

In the United States Bankruptcy Court

for the Northern District of Iowa

KEITH JEANES
JO ELLEN JEANES
aka Jodi Jeanes
Debtor(s).

Bankruptcy No. 01-00760-W

Chapter 13

ORDER RE APPLICATION FOR APPROVAL OF FEES

This matter came before the undersigned on December 12, 2001 for hearing on Application for Approval of Fees. Attorney John W. Hofmeyer III appeared for Debtors Keith and Jodi Jeanes. Carol Dunbar appeared as Chapter 13 Trustee. After hearing arguments of counsel, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

STATEMENT OF THE CASE

Debtors and their attorney, John Hofmeyer, request approval of \$2,500 attorney's fees to be paid through Debtor's Chapter 13 Plan. Mr. Hofmeyer's itemization shows fees, expenses and payments beginning May 17, 2000 through November 1, 2001. Total fees and expenses are \$4,700.97. Debtors have already paid \$1,074.06, leaving \$3,626.91 unpaid. Mr. Hofmeyer seeks approval and payment of \$2,500 of the unpaid fees and expenses itemized.

Debtors filed their Chapter 7 petition on March 16, 2001 and subsequently converted to Chapter 13. Mr. Hofmeyer points out this case involved questions about the homestead exemption and student loans. Also, Trustee has questioned Debtors' disposable income. Mr. Hofmeyer states these questions required additional documentation and attorney time. Debtors filed three versions of their Chapter 13 plan. The most recent amended plan is now confirmable subject to Debtors reducing miscellaneous and recreation expenses. Debtors also amended their schedules more than once.

No objection to the application for approval of fees appears in the file. Trustee filed "Remarks" regarding approval of Mr. Hofmeyer's fees. She notes that the first few entries represent services from 2000 which do not specify any relation to the bankruptcy case. Travel time billed in May and June 2001 is charged at the attorney's regular rate, rather than at one-half which is customary in this district. Mr. Hofmeyer's requested fees in Debtors' most recent amended plan are \$2,000. If the Court allows the additional \$500 he now requests, the payout on unsecured claims will be reduced by less than one percent.

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. The Eighth Circuit Bankruptcy Appellate Panel has considered this approach as it applies to debtors' attorney fees in Chapter 13. In re Pflughaar, 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 \$1000. See In re Digman, No. 98-00220-C, slip op. at 4 (Bankr. N.D. Iowa Aug. 17, 1998). That base amount is 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). If Chapter 13 debtors' attorneys seek fees which exceed the presumptively acceptable amount, the requirements of §330(a) and Federal Rule of Bankruptcy Procedure 2016 must be followed.

ANALYSIS

Having reviewed Mr. Hofmeyer's itemization of fees, the Court concludes that not all fees requested should be allowed and paid through the plan. Without making a line-by-line analysis of the itemization, the Court notes several categories of fees or expenses listed by Mr. Hofmeyer are not allowable. Fees arising during 2000 are vaguely described. The Court concludes Mr. Hofmeyer has failed to show these fees were related to the bankruptcy filing. Two entries for travel time during May and June 2001 are billed at Mr. Hofmeyer's full hourly rate. In this district, travel time is allowed at one-half counsel's hourly rate. Fees for preparing counsel's fee application are also not allowable in this district. Counsel's itemized "finance charges" are not appropriately paid through Debtors' plan. A \$200 charge on 03/13/2001 "for service in Behrens/Allen notice" does not appear to have any relation to this case.

In applying the lodestar analysis, the Court finds Mr. Hofmeyer's hourly rate is reasonable. As to the number of hours reasonably expended in the circumstances of this case, the Court notes Mr. Hofmeyer is seeking less than full payment as set forth in his itemization. Mr. Hofmeyer requests approval of total fees and expenses of approximately \$3,500, taking into account approximately \$1,000 already paid and an additional \$2,500 to be paid through the plan. This case required some legal services beyond those the customarily basic services for Chapter 13 cases. Thus, payment of fees beyond the presumptively acceptable amount of \$1,000 is appropriate. A total of \$3,500 for the work in this case is, however, somewhat excessive. The Court concludes a total of \$3,000 is allowable to compensate Mr. Hofmeyer for a reasonable expenditure of time at a reasonable rate. Subtracting the approximately \$1,000 Mr. Hofmeyer has already been paid, he is entitled to payment of \$2,000 for legal fees and expenses through Debtors' Chapter 13 plan.

WHEREFORE, Debtors' Application for Application for Approval of Fees is GRANTED in part.

FURTHER, fees and expenses of Attorney John W. Hofmeyer III as Debtors' attorney are approved in the amount of \$2,000 to be paid through Debtors' Chapter 13 Plan.

SO ORDERED this 20th day of December, 2001.

Paul J. Kilburg
Chief Bankruptcy Judge