

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FILED
at _____ o'clock & _____ min _____ M
NOV 20 2003

THERESE BUTHOD, CLERK
United States Bankruptcy Court
Eastern District of Oklahoma

IN RE:)
)
HARVEY DEWAYNE WALDEN)
SSN 429-15-7037)
DONNA JANE WALDEN)
SSN 444-66-1448)
)
BARRY LEE BOWMAN)
SSN 433-04-1577)
LAURA BETH BOWMAN)
SSN 446-72-2230)
)
Debtors.)

Case No. 03-73031
Chapter 13

Case No. 03-72812 ✓
Chapter 13

ORDER

The two above-captioned cases were consolidated for evidentiary hearing on October 23, 2003 on the Trustee's Request to Increase Attorney's Fee to Counsel for the Debtors. The Court has determined that the Trustee's Motions should be granted. In his Request, the Trustee has requested that this Court revisit its previous Orders which have allowed a presumptive fee of \$1,500.00 in all Chapter 13 cases in this District, which represents pre- and post-petition attorney fees. Appearing at the hearing were William Mark Bonney, the Chapter 13 Trustee and Jeff Herrick, attorney for the Debtors in both cases. The Court heard sworn testimony from Jeff Herrick and Mr. Lonnie Eck, Chapter 13 Trustee for the United States Bankruptcy Court for the Northern District of Oklahoma. The Court, having considered the evidence and the exhibits introduced in the proceeding, issues the following findings of fact and conclusions of law in conformity with Rule 7052,

Fed. R. Bankr. P. In this core proceeding.

BACKGROUND

The Trustee has presented these Requests in the hope that this Court, recognizing that it has been some time since the Court has visited the fee structure in Chapter 13 cases, will consider an appropriate and fair increase in these fees. The Court agrees with the Trustee. Mr. Herrick and Mr. Eck have outstanding credentials and experience in handling Chapter 13 cases in the Eastern and Northern Districts of Oklahoma. They testified regarding the extra work and numerous Court appearances required in Chapter 13 cases as opposed to Chapter 7 cases and the need to modify Plans due to change of circumstances of the Debtors. The Court is persuaded by their testimony.

This Court is also mindful that there are several factors in the Eastern District which contribute to the number of Chapter 13 filings and the duration that Chapter 13 cases remain open. Three factors come to the Court's mind that indicate a successful Chapter 13 program and an even more successful completion rate: (1) Mr. Bonney is a hard working and conscientious Chapter 13 Trustee; (2) the Chapter 13 lawyers are very professional and communicate well with the Trustee and creditors' lawyers; and (3) this Court has always been a proponent and advocate that debtors are better suited and creditors are more satisfied being in the Chapter 13 setting.

As further evidence of the Chapter 13 climate in the Eastern District of Oklahoma, the Chapter 13 cases here remain open longer than the majority of the districts in this country. More than 92 percent of our Chapter 13 cases are open six months after filing and 44 percent are open thirty-six (36) months following filing. The median disposition

time for a Chapter 13 case in this District is 45.7 months. During 2002, the median disposition time was 50.1 months. Our cases appear to remain open longer than the national median; however, this is done in an effort to allow debtors to continue paying on a Plan which ultimately benefits both the debtors and creditors. However, this also requires more time expended by debtors' counsel, creditors' counsel and the Chapter 13 Trustee. The most recent annual report from the Administrative Office of the U. S. Courts shows that there were 815 Chapter 13 cases pending; 349 of those were pending for less than a year; 201 were pending between one and two years; 125 were two to three years of age; and 140 were three years or older. These statistics certainly reflect a lot of effort being made by all involved, including the Clerk's office of this Court.

EXPERT TESTIMONY

Mr. Eck has served as the Chapter 13 Trustee for the United States Bankruptcy Court for the Northern District of Oklahoma for over twenty-three years. Mr. Eck estimated he has administered around 20,000 cases during his tenure as a Chapter 13 Trustee. He stated that he believes the majority of Chapter 13 attorneys do not keep contemporaneous time records. Mr. Eck stated that a \$2,000.00 fee in wage earner cases would be a fair fee. He also stated that in cases where a debtor is self-employed, or owns a small business, the attorney typically spends more time on the case. Mr. Eck stated that a fee of \$2,500.00 in those types of cases would be a fair fee.

Mr. Herrick has been practicing bankruptcy law for ten years. He testified that his Chapter 13 filings have increased in that time. Mr. Herrick stated that he believes more Chapter 7 cases are filed because of the current Chapter 13 fee structure. He stated that

Chapter 7 cases are more profitable, and Chapter 13 cases require much more work. He stated that an attorney could easily spend fifteen to twenty hours working on an average Chapter 13 case, and that the fee should be increased.

FINDINGS AND CONCLUSIONS

The Court has recently examined an excellent article by Sharron B. Lane and David E. Frisvold in the September 2003 edition of the Norton Bankruptcy Law Advisor titled "Attorney's Fees in Chapter 13: Do They Influence Chapter Choice?" In this outstanding article, the authors cite *in re Yates*, 217 B.F. 296, 301 (Bankr. N.D. Okla. 1998) which contains an excellent discussion by Judge Michael.

Section 330 of the Bankruptcy Code provides in part:

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(B) In a chapter 12 or 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

11 U.S.C. § 330(3), (4)(B). When considering fee applications, this Bankruptcy Court typically uses the lodestar method, which involves multiplying the reasonable number of hours spent on a case by a reasonable hourly fee. However, the Court notes that in certain circumstances, the lodestar method need not be used. "Routine Chapter 13 cases are not appropriate cases for the use of the lodestar method. Instead, they are much more susceptible to a standard rate or flat, fixed rate approach, based upon all the relevant legal factors." *In re Howell*, 226 B.F. 279, 281 (Bankr. M.D. Fla. 1998).

The presumptive or routine fee has been criticized by some as being an abdication of the Court's duty and obligation to review all fees. This presumptive or no-look fee should be used as a guide for all attorneys in routine Chapter 13 cases, and the Court will still review the reasonableness of those fees. This Court does routinely look at fees charged in every case and has made adjustments when appropriate. The Court has also considered, granted, and denied applications for additional fees in excess of the presumptive fee when extra services are rendered by counsel in Chapter 13 cases. When attorney's fees become an issue, the attorney should be able to furnish accurate time records.

The Trustee, and the two witnesses, Mr. Eck and Mr. Herrick, have asked this Court, when considering an increase of the presumptive fee, to consider a different fee for wage earner cases and cases where debtors are self-employed or own a small business. This Court agrees that there should be a distinction between the two, the distinction being that the latter in Chapter 13 do require more attorney and Trustee work.

IT IS THEREFORE THE ORDER OF THIS COURT that, effective December 1, 2003, in all cases filed on or after that date, the presumptive fee in all Chapter 13 cases will be \$2,000.00 for wage earner cases and \$2,500.00 for cases where debtors are self-employed or own a small business. Where joint debtors are a wage earner and a small business owner, then the higher presumptive fee shall apply. This Order shall be prospective only.

DATED this ~~20th~~ day of November, 2003.


TOM R. CORNISH
United States Bankruptcy Judge