. 01-42568-DML-13
MARK ERWIN GENTRY	§	CASE NO. 01-42570-DML-13
CARMEN VILLARREAL	§	CASE NO. 01-42638-DML-13
JAMES OTIS JOHNSON, JR.	§	CASE NO. 00-42860-DML-13
WILLIAM REIGLER	§	CASE NO. 01-43083-DML-13
EDDIE RAY & CREDIA	§	
JACKSON SIMON	§	CASE NO. 00-43359-DML-13
TAMMY LaVERNE SMITH	§	CASE NO. 00-43445-DML-13
THOMAS MICHAEL WEBER	§	CASE NO. 00-43495-DML-13
CIRSTAN ANNE WYNN	§	CASE NO. 00-43798-DML-13
DEMETRIUS DUFFY	§	CASE NO. 00-43874-DML-13

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RICHARD & CARRIE DILLARD	§	CASE NO. 99-44034-DML-13
ROY & BRENDA HORD	§	CASE NO. 00-44112-DML-13
JAMES TURNER & KARLA KUYAW	§	CASE NO. 01-44153-DML-13
DENNIS SWANZY	§	CASE NO. 00-44317-DML-13
RAUL ORTIZ	§	CASE NO. 00-44340-DML-13
BRIAN & TONIA HOLCOMB	§	CASE NO. 00-44456-DML-13
THOUN SIEN	§	CASE NO. 00-44558-DML-13
JAMES & ANITA ALLEN	§	CASE NO. 01-44596-DML-13
DWAYNE BILLY BALL	§	CASE NO. 00-44748-DML-13
OLIVER JAMES & WILLIE NELL	§	
BREEDLOVE	§	CASE NO. 00-44506-DML-13
JOHN & DOROTHY SHARP	§	CASE NO. 00-44647-DML-13
RODNEY & DOROTHY	§	
KATHERINE REDDICK	§	CASE NO. 00-44991-DML-13
MICHAEL S. FISH	§	CASE NO. 00-44996-DML-13
MICHAEL REYNOLDS	§	CASE NO. 01-45049-DML-13
ROGER & LIZA BAKER	§	CASE NO. 00-45134-DML-13
LUIS NEGRETE	§	CASE NO. 00-45200-DML-13
ROBERTO MERCADO & GABRIELA	§	
IBETH CERVANTES	§	CASE NO. 00-45253-DML-13
ROBERT & SUSAN MANN	§	CASE NO. 00-45270-DML-13
BECKY LEA LUBKE	§	CASE NO. 00-45309-DML-13
TERRY & JENNY WILSON	§	CASE NO. 98-45341-DML-13
J.D. & BECKY CAMPBELL	§	CASE NO. 01-45426-DML-13
SHERMAN ONEAL & SANDRA KAY	§	
JOHNSON	§	CASE NO. 01-45525-DML-13
LAURIE ANN MELTON	§	CASE NO. 00-45800-DML-13
JOHN GILBERT & LORRAINE	§	
LOZANO	§	CASE NO. 00-46215-DML-13
WAYNE & LYDIA GREEN	§	CASE NO. 97-46220-DML-13
EDDIE & ELIZABETH OCHOA	§	CASE NO. 00-46266-DML-13
TERRY LORENZO & SANDRA	§	
JEAN TROUPE	§	CASE NO. 00-46459-DML-13
EDITH McDANIEL	§	CASE NO. 00-46555-DML-13

MEMORANDUM ORDER

This Court has reviewed fee applications by debtors' counsel in the captioned cases. Review of fee applications is often a distasteful duty for a Judge. Based on limited evidence and having viewed only a small part of a case, the Judge is required to set a fee for counsel (or another

professional) based on a methodology which virtually ensures that errors will sometimes be made resulting in an award of compensation that is too low or too high.[1]

In the captioned cases, however, the Court finds itself concerned that the information provided to it is insufficient even to keep the error rate within a reasonable range. The applications, which in most cases are identical in form regardless of the identity of counsel, seek fees in addition to the flat fee of $1,750 (the "Flat Fee") charged for a Chapter 13 case that does not require more of counsel than "normal" tasks. Attached as Appendix "A" to this Memorandum Order is a description of what the Court understands are "normal" tasks in the view of the standing Chapter 13 trustees in this District.[2]

In many cases, the Court is unable to determine from the applications whether or not the work for which additional compensation is sought should properly be considered "normal" tasks covered by the Flat Fee. Even when it appears that the additional compensation is clearly a result of services not included within the Flat Fee, the applications do not provide the Court with sufficient information to determine the value of the services. Often the additional services are charged at a flat rate; even when an application shows time expended on a given service, comparison with other applications filed by the same counsel suggests that the time required for a task is preset at a standard number of hours.

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[1]This Court has had occasion to reduce fees sought by secured creditors in connection with agreed orders resolving motions for relief from stay. The Court is willing to consider any fee application filed by an attorney for a party, whether debtor, creditor or trustee. However, where the fees sought are by agreement and without substantiation or a hearing, the Court will continue to limit awards as reflected in this order for debtor's counsel and as it has done previously for a secured creditor's counsel.

[2]The Court does not mean to set a rigid standard by reference to Appendix A. The Court recognizes that a "normal" task may take an abnormal amount of time and that what is "normal" for one case is not necessarily normal in the next. Thus, the Court looks to Appendix A only as a rough guideline to assist both the Court and counsel in calculating appropriate compensation.

In many instances, the mathematics by which counsel arrives at the fee sought is at best confusing and at worst not intelligible. In such circumstances, it is impossible for this Court to apply a lodestar test or any other standard to arrive at a proper amount of compensation. The Court's problems are exacerbated by interim fee applications previously approved in some cases by the Court's predecessor ("Prior Awards").

The Court is, however, mindful of the difficulties faced by attorneys conducting a volume consumer practice. Applying the stringent rules regarding compensation used in large Chapter 11 cases in Chapter 13 cases could add substantially to the cost of representing consumer debtors. Those who undertake representation of consumers are providing a considerable service to the courts and the community and ought not to be prejudiced because their cases are too small and too many to justify excessive attention to exactitude in billing.

Nevertheless, the Court must deal with the applications on file in the captioned cases in a manner fair to all parties and in accord with the Bankruptcy Code. In awarding compensation, this Court wishes to be consistent and put counsel on notice of what to expect in future cases. The Court also does not wish to unduly burden attorneys accustomed to procedures acceptable in the past. Finally, and keeping in mind the foregoing, the Court must perform its duties as established in 11 U.S.C. §330 and applicable case law. It is therefore,

1. ORDERED that, exclusive of Prior Awards but including the Flat Fee, total fees are hereby awarded in each of the captioned cases to debtor's counsel in the lesser of the amount applied for or $1,900.00[3]; and it is further

[3] The Court does not mean to suggest that in the future it will automatically award $150.00 above the Flat Fee on any fee application filed. Rather the Court is acknowledging that counsel would only seek additional compensation if it believed it was entitled to it.

2. ORDERED that, subject to any counsel's compliance with the further provisions of this ORDER, each such application is otherwise denied; and it is further

3. ORDERED that debtor's counsel in any of the captioned cases may, within 30 days of entry of this Order in such case, file and serve upon the debtor, the Chapter 13 trustee and the U.S. Trustee a supplemental fee application (for which there may be no charge to the debtor or the estate[4]) which sets forth in detail services for which such counsel seeks additional compensation; the description of such services shall include (1) the reason the services are not covered by the Flat Fee, (2) sufficient explanation for the Court to determine that the additional compensation sought is warranted under the tests prescribed by 11 U.S.C. §330(a)(3)(B), including time expended (giving due consideration to proration of time during multi-case appearances), (3) a clear and complete accounting of all fees received or applied for during the entire case, and (4) specific identification of any compensation not sought prior to the supplemental fee application; and it is further,

4. ORDERED that, if any counsel has not maintained time records in reliance on charging a per task flat rate, he or she may so verify his or her best estimate of time expended in the case on each such task for which additional compensation is sought; and it is further

5. ORDERED that in any case in which a supplemental fee application is filed for less than $500.00, if the supplemental fee application is verified, absent any objection or

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[4]Most of the applications include charges for their preparation. The Court's requirement that additional information to cure inadequacies of those applications should be furnished without charge does not constitute a ruling by this Court on compensability of fee application preparation.

further order of the Court, no hearing need be held on such application prior to this Court ruling on same; and it is further

6. ORDERED that, in all other cases, counsel shall obtain a setting for hearing of such application and give notice of same to those persons on whom the supplemental fee application was served; and it is further

7. ORDERED that, at any hearing on a supplemental fee application, all fees paid to counsel, including the Flat Fee and Prior Awards, will be subject to review by this Court; and it is further

8. ORDERED that any reduction in fees sought by counsel which is ordered by the Court shall be deducted from the amounts which counsel had proposed to be paid by the Chapter 13 trustee through the debtor's plan; and it is further

9. ORDERED that the first three criteria set by the third decretal paragraph of this ORDER shall apply to any fee application which may be filed in a Chapter 13 case before this Court in the future.

SIGNED this the 3rd day of December, 2001.

Dennis Michael Lynn,
United States Bankruptcy Judge

STANDARD (Unanimous by 4 Trustees): **$1,750.00**
$1,500.00 Pre-Confirmation
$ 250.00 Post-Confirmation

1. ALL CONFERENCES WITH THE DEBTOR

2. PREPARATION OF SCHEDULES AND PETITION AND STATEMENT OF FINANCIAL AFFAIRS

3. REPRESENTATION DURING THE TITLE 11, SECTION 341(A) MEETING(S) OF CREDITORS

4. REPRESENTATION DURING CONFIRMATION HEARING

5. NOTICES TO CREDITORS, WHERE APPROPRIATE, EXPLAINING THE AUTOMATIC STAY

6. BUDGET COUNSELING

7. DOCUMENT PREPARATION, NOTICE, SUBMISSION FOR TRUSTEE RECOMMENDATION AND ATTENDANCE AT ALL HEARINGS, INCLUDING THE FOLLOWING:

   (a) Requests for payment deferrals

   (b) Motions for emergency refund of plan payments

   (c) Motions to avoid liens and judgments (11 USC 522(f))

   (d) Review, and if appropriate, object to Trustee's recommendations concerning claims

   (e) Preparation of plan and plan amendments

   (f) Preparation of authorization for pre-confirmation disbursements

   (g) Representation in connection with all Section 362 motions and all motions to dismiss prior to confirmation

   (h) Negotiations and communication with the IRS

   (i) Review of Trustee's Notice of Claims Filed and Not Filed

   (j) Explanation of Semi-Annual Report

   (j) Timely response to Debtor inquiries, including telephone calls and written correspondence

   (k) Representation at any objection to exemption hearing

8. WAGE ORDER REVIEW

9. OTHER MISCELLANEOUS NORMAL, CUSTOMARY SERVICES INCLUDING CORRESPONDENCE TO CLIENTS AND REVIEW OF CORRESPONDENCE FROM CLIENTS

APPENDIX "A"