

In the United States Bankruptcy Court

for the Northern District of Iowa

THOMAS G. DIGMAN
Debtor(s).

Bankruptcy No. 98-00220-C
Chapter 13

RICKY G. MEADE
JOANN H. MEADE
Debtor(s).

Bankruptcy No. 98-00322-C
Chapter 13

ORDER RE APPLICATIONS FOR ALLOWANCE OF ATTORNEY'S FEES AND EXPENSES

These matters came on for hearing before the undersigned on August 4, 1998 on separate Applications for Allowance of Attorney's Fees and Expenses filed by Attorney Janet Hong as attorney for the respective Debtors. Present at the hearing were Ms. Hong and Chapter 13 Trustee Carol Dunbar. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

FINDINGS OF FACT

Attorney Janet Hong represented Debtor Thomas Digman and Debtors Ricky and Joann Meade in their respective Chapter 13 bankruptcy cases. The Court confirmed plans in both cases which allow \$800 in attorney fees to Ms. Hong. Ms. Hong requested more than \$800 in each case. The Court requested a detailed statement of services rendered and amounts requested pursuant to Fed. R. Bankr. P. 2016(a) and set a hearing sua sponte.

In Meade, the plan requested total attorney fees of \$1,200, with \$200 paid to date and the \$1,000 balance to be paid through the plan. Ms. Hong's fee application documents total fees for services rendered of \$1,725, plus \$160 in expenses for the bankruptcy filing fee. She received \$360 from Debtors of which she applied \$160 toward the filing fee and \$200 toward attorney fees. Although apparently \$1,525 of total fees remain unpaid, Ms. Hong has reduced that amount to \$1,000 which she requests be paid through the plan.

In Digman, the plan requested total attorney fees of \$1,000, with \$200 paid to date and the \$800 balance to be paid through the plan. Ms. Hong's fee application documents total fees for services rendered of \$1,625, plus \$160 in expenses for the bankruptcy filing fee. She received \$360 from Debtors of which she applied \$160 toward the filing fee and \$200 toward attorney fees. Although apparently \$1,425 of total fees remain unpaid, Ms. Hong has reduced that amount to \$1,000 which she requests be paid through the plan.

In both of these cases, Attorney Hong requests total fees of \$1,200. She received \$200 as a retainer prepetition which she has applied against her total attorney fees. She seeks payment of the remaining \$1,000 through Debtors' Chapter 13 plans. The Orders confirming the plans approve payment to Ms. Hong of \$600 through the plans (\$800 total fees allowed minus \$200 paid from Debtors' retainers).

CONCLUSIONS OF LAW

The Court may award an attorney reasonable compensation for services rendered. 11 U.S.C. §330(a)(1)(A). It may on

its own motion award less than the amount of compensation that is requested. 11 U.S.C. §330(a)(2). Subsection (4)(B) of §330(a) provides that in a chapter 13 case in which the debtor is an individual, the court may award 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 §330(a).

In In re Apex Oil Co., 960 F.2d 728, 732 (8th Cir. 1992), the Eighth Circuit adopted the lodestar approach for calculating appropriate compensation under §330(a). The lodestar amount is the number of hours reasonably expended multiplied by a reasonable hourly rate. Id. Upward adjustments of the lodestar figure are permissible "in certain 'rare' and 'exceptional' cases, supported by both 'specific evidence' on the record and detailed findings by the lower courts." Id., quoting Pennsylvania v. Delaware Valley Citizens' Council, 478 U.S. 546, 565 (1986).

The Eighth Circuit Bankruptcy Appellate Panel recently had occasion to consider this approach as it applies to debtors' attorney fees in Chapter 13. In re Pfleghaar, 215 B.R. 394, 396 (B.A.P. 8th Cir. 1997).

[I]n making fee awards under §330, a bankruptcy court is required to either make a specific lodestar calculation or indicate why the lodestar method is inappropriate under the circumstances. . . These requirements are frequently inappropriate in Chapter 13 cases and . . . many districts have local rules permitting applications for fees under a certain amount, typically \$850--1,000, be granted without an itemized fee statement and without a hearing. Such instances present an exception to the requirement for a hearing and a lodestar calculation.

Id. The court noted that the lodestar calculation may not necessarily be the best method for determining appropriate fees in Chapter 13 cases because the majority of the work is normal and customary and because of the sheer volume of such cases in most districts. In re Kula, 213 B.R. 729, 737 n.5 (B.A.P. 8th Cir. 1997).

The applicable rule in this district is Local Rule 2016-1(b). This Rule excuses Chapter 13 debtors' attorneys from the application requirements of Fed. R. Bankr. P. 2016(a) if the request for compensation is less than the base amount established by the Court at the time of confirmation of the plan. The base amount as established by the Court as of the time of hearing was \$800. That base amount was determined to be sufficient to compensate for basic services rendered by debtors' attorneys in Chapter 13 cases. These include counseling the debtors; preparing and filing the petition, schedules and plan; attending the creditors' meeting and the confirmation hearing; reviewing claims and objecting to claims where necessary; and filing amendments and motions. See In re Watkins, 189 B.R. 823, 833 (Bankr. N.D. Ala. 1995); In re Pearson, 156 B.R. 713, 717 (Bankr. D. Mass. 1993).

Prior to 1994, compensation was allowed only to the extent the attorney's services benefitted the estate. In re Rothman, 206 B.R. 99, 110 (Bankr. E.D. Pa. 1997). Congress amended §330(a) to add subsection (4)(B) which broadened compensable services to those which benefit the debtor. Id. One court has noted that this broadening of the statute acknowledges that the debtor is the principle asset of the estate. In re Lee, 209 B.R. 708, 710 (Bankr. N.D. Ill. 1997).

While not directly an issue in these cases, a reference was made at the hearing implying fees may be sought from Debtors after the Plan is completed. The Court feels it is appropriate to point out that only the amount allowed by the court is collectible by the attorney. In re Gantz, 209 B.R. 999, 1002 (B.A.P. 10th Cir. 1997). Attorney fees may be paid to a Chapter 13 debtor's counsel only if they are approved by the Court. In re Wyant, 217 B.R. 585, 588 (Bankr. D. Neb. 1998). Fees are disallowed, allowed as an administrative expense to be paid from the estate, or allowed but must be paid by the debtor directly, not from the estate. Gantz, 209 B.R. at 1003. Absent court approval, neither the debtor nor the estate is ever liable. Id.

Also, while not at issue here, the Court feels it is appropriate to comment about taking payment from a retainer without Court approval. The general rule in bankruptcy is that retainers must be held in trust pending court approval. In re Pineloch Enters., Inc., 192 B.R. 675, 679 (Bankr. E.D.N.C. 1996) (small business Chapter 11 case); In re Independent Sales Corp., 73 B.R. 772, 774-75 (Bankr. S.D. Iowa 1987) (stating, in Chapter 11 case, that prepetition general retainers must be held in trust to extent they are for services during pendency of case). Counsel may not take payments on fees absent court approval under §330(a). In re Emerson Mattress, Inc., No. 95-12358KC, slip op. at 2 (Bankr. N.D. Iowa June 7, 1996) (Chapter 11 case). "[O]nce the petition is filed, debtor's counsel may not charge against or draw down from the retainer without the permission of the court." In re Cargo, Inc., No. X90-00200S, slip op. at 6 (Bankr. N.D.

Iowa Jan. 24, 1992) (Chapter 7 case).

This rule requiring court approval before receiving payment from a retainer may make less sense in a Chapter 13 case for the same reasons that courts do not require attorneys to comply with the §330(a) requirements in Chapter 13. Ms. Hong took payment of \$200 in fees from retainers in both of these Chapter 13 cases. The Court will not require Ms. Hong to disgorge these amounts. Counsel is on notice, however, that in the future the Court will require prior approval for any draw down of retainers for attorney fees unless the issue is presented to the Court and a contrary ruling is entered after an opportunity to brief and argue the issue by interested parties.

Local Rule 2016-1(b) provides for payment of a base amount of attorney fees without application and hearing. The Court has recently considered the amount allowable under the local rule and concludes that the base amount applicable in these cases and in future Chapter 13 cases is a maximum of \$1,000. This is a total amount which includes retainers and amounts to be paid through the plan. If Chapter 13 debtors' attorneys seek fees which exceed that amount, the requirements of §330(a) and Fed.R.Bankr.P. 2016 must be followed. Any attorney fees exceeding the amount ultimately approved by the court for payment from the estate or from debtors directly are not collectible.

The Court concludes that a specific lodestar calculation is not appropriate under the circumstances. Ms. Hong admits both cases are essentially routine. The Court has reviewed the itemized fee statements attached to Ms. Hong's applications for fees. The services set forth in those statements are those basic services for which the Court has set a base amount of fees allowable without application. The Court will allow the base amount and finds a lodestar calculation is unnecessary because of the routine nature of these Chapter 13 cases.

WHEREFORE, the Applications for Allowance of Attorney's Fees and Expenses filed in these cases are GRANTED IN PART and DENIED IN PART.

FURTHER, the Court approves \$1,000 of attorney fees for Attorney Janet Hong in each case.

FURTHER, the remainder due to Ms. Hong at the time of confirmation of the plans, or \$800 in each case, shall be paid through the Debtors' plans.

FURTHER, Ms. Hong may not collect any additional fees from Debtors or from the Chapter 13 estates.

SO ORDERED this 17th day of August, 1998.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge