

In the United States Bankruptcy Court

for the Northern District of Iowa

CARL M. SIMON and DIANE L. SIMON
Debtors.

Bankruptcy No. 94-21591KD
Chapter 12

RULING RE: APPLICATION FOR COMPENSATION

This matter came before the undersigned on April 10, 1997 on Application for Compensation filed by Debtors' counsel, Tom Riley Law Firm, P.C. No formal objections to the application have been filed. After reviewing the Application, the Court set a hearing concerning billings for a farm consultant and a legal assistant. Peter C. Riley appeared at the hearing on behalf of the Riley Law Firm. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(A).

FINDINGS OF FACT

Debtors Carl and Diane Simon filed this Chapter 12 case on October 4, 1994. Their third proposed Plan of Reorganization was confirmed June 3, 1996. Riley Law Firm filed its Application for Compensation as attorney for Debtors on January 22, 1997. The Application identifies Darwin Kohl as a Farm Consultant and bills his time at \$100.00 per hour. It also identifies Julie Wulfekuhle as a legal assistant and bills her time at \$50.00 per hour. Mr. Kohl billed a total of 179.2 hours; Ms. Wulfekuhle billed 226.8 hours.

On April 9, 1997, Riley Law Firm filed an Amendment to the application for compensation. Its Motion for Leave to Amend explains that the amendment corrects an error in identifying Mr. Kohl. It states that Darwin Kohl had the title of legal assistant rather than farm consultant during his employment with the Law Firm on this case. Mr. Kohl's employment with the Law Firm ended November 1, 1996.

Subsequent to the hearing, Riley Law Firm filed a Conditional Application to Employ Professional Person in response to the Court's questions concerning the payment of \$784.98 to John Merges CPA. This payment was listed as an expense dated 9/19/94 in the Application for Compensation. Riley Law Firm asserts that this was a proper prepetition payment for Mr. Merges' services in bringing Debtors' books up to date in contemplation of filing bankruptcy. In the alternative, the Law Firm requests Court approval for employing Mr. Merges as Debtors' accountant and for the \$784.98 payment for his services.

Also subsequent to the hearing, an Affidavit of H. Raymond Terpstra II was filed concerning Mr. Kohl's work as a legal assistant. Mr. Terpstra states that Mr. Kohl has an excellent understanding of

farm related issues in bankruptcy and that his contributions were beneficial in the resolution of this difficult case.

CONCLUSIONS OF LAW

Riley Law Firm is seeking compensation under 11 U.S.C. 330(a)(4)(B). Generally, in reviewing fee applications, the Court calculates the lodestar amount by considering the hours expended by the attorneys and estimating the reasonable time required to perform the compensable services. In re National Cattle Congress, Inc., No. 93-61986KW, slip op. at 9 (Bankr. N.D. Iowa March 26, 1996). The Court then multiplies the number of hours reasonably expended by a reasonable hourly rate. In re Apex Oil Co., 960 F.2d 728, 731 (8th Cir. 1992). Section 330(a)(3), enacted in 1994, adopted the lodestar analysis, codifying existing case law. In re Holder, ___ B.R. ___, 1997 WL 157529, at *5 (Bankr. M.D. Tenn. March 28, 1997).

Some general rules apply to fee applications in this District. "Lumping" of fees and vagueness in billing statements is prohibited. No compensation will be granted for work performed which is inadequately explained. Nor will the court indulge in guesswork or undertake extensive labor to justify fees not justified in the application itself. In re Snook, No. 92-62249LW, slip op. at 3 (Bankr. N.D. Iowa Jan. 11, 1994) (citations omitted).

Generally, fees are not allowed for simply reading the work product of another as a matter of interest. In re Pettibone, 74 B.R. 293, 303 (Bankr. N.D. Ill. 1987). Document review is compensable only if review is required to form some kind of response or to perform a particular task in the case. Id. Likewise, duplicative billing arising from intraoffice conferences should not be borne by the bankruptcy estate "unless counsel can show that the estate benefitted from each [individual's] special area of expertise." In re Pothoven, 84 B.R. 579, 585 (Bankr. S.D. Iowa 1988). This conclusion was also reached in In re Wideau's, Inc., 78 B.R. 904, 908 (Bankr. S.D. Ill. 1987), which stated that "[w]hile some intraoffice conferences may be necessary, no more than one attorney may charge for it unless an explanation of each attorney's participation is given."

The Court finds an inordinate amount of time was billed by Ms. Wulfekuhle for interoffice conferences. Approximately 32 hours are listed for "interoffice conferences with assistant". A further 25 hours are listed for "interoffice conferences with PCR, attorney". No doubt these entries duplicate entries for Attorney Peter Riley. The Court concludes that Ms. Wulfekuhle's time for interoffice conferences should be reduced to a total of 20 hours. At her hourly rate of \$50.00, the Court disallows \$1,850 of the amount billed for her paralegal services.

Another problem arising from the Law Firm's statement is that many of the billing entries do not meet the requisite specificity. Most of the entries for telephone calls and conferences with the client, attorneys, and other third parties have no designated purpose. As a result, the Court has little basis to judge the merits of these particular billing entries.

Although, the failure to provide sufficient detail to allow this Court to determine the nature and value of the paralegal services justifies the complete denial of compensation for such services, In re Voster,

X88-00878F, slip op. at 5 (Bankr. N.D. Iowa Dec. 17, 1991), an equitable reduction of fees is more appropriate. Snook, slip op. at 3-4. The Court is aware that this was not a simple Chapter 12 case and that Riley Law Firm expended a considerable amount of effort on behalf of Debtors. Because of the lack of specificity in the billing, the Court concludes that the Law Firm's requested compensation for professional services should be reduced by 10 percent.

PARALEGALS

The use of paralegals to the greatest extent possible to reduce more expensive attorney time has been approved whole-heartedly. In re Almacs, Inc., 178 B.R. 598, 605 (Bankr. D.R.I. 1995). Section 330(a) is designed to encourage attorneys and other professionals to use paraprofessional assistance where possible, and to ensure that the estate, not the professional, will bear the cost. In re Quick Release, Inc., 6 B.R. 713, 716 (Bankr. D.S.D. 1980). Although the use of paralegals and law clerks is encouraged as a cost-saving measure, the "[c]ompensation for the services of such persons is subject to court scrutiny and the standard of reasonableness." Pothoven, 84 B.R. at 588.

A paralegal is a professional whose qualifications must be established in the fee application for a paralegal's work to be compensated. In re Cargo, No. X90-00200S, slip op. at 5 (Bankr. N.D. Iowa Jan. 24, 1992); In re Carter, 101 B.R. 170, 175 (Bankr. D.S.D. 1989). This court disallows paralegal compensation for secretarial or ministerial work. Cargo, slip op. at 15; see also Almacs, 178 B.R. at 606. Paralegal billing entries for "[s]ecretarial tasks are overhead expenses of the attorney and [] not additionally compensable." In re Bonds Lucky Foods, Inc., 76 B.R. 664, 671 (Bankr. E.D. Ark. 1986). No compensation is "allowed for paralegals performing clerical functions such as organizing files, copying documents, checking the docket, updating files, checking court dates and delivering papers." In re Biocoastal Corp., 121 B.R. 653, 655 (Bankr. M.D. Fla. 1990).

This Court in In re Reil, No. 92-00860, slip op. at 2-3 (Bankr. N.D. Iowa June 27, 1994), disallowed compensation for paralegals discussing matters or events in the case without justification for the discussion, clerical work which could have been done by a secretary without charge, the assignment of paralegal personnel to put notation of deadlines on calendars, paralegals reviewing the work of attorneys for what appeared to be merely informational purposes or the similar review of court orders or other filings, and three attorneys and three paralegals working on the plan and statement, often reviewing and redoing each other's work. Likewise, the Court in In re Stein, No. 92-31609XF, slip op. at 11-13 (Bankr. N.D. Iowa Feb. 28, 1996), stated:

Other charges that should be disallowed fall into various categories, such as charging legal fees for clerical work that might be done by a secretary or where a paralegal spends time viewing or reviewing documents about which [the paralegal] is not competent to make legal judgments. Also, some of the entries show that work was duplicated between paralegals and attorneys.

Riley Law Firm has the burden to establish the qualifications of Mr. Kohl and Ms. Wulfekuhle as paralegals. Once that is established, the Court reviews their billings based on the general standards for review of applications for compensation for attorneys. Both the time spent and the rate of compensation must be reasonable. No compensation is allowed for paralegals performing basically

clerical tasks.

Although the fee application initially identified Mr. Kohl as a farm consultant, he is now identified as a paralegal. Based on the entire record, both Mr. Kohl and Ms. Wulfekuhle are qualified to perform services as paralegals. They both have a number of years of experience working with legal and financial matters relating to bankruptcy. Their backgrounds and education are appropriate for persons performing paralegal services. As this is a Chapter 12 case focused on reorganization of a farm business, Mr. Kohl is especially qualified to work as a paralegal.

Ms. Wulfekuhle's services are billed at \$50.00 per hour. The ordinary charge for paralegal services in this area is between \$50.00 and \$60.00 per hour with the highest rate being approximately \$85.00. Mr. Kohl's services are billed at \$100.00 per hour. This rate is beyond what is acceptable in this Court's experience. The Court approves Mr. Kohl's paralegal services at a rate of \$85.00 and Ms. Wulfekuhle's services at a rate of \$50.00 per hour.

Riley Law Firm has sufficiently established the qualifications of their legal assistants and the Court has approved the appropriate rates for their services. In reviewing the Law Firm's statement, however, the Court has found a number of paralegal entries appropriately considered overhead as clerical duties which are not compensable at professional rates. Such entries include various telephone "conferences" with no designated purpose, preparation of matrix, review of documents, organizing files and ordering copies. Ms. Wulfekuhle billed approximately 12 hours at \$50.00 per hour for these services. The Court will disallow \$600.00 from the total amount billed for her services.

ACCOUNTANT

To be employed by the estate as a professional, an accountant must be disinterested and must not hold an interest adverse to the estate. In re 7th St. & Beardsley Partnership, 181 B.R. 426, 432 (Bankr. D. Ariz. 1994); 11 U.S.C. 327. Section 328(c) provides that the court may deny compensation for services if a professional person, such as an accountant, is not disinterested. Id. In In re Jensen-Farley Pictures, Inc., 47 B.R. 557, 589 (Bankr. D. Utah 1985), the court allowed the debtor's accountant to cure the failure to disclose a prepetition claim by waiver of that claim in order for the accountant to be qualified as a disinterested person under 327. This was necessary before the court would consider granting the accountant fees for postpetition services. Id. The court stated that "prepetition accounting services and costs rendered to the debtor by [the accountant] are not compensable as an administrative expense under any provision of the Bankruptcy Code." Id.

In In re Ross, 88 B.R. 471, 476 (Bankr. M.D. Ga.), remanded on other grounds, 94 B.R. 210 (M.D. Ga. 1988), the court refused to award the trustee's attorney \$700 as reimbursement for the fee charged by a C.P.A. hired to assist the attorney in the bankruptcy case. It stated: "The employment of the accountant was done without court approval. Because court approval was not obtained, [the attorney] is not entitled to reimbursement for this expense." Id.

The approval of employment arrangements initially entered into without application to the court has sometimes been granted nunc pro tunc. Lavender v. Wood Law Firm, 785 F.2d 247, 248 (8th Cir.

1986). Various factors assist a court in determining whether this retroactive approval is appropriate, including:

whether the applicant or some other person bore the responsibility for applying for approval; whether the applicant was under time pressure to begin service without approval; the amount of delay after the applicant learned that initial approval had not been granted; the extent to which compensation to the applicant will prejudice innocent third parties; and other relevant factors.

In re McKibbin, No. X85-02156S, slip op. at 5-7 (Bankr. N.D. Iowa Apr. 21, 1992).

The Court concludes that the Riley Law Firm is not entitled to reimbursement of its \$784.98 payment to John Merges, CPA. Allowing the Law Firm to receive reimbursement from the bankruptcy estate would have the effect of granting this payment administrative expense status. This is not allowed under the Code. Furthermore, nunc pro tunc approval of employment of Mr. Merges is not appropriate. A significant amount of time has passed since the Mr. Merges provides his services and was paid without application for approval of his appointment by the Law Firm. The Law Firm is knowledgeable about the requirement of court approval before fees are payable to professionals in a bankruptcy case. Also, Mr. Merges was not a disinterested party at the time he provided the services.

OTHER EXPENSES

Counsel may claim reimbursement for actual and necessary expenses under 330. Pothoven, 84 B.R. at 586. All out-of-pocket expenses chargeable to a particular case must be itemized and documented. Id. Copying charges in this district are generally allowed at 25 cents per page. Reil, slip op. at 3. If a professional drives to court, parking fees and mileage costs are generally allowable. In re Bank of New England Corp., 134 B.R. 450, 457 (Bankr. E.D. Mass. 1991).

An expense is not "actual," and therefore not reimbursable under 330(a) to the extent it is based on any sort of guesswork, formula or pro rata allocation. In re U.S. Trustee, 32 F.3d 1370, 1376 (9th Cir. 1994). Concrete documentation is necessary to support any application for reimbursement. Id. In In re Perez Hernandez, 73 B.R. 329, 332 (Bankr. D.P.R. 1987), the court denied a fee application, without prejudice, where there were insufficient description and itemization of charges corresponding to, among other things, photocopies, telephone calls and postage.

The Court is concerned with the lack of detailed description of the out-of-pocket expenses for which Riley Law Firm requests reimbursement. The following total amounts are requested with the corresponding descriptions:

Description	Total
Photocopy Expense	\$1,216.09
Deposition Expense	606.25
Telephone Expense	395.44
Postage	389.38
Mileage	72.23

Fax Expense	27.70
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The lack of detail in the description leaves the following questions unanswered: the number of photocopies made and the amount charged per copy, who was deposed, who participated in the telephone calls, whether the postage was for special mailings or part of overhead costs, who drove where, and whether faxes were sent or received and the per page charge. Furthermore, the Telephone Expense and Postage entries were dated 9/30/94 and 11/7/94 respectively, near the beginning of the Law Firm's representation of Debtors. These cannot be based on actual telephone and postage expenses as the majority of those expenses would not yet have been incurred.

The Court concludes that it cannot approve reimbursement of the above amounts from these six expense categories as actual and necessary expenses under 330(a)(1)(B) on this record. The Court, therefore, disallows the aggregate total of \$2,707.09 in expenses.

WHEREFORE, the Motion for Leave to Amend Application for Compensation is GRANTED. The Amendment to Application for Compensation is accepted and considered part of the record.

FURTHER, the Conditional Application to Employ Professional Person is DENIED.

FURTHER, as to the paralegal services of Julie Wulfekuhle, the Court disallows the amount of \$2,450.

FURTHER, as to the paralegal services of Darwin Kohl, the Court reduces his hourly rate to \$85.00. This results in a reduction of the amount allowed for his services of \$2,473.

FURTHER, the total amount of services rendered by Riley Law Firm is therefore reduced to \$35,831. The ten percent reduction for lack of specificity results in a total amount allowable for services rendered of \$32,247.90.

FURTHER, the Court disallows reimbursement to the Riley Law Firm for the \$784.98 payment to John Merges, CPA. The Court further disallow reimbursement for insufficiently described expenses in the amount of \$2,707.09.

FURTHER, the remainder of the Application for Compensation is APPROVED.

FURTHER, the total amount allowed to the Tom Riley Law Firm P.C. as attorney for Debtors is \$32,247.90 for services rendered plus out-of-pocket expenses of \$1,425.68.

SO ORDERED this 23rd day of April, 1997.

Paul J. Kilburg
U.S. Bankruptcy Judge