



Entered on Docket  
October 02, 2006

Hon. Linda B. Riegler  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

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11 In Re: 12 ROBERT & ODETTE VIRISSIMO, 13 Debtor.	) ) ) )	BK-S-05-13605-LBR  Chapter 7 Date: February 8, 2006 Time: 11:00 a.m.
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**ORDER ON FEES**

James Lisowski is the trustee in this chapter 7 case and his firm, Lisowski Law Firm, Chtd. also serves as attorney for the trustee. The Lisowski firm has filed a fee application requesting \$24,835 for attorney's fees and \$419.43 as costs. The debtors have objected.<sup>1</sup> The court requested that Lisowski supplement the record by filing his trustee billing statements.<sup>2</sup> The court then issued a tentative ruling, denying the Lisowski firm compensation for certain services that the court determined were trustee duties. The court invited the Lisowski Law Firm, Chtd. to file a brief on the issue of the demarcation between trustee duties and attorney duties.

The firm has filed its brief, but does not argue (or raise) the issue that the court erred in determining what the job of a trustee is, as opposed to that of an attorney. Instead, the firm argues

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<sup>1</sup>The firm argues that the debtors lack standing to object. Regardless of the debtors' standing the bankruptcy court has an independent obligation to evaluate the reasonableness of a fee request. *In re Eliapo*, 298 B.R. 392, 404-05 (B.A.P. 9<sup>th</sup> Cir. 2003).

<sup>2</sup>Filed on February 14, 2006 (docket #119).

1 that the attorneys' fees and the trustee's fees combined total less than the maximum statutory rate  
2 allowable under § 326, and therefor the trustee was not attempting to effectively circumvent the  
3 statutory limits. The Lisowski firm says that Lisowski would have billed for the services anyway,  
4 as trustee, and that it actually saved the estate money because the trustee hourly rate was greater  
5 than the attorney rate for many of the services in question.

6 The court finds the arguments of the Lisowski firm to be unpersuasive. Whether or not  
7 Lisowski's trustee fees are below or above the statutory cap is irrelevant to this court's  
8 determination of whether Lisowski Law Firm, Chtd. is entitled to attorney fees as counsel for the  
9 trustee and whether the requested fees are reasonable. Accordingly, the court hereby allows  
10 attorneys' fees of \$14,627.50 plus costs of \$419.43. The court disallows the remainder of the fees  
11 sought by the firm (\$10,207.50). Those charges are not compensable as legal services, and  
12 should have been performed by Lisowski in his capacity as trustee.

13 Lisowski, through his law firm Lisowski Law Firm, Chtd., filed a motion to appoint his  
14 firm as the trustee's counsel on June 15, 2005, which the court granted. Section 327(d)  
15 authorizes a trustee to employ himself as attorney when it is in the best interest of the estate. The  
16 roles of trustee and attorney are distinct, however, and 11 U.S.C. § 328(b) prohibits an attorney-  
17 trustee from being paid for performing the statutory duties of a trustee. *In re Garcia*, 335 B.R.  
18 717 (B.A.P. 9th Cir. 2005). Section 328(b) provides:

19 If the court has authorized a trustee to serve as an attorney or  
20 accountant for the estate under section 327(d) of this title, the court  
21 may allow compensation for the trustee's services as such attorney  
22 or accountant only to the extent that the trustee performed services  
as attorney or accountant for the estate and not for performance of  
any of the trustee's duties that are generally performed by a trustee  
without the assistance of an attorney or accountant for the estate.

23 Allowing a trustee's lawyer to be compensated for the duties of a trustee would render  
24 this provision meaningless. *See In re Butterbaugh*, 135 B.R. 507, 510 (Bankr. N.D. Ohio  
25 1991)(attorney compensation for performing trustee duties "violates the Code itself"). The  
26 Bankruptcy Code provides separate compensation systems to trustees and their counsel based on  
27 their distinct expertise and function in a bankruptcy case. Services that a trustee performs without  
28 the aid of counsel are compensable under § 326, while legal services are compensated under

1 § 328, and each fee application must be reviewed on its own merits. If the duties of counsel were  
2 identical to those of a trustee, then appointment under § 327(d) would not be in the best interest  
3 of the estate.<sup>3</sup> With the benefit of self-retention comes the burden of adhering to the lines of  
4 responsibility between the two roles and for charging attorneys' fees only for services that are  
5 properly compensable under the Code.

6 Trustees are charged with performing the administrative and ministerial duties in a  
7 bankruptcy case.<sup>4</sup> The statutory duties of the trustee under 11 U.S.C. § 704<sup>5</sup> are to:

- 8 (1) collect and reduce to money the property of the estate for which  
9 such trustee serves, and close such estate as expeditiously as is  
10 compatible with the best interests of parties in interest;
- 11 (2) be accountable for all property received;
- 12 (3) ensure that the debtor shall perform his intention as specified in  
13 section 521(2)(B) of this title;
- 14 (4) investigate the financial affairs of the debtor;
- 15 (5) if a purpose would be served, examine proofs of claims and  
16 object to the allowance of any claim that is improper;
- 17 (6) if advisable, oppose the discharge of the debtor;
- 18 (7) unless the court orders otherwise, furnish such information  
19 concerning the estate and the estate's administration as is requested  
20 by a party in interest;
- 21 (8) if the business of the debtor is authorized to be operated, file  
22 with the court, with the United States trustee, and with any  
23 governmental unit charged with responsibility for collection or  
24 determination of any tax arising out of such operation, periodic  
25 reports and summaries of the operation of such business, including  
26 a statement of receipts and disbursements, and such other  
27 information as the United States trustee or the court requires; and  
28 (9) make a final report and file a final account of the administration  
of the estate with the court and with the United States trustee.

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21 <sup>3</sup>As explained more fully below, the billing statements show a number of instances where  
22 the Lisowski as trustee and the Lisowski Law Firm charged for performing the same services. For  
23 example, both the law firm and trustee Lisowski charged to review the closing documents on the  
24 same property located in Cathedral City, California, both charged to view certain other property  
25 owned by the debtors, and both charged to review a title report.

24 <sup>4</sup>*Handbook for Chapter 7 Trustees*, United States Dept. of Justice, Executive Office for  
25 the United States Trustee, Chapter 8, ¶ M(5) at p. 8-25 (July 1, 2002) (“[t]he law imposes upon  
26 the trustee the primary responsibility to administer the estate. . . .”)

27 <sup>5</sup>This case was filed on April 25, 2005, which was before the effective date of the revision  
28 to § 704 under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005  
(BAPCPA).

1 The role of counsel for the trustee, however, is to perform those tasks that require special  
2 expertise beyond that expected of an ordinary trustee. *In re Garcia*, 335 B.R. 717, 725 (B.A.P. 9<sup>th</sup>  
3 Cir. 2005).<sup>6</sup>

4 The threshold question in distinguishing between these roles is whether the services can  
5 be performed legally only with a law license. One court has described the differences in the roles  
6 of attorneys and trustees like this:

7 The purpose of the attorney for the trustee is not to provide  
8 assistance to the trustee in the performance of the trustee's  
9 statutory duties, ***but to provide assistance with those services the trustee is unable to perform due to the lack of a license to practice law.***

10 *In re Polk*, 215 B.R. 250, 253 (Bankr. M.D. Fla. 1997)(citation omitted)(emphasis added).

11 Courts have developed generalized guidelines to assist trustees who serve as their own  
12 counsel in distinguishing between legal services and a trustee's duties. One widely accepted  
13 generalization is this one:

14 In general, professional time is limited to those tasks performed  
15 while representing the trustee in the prosecution of contested  
16 matters and adversary proceedings, attendance at court hearings in  
17 the capacity of attorney or other professional when the trustee has  
18 an interest, the preparation of professional related applications, and  
19 the performance of other specialized services that cannot be  
20 performed practically or lawfully by the trustee without engaging  
21 the services of a professional.

22 *In re Holub*, 129 B.R. 293, 296 (Bankr. M.D. Fla. 1991). Under this analysis, the professional  
23 skills of an attorney are required when there is an adversary proceeding or a contested motion  
24 that requires the trustee to appear and prosecute or defend, when an attorney is needed for a court  
25 appearance, or when other services are needed that require a law license.

26 The practice of law in Nevada, at a minimum, involves giving legal advice and exercising  
27 legal judgment. *See Pioneer Title Ins. & Trust v. State Bar of Nevada*, 326 P.2d 408, 411 (Nev.  
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26 "Reasonable and necessary legal skills are those which require professional legal skills  
27 and expertise beyond the knowledge and skills of a trustee." *Handbook for Chapter 7 Trustees*,  
28 U.S. Dept. of Justice, Executive Office for the United States Trustees, Chapter 8, ¶ N(3) at p. 8-  
30 (July 1, 2002).

1 1958)(unauthorized practice of law occurs with exercise of legal judgment, advice, guidance and  
2 suggestion). Law practice is not limited to conducting litigation, but includes the preparation of  
3 documents requiring the use of legal knowledge or skill. For example in *Garcia*, the Bankruptcy  
4 Appellate Panel ruled that preparing two documents - a stipulation and a mutual  
5 release - constituted legal services. Analyzing the definition of “practicing law,” the BAP held  
6 that under applicable state law it means more than just appearing in court. “[T]he practice of law  
7 includes the preparation of legal instruments and contracts by which legal rights are secured,  
8 whether the matter is pending in court or not.” The complexity of the documents is not the  
9 determining factor. *In re Garcia*, 335 B.R. 717, 728 (B.A.P. 9<sup>th</sup> Cir. 2005).

10 A trustee-attorney applicant has the burden of showing that a service “cannot be  
11 performed practically or lawfully except by an attorney.” *In re Howard Love Pipeline Supply*  
12 *Co.*, 253 B.R. 781, 792 (Bankr. E.D. Tex. 2000). Attorneys must therefore present billing records  
13 with enough detail to show that the charge involves some legal service beyond the scope of the  
14 trustee’s statutory duty. *See In re Garcia*, 335 B.R. 717, 727 (B.A.P. 9<sup>th</sup> Cir. 2005). The need for  
15 the attorney must be clear from the description of the services in the application. *Id.* The fee  
16 applicant has the burden of showing that the requested fees are reasonable. *In re Basham*, 208  
17 B.R. 926, 931-32 (B.A.P. 9<sup>th</sup> Cir. 1997), *aff’d*, 152 F.3d 924 (9<sup>th</sup> Cir. 1998).

18 The Ninth Circuit in *Unsecured Creditor’s Committee v. Puget Sound Plywood, Inc.*, 924  
19 F.2d 955, 957-58 (9<sup>th</sup> Cir. 1990) has employed a three-part analysis in reviewing a professional’s  
20 fee application, which requires a court to ask the following questions:

- 21 (1) Are the services which are the subject of the application properly compensable  
22 as legal services?  
23 (2) If so, were they necessary and is the performance of necessary tasks adequately  
24 documented?  
25 (3) If, so, how will they be valued? Were the necessary tasks performed within a  
26 reasonable amount of time and what is the reasonable value of that time?

27 If the services of the attorney for the trustee are compensable, then the rest of the analysis  
28 centers on whether the fees amount to “reasonable compensation for actual, necessary services.”

1 11 U.S.C. 330(a)(1)(A). To determine the amount of reasonable compensation, § 330(a)(3)<sup>7</sup>  
2 says that the court must:

3 [C]onsider the nature, the extent, and the value of such services,  
4 taking into account all relevant factors, including-

5 (A) the time spent on such services;

6 (B) the rates charged for such services;

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

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

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

18 A professional needs only to show that the services rendered were “reasonably likely” to  
19 benefit the estate at the time they were rendered. *In re Garcia*, 335 B.R. 717, 724 (B.A.P. 9<sup>th</sup> Cir.  
20 2005).

21 In addition, a bankruptcy court must examine the circumstances and manner in which the  
22 services are performed and the results achieved to determine a reasonable fee. This examination  
23 includes:

24 (a) Were the services authorized?

25 (b) Were the services necessary or beneficial to the administration of the estate at  
26 the time they were rendered?

27 (c) Are the services adequately documented?

28 (d) Are the fees required reasonable, taking into consideration the factors set forth  
in section 330(a)(3)?

(e) In making the determination, the court must consider whether the professional  
exercised reasonable billing judgment.

*Id.* In exercising reasonable billing judgment, the professional must consider:

(a) Is the burden of the probable cost of legal services disproportionately large in  
relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services  
are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is  
the likelihood of the disputed issues being resolved successfully?

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<sup>7</sup>This case was filed before the effective date of the revision to § 330 under the  
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).

1 *Id.* Section 330(a)(4)(A) provides that a court must not allow compensation for-

- 2 (i) unnecessary duplication of services; or
- 3 (ii) services that were not-
  - 4 (I) reasonably likely to benefit the debtor's estate; or
  - 5 (II) necessary to the administration of the case.

6 The threshold question that underpins all of this analysis is whether the services of the  
7 attorney for the trustee are properly compensable as legal services. *Unsecured Creditors'*  
8 *Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 958 (9<sup>th</sup> Cir. 1990). "A finding of  
9 compensability merely means the services performed were properly charged as legal services, as  
10 opposed to administrative or otherwise nonlegal services." *Id.* Accordingly, before an attorney  
11 for the trustee can be compensated, the court must determine whether the services performed by  
12 the attorney were legal services, as opposed to the trustee's statutory duties.

13 A review of the time sheets submitted by Lisowski Law Firm, Chtd. show that many of  
14 the tasks that are billed for are not compensable. This is because in many instances the Lisowski  
15 firm has billed for services that are the statutory duties of a trustee.

16 ***A. Services That Are Not Compensable***

17 ***1. Public Record Searches and Other Investigation***

18 Lisowski Law Firm, Chtd. bills 12.4 hours and charges \$3,410<sup>8</sup> to research  
19 public records, to order deeds from county recorders, to review and seek information about  
20 lawsuits already pending against the debtors, and to review closing documents on their realty.  
21 This charge includes \$110 (.4 hours) to "order deeds from San Diego County recorder;"<sup>9</sup>  
22 \$687.50 (2.5 hours) to "review file and initiate public records search;"<sup>10</sup> \$275 (1 hour) to  
23 "research/find deed of sale - San Diego property";<sup>11</sup> \$137.50 (.50 hour) to "research Riverside

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24 <sup>8</sup>The hourly rates billed in this case by the attorneys in Lisowski Law Firm, Chtd. range  
25 from \$200 to \$295 per hour.

26 <sup>9</sup>June 21, 2005.

27 <sup>10</sup>June 7, 2005.

28 <sup>11</sup>June 20, 2005.

1 County public records;”<sup>12</sup> and \$137.50 to “review transfer records from Riverside + San Diego  
2 counties.”<sup>13</sup> It also includes \$275 (1 hour) to “prepare task list for attorney and investigator;”<sup>14</sup>  
3 \$192.50 (.7 hours) to review closing documents on the debtors’ out-of-state realty;<sup>15</sup> and  
4 \$1,402.50 (5.1 hours) to either seek information, review, or talk about lawsuits already filed by  
5 others against the debtors.<sup>16</sup>

6 These tasks are examples of a trustee’s statutory duty under § 704(a)(4) to investigate the  
7 financial affairs of the debtor. Public records searches are fairly straightforward and the  
8 application fails to show that legal analysis was necessary. Similarly, the firm’s charges to  
9 review the lawsuits lack any description regarding a legal analysis of the issues involved. There  
10 is no showing that either the records searches, the deed orders, the communications, or the  
11 review of the pending lawsuits presented unique difficulties that required the professional  
12 expertise of an attorney. These charges are not sufficiently documented to support a claim for  
13 legal services. *See In re Garcia*, 335 B.R. 717, 727 (B.A.P. 9<sup>th</sup> Cir. 2005). One billing entry  
14 baldly states “legal research and review outstanding lawsuits.”<sup>17</sup> Vague entries and those that  
15 lump together different services are not compensable. *In re Ginji Corp.*, 117 B.R. 983, 993  
16 (Bankr. D. Nev. 1990).

17 Additionally, the billing records of the Lisowski firm and Lisowski as trustee show a  
18 duplication of services. This is because both the firm and the trustee have charged to investigate  
19 the affairs of the debtor. For example, Lisowski’s trustee billing statement for July 7, 2005 has  
20 an entry which states in part “review closing docs for Cathedral City property” (\$125.00 for .5  
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22 <sup>12</sup>June 8, 2005.

23 <sup>13</sup>June 13, 2005.

24 <sup>14</sup>June 8, 2005.

25 <sup>15</sup>June 27, 2005.

26 <sup>16</sup>June 20 - 22, 2005.

27 <sup>17</sup>June 20, 2005.

1 hours). The firm's billing records show a charge for the same service. On June 27, 2005, the law  
2 firm billed to "review closing docs on S.D. and Cathedral City homes" (\$192.50 for .7 hours).  
3 This problem of receiving two fees for the same service was expressly acknowledged when  
4 Congress enacted § 328(b) and is clearly not in the best interest of the estate.<sup>18</sup> See 11 U.S.C.  
5 § 330(a)(4)(A)(i)(court must not allow compensation for "unnecessary duplication of services").

## 6 **2. Disposition of Assets**

### 7 **a. Valuations and Appraisals**

8 Arranging for an appraisal or the valuation of a debtor's property is  
9 a duty of the trustee. Appraisals are a part of the trustee's duty under §§ 704(1) and (4) to collect  
10 and liquidate property of the estate and to investigate the affairs of the debtor. See *In re*  
11 *McKenna*, 93 B.R. 238, 242 (Bankr. E.D.Cal.1988)(arranging for appraisals of the estate and  
12 services related the sale of debtor's assets are trustee functions).<sup>19</sup> Despite this, Lisowski Law  
13 Firm, Chtd. bills \$535 (2 hours) for telephone calls with realtors about appraisals and valuations  
14 of the debtors' real property. For example, the law firm bills \$137.50 (.50 hours) to call a realtor  
15 to "request valuation,"<sup>20</sup> and \$82.50 (.3 hours) for "telephone call to Diero re: itemized  
16 appraisal."<sup>21</sup>

17 The services of the Lisowski firm duplicated Lisowski's trustee work. In addition to the

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19 <sup>18</sup>Section 328(b) provides that legal fees can be disallowed if an attorney's services  
20 duplicate the job of a trustee. As stated earlier, the legislative history states that the purpose of  
21 allowing the trustee to serve as his own counsel is to reduce costs and not to permit a trustee "to  
22 receive two fees for the same service or avoid the maxima fixed in section 326." House Report  
23 on § 328(b), H.R. Rep. No. 95-595, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 329 (1977), U.S. Code Cong. & Admin.  
24 News pp. 5963, 6285.

25 <sup>19</sup>See also, *Handbook for Chapter 7 Trustees*, United States Dept. of Justice, Executive  
26 Office for the United States Trustee, Chapter 8, ¶ M(7) at p. 8-28 (July 1, 2002)("[a] trustee may  
27 require the services of an appraiser to ascertain the value of property of an estate.").

28 <sup>20</sup>June 7, 2005.

<sup>21</sup>August 18, 2005. The record shows that Robert Diero & Associates is a realty  
company. See "Trustee's Motion to Enter Into Listing Agreement." (Docket #42).

1 firm's services as mentioned above, valuation services were also performed by Lisowski as  
2 trustee. His trustee billing statement shows that he billed \$100 (.4 hours) as trustee for a phone  
3 call with a realtor "re: value and time to sell"<sup>22</sup> and that he billed to review the "bluebook values  
4 on cars."<sup>23</sup>

5 There is no showing in the firm's application about why the professional expertise as an  
6 attorney was required to either request or discuss appraisals, and no showing of the legal issues  
7 that were involved. The charges for the valuation and appraisal-related services that Lisowski  
8 Law Firm, Chtd. performed are trustee duties, not attorney duties. Accordingly, they are denied.

9 ***b. Viewing Property***

10 The Lisowski firm bills \$687.50 (2.5 hours)<sup>24</sup> for time spent  
11 "meeting with Diero to view household goods." Viewing a debtor's property, however, is part of  
12 a trustee's duty to investigate the affairs of the debtor (§ 704(4)) and to collect and liquidate  
13 property of the estate (§ 704(1)). The application is silent as to whether the viewing was done to  
14 sell the property, inventory it, or facilitate an appraisal. But in any event, absent a showing of the  
15 need for legal services, all of those activities are the duties of a trustee.<sup>25</sup>

16 Again, the court notes that the law firm's services duplicated Lisowski's trustee work. His  
17 trustee billing statements show a charge of \$212.50 (2.5 hours)<sup>26</sup> to "locate, drive, view house  
18 and vehicles." Two months later, Lisowski Law Firm, Chtd. billed \$687.50 (2.5 hours) as  
19 attorney for the trustee for "meeting with Diero to view household goods."<sup>27</sup>

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22 <sup>22</sup>Trustee billing statements on June 7, 2005.

23 <sup>23</sup>Trustee Billing Statements on July 30, 2005.

24 <sup>24</sup>August 17, 2005.

25 <sup>25</sup>*Handbook for Chapter 7 Trustees*, United States Dept. of Justice, Executive Office for  
26 the United States Trustee, Chapter 6 ¶ B(1) - (2), pp. 6-2- through 6-4; Chapter 8 ¶ M at p. 8-21  
(July 1, 2002).

27 <sup>26</sup>June 14, 2005.

28 <sup>27</sup>August 17, 2005.

1 The firm's application lacks the detail of what legal issue was involved that required his  
2 professional skills as an attorney to simply view the debtors' property. These charges are denied.

3 ***c. Sale Negotiations and Listing Agreement***

4 The firm bills \$2,570 (11.8 hours) to talk with the realtor and  
5 opposing counsel about offers and counter-offers on the debtors' residence, and about closing  
6 costs, closing dates, and signatures on the payoff. The billing entries include "telephone call  
7 from Sandy Beard re: offer on house,"<sup>28</sup> "phone call from Sandy Beard re: counter-offer on  
8 house,"<sup>29</sup> and telephone call from Mark Segal re: possible offers on house."<sup>30</sup> In addition, there  
9 are charges of \$632.50 (2.3 hours) to communicate with the realtor about the listing agreement  
10 on the house.<sup>31</sup>

11 A comparison of the billing records for Lisowski Law Firm, Chtd. and Lisowski as trustee  
12 show that sale-related services were performed by both. For example, as trustee Lisowski billed  
13 \$100 (.4 hours) on June 24, 2005 to talk with the realtor about a listing. On the same day, the law  
14 firm also billed \$275 (1 hour) for communications about the listing.<sup>32</sup> And on August 11, 2005  
15 the Lisowski firm and Lisowski as trustee billed to review or talk about a counter-offer on the  
16 debtors' house.

17 "Routine negotiations regarding the sale of real property are properly within the trustee's  
18 province." *In re Garcia*, 335 B.R. 717, 727 (B.A.P. 9<sup>th</sup> Cir. 2005)(communications with broker,  
19 reviewing title reports, and negotiating sales are trustee functions). There is no description in the  
20 application of what the legal issues were that required the services of an attorney, or why these

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22 <sup>28</sup>August 10, 2005. The record shows that Sandy Beard is a realtor. See "Trustee's  
23 Motion to Enter Into Listing Agreement" filed on July 8, 2005 (Docket #42).

24 <sup>29</sup>August 11, 2005.

25 <sup>30</sup>August 19, 2005.

26 <sup>31</sup>June 22, 2005; June 24, 2005; June 27, 2005; July 1, 2005; and July 5, 2005.

27 <sup>32</sup>The billing entries state: "telephone call to Sandy Beard re: listing contract;" "phone call  
28 w/Sandy Beard re: new Virissimo listing;" and "ltr to Frank Napoli realtor - reject listing  
contract."

1 services were beyond Lisowski's scope of duties as trustee. Absent this detail the services are not  
2 compensable.

3 ***d. Reviewing Title Reports***

4 Lisowski Law Firm, Chtd. charges \$495 (2.1 hours)<sup>33</sup> for reviewing  
5 a title report and for related telephone calls. The application, however, reveals no legal issue that  
6 would require the professional services of an attorney. "With no apparent legal issues present,  
7 reviewing the title report is part of the trustee's duties." *Garcia*, 335 B.R. at 727. The court  
8 notes, again, that both the firm and Lisowski as trustee billed for viewing title reports. Lisowski  
9 charged as trustee to review the title report on the debtors' residence on June 24, 2005 ("review  
10 preliminary title report on Riley property").

11 ***3. Preparing Simple Applications and Motions***

12 ***a. Application for Employment of Counsel***

13 Fifty dollars (.5 hours) is charged to prepare the trustee's  
14 application to employ his law firm as counsel for the trustee and to prepare an affidavit.<sup>34</sup> As  
15 determined in *In re Garcia*, 335 B.R. at 726, absent a showing by the applicant to the contrary,  
16 the preparation of an application for the employment of a professional is a duty generally  
17 performed by a trustee without the assistance of an attorney. The firm's application is a little over  
18 2 pages long. The supporting affidavit is two pages and the order is a single paragraph. The  
19 application demonstrates no legal issues that required an attorney. "Routine employment  
20 applications are generally prepared and presented by a trustee without the assistance of an  
21 attorney for the estate." *Id.*

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27 <sup>33</sup>June 17, 2005; July 1, 2005; August 24, 2005; September 30, 2005; October 3, 2005;  
November 23, 2005; and November 28, 2005.

28 <sup>34</sup>June 5, 2005.

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***b. Application for Rule 2004 Exam***

Lisowski Law Firm, Chtd. bills \$110 (.4 hours)<sup>35</sup> to draft an ex parte application for a 2004 exam to be conducted by the trustee, and a supporting affidavit. The application states “[i]t is necessary for the trustee to examine the custodian of records of Prudential Americana Group regarding the debtors and debtors’ assets.” The affidavit in support of the application is virtually identical and adds no additional facts.<sup>36</sup> The application and the affidavit are four and five paragraphs long, respectively.

This application, filed ex parte and not opposed, is an example of the trustee’s statutory duty to investigate the affairs of the debtor (§ 704(4)) and to collect and liquidate property of the estate (§ 704(1)). Absent a need for complex legal analysis or intricate argument, the filing of a simple motion like this is generally performed by a trustee without the assistance of an attorney. *In re McKenna*, 93 B.R. 238, 241 (Bankr. C.D. Cal. 1988)(unopposed motion to sell liquor license is trustee duty). This simple application for a 2004 exam is akin to the trustee’s execution of an application to employ himself, which is a trustee job, than it is to the preparation of a legal instrument that secures legal rights, such as a stipulation, which was considered a legal service in *In re Garcia*, 335 B.R. 717 (B.A.P. 9<sup>th</sup> Cir. 2005). Drafting this application for a 2004 exam does not fall within the *Holub* test, either, as being the prosecution of a contested matter or adversarial proceeding, attendance at a court hearing as an attorney, or as being impossible to perform practically or lawfully without a law license.

The firm’s fee application lacks any showing of why the professional skills of an attorney were required to draft this simple, unopposed application, or why drafting the application was beyond the scope of a trustee’s duties. Accordingly, this charge is denied.

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<sup>35</sup>June 23, 2005.

<sup>36</sup>It states “[i]t has become necessary for the trustee to examine the Custodian of Records of Prudential Americana Group to explore the facts and circumstances surrounding the debtors and potential estate assets.”

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*c. Simple Uncontested Motions*

Lisowski Law Firm, Chtd. bills \$260 to draft a motion for turnover of bank account funds (.8 hours)<sup>37</sup> and for a conference with “Katie” four months later about whether the funds had been received (.2 hours).<sup>38</sup> The debtors did not file a written opposition or appear at the hearing. In fact one of the attorneys in the firm<sup>39</sup> appeared at the hearing and told the court that “I have spoken to Mr. Segal; he is not opposing these motions.”<sup>40</sup> There was no argument at the hearing. The motion was a mere two pages plus an exhibit.

The presentation of a simple motion that relates to a trustee duty and that requires no complex legal analysis or argument is generally performed by a trustee without the aid of counsel. *See In re McKenna*, 93 B.R. 238, 241 (Bankr. C.D. Cal. 1988)(unopposed motion to sell liquor license). A skeletal, unopposed motion for turnover is an example of that kind of motion. This is so because a demand for turnover is a part of the trustee’s statutory duty under § 704(1) to collect property of the estate and liquidate it. *See In re Spungen*, 168 B.R. 373, 377-78 (D. N. D. Ind. 1993)(turnover request is trustee duty even if could lead to “full court action”).

The fact that documents are simple does not determine whether their drafting “is properly within the sphere of legal services.” *In re Garcia*, 335 B.R. 717, 728 (B.A.P. 9th Cir. 2005). But Nevada law makes it clear that giving legal advice and exercising legal judgment constitute the practice of law. *Pioneer Title Ins. & Trust v. State Bar of Nevada*, 326 P.2d 408, 411 (Nev. 1958). The application and record here show no apparent legal issues present. The need to demand turnover should be known to a competent trustee without seeking legal advice. The turnover motion itself is no more that a recitation of what the trustee told the debtors at the § 341 meeting, which was to turnover their bank funds. After making the demand at the § 341 meeting,

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<sup>37</sup>June 21, 2005.

<sup>38</sup>October 21, 2005.

<sup>39</sup>Donald Norris, Esq.

<sup>40</sup>The trustee’s motion to extend time to file an adversary proceeding was also heard at that time (July 27, 2005).

1 any trustee could determine that the funds had not been surrendered. The firm did not have to file  
2 an extensive brief, and there was no need for complex legal analysis or intricate argument. An  
3 attorney from the firm was not even required to appear in prosecution of the motion because it  
4 was unopposed. It therefore does not fall within the *Holub* test as being the prosecution of either  
5 a contested matter or adversarial proceeding, attendance at a court hearing as an attorney, or as  
6 being impossible to perform without a law license. Furthermore, turnover is pursuant to statute  
7 under the Bankruptcy Code, so no legal instruments were required to be drafted in order to secure  
8 a legal right as in *Garcia*. While it is true that a motion was drafted to obtain a court order for  
9 turnover, the preparation of that motion could be performed both practically and lawfully by the  
10 trustee without a law license as it required no complex legal analysis or intricate argument.<sup>41</sup>  
11 This unopposed turnover motion is more akin to the simple, uncontested motion to sell that was  
12 at issue in *McKenna*<sup>42</sup> and found to be a trustee duty as opposed to the job of an attorney.

13 This is not to say that the preparation of a simple motion for turnover is *per se* not  
14 compensable. Matters that are initially unopposed can turn into contested matters that require  
15 legal advice, judgment, or advocacy. But in this case the fee application lacks any detail showing  
16 that legal services were required that went beyond the scope of the statutory duty of a trustee.  
17 The court therefore concludes this routine, unopposed motion is not compensable. The charge is  
18 denied.

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20 <sup>41</sup>The court acknowledges that LR 9014(c)(1) requires that a motion contain a “legal  
21 memorandum.” This requirement, however, does not mean that trustee Lisowski would have  
22 been practicing law if he had prepared the turnover motion. The skeletal motion filed by the firm  
23 contained a very brief recitation of the essential facts (debtors were told to turnover the funds at  
24 the § 341 meeting but had failed to do so) and a statement that the funds are property of the estate  
25 under § 541. Trustees have been charged by Congress with the responsibility of overseeing  
26 bankruptcy cases. “Congress obviously took the trustee’s qualifications into account when  
27 drafting the Bankruptcy Code and contemplated that these highly qualified individuals could and  
28 would perform the duties set forth in § 704, *i.e.*, conservation of estate assets for the benefit of  
creditors.” *In re Perkins*, 244 B.R. 835, 844 (Bankr. D. Mont. 2000)(trustee filing routine  
motions that lack legal argument and require no legal expertise does not constitute unauthorized  
practice of law).

<sup>42</sup>*In re McKenna*, 93 B.R. 238, 241 (Bankr. C.D. Cal. 1988).

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**d. Motion to Extend**

Lisowski Law Firm, Chtd. charges \$825 for work on what is characterized as motions to extend the time to object to an exemption<sup>43</sup> and to discharge.<sup>44</sup> A review of the docket shows that an extend-time motion to object to the debtor’s discharge was filed on July 1, 2005. The court presumes that the \$825 bill relates to that motion.<sup>45</sup> The debtors did not file a written opposition to the motion and their counsel made no appearance at the hearing. A lawyer in the attorney-trustee’s firm appeared, however, and told the court that the debtors did not oppose the motion. As stated earlier, unopposed motions concerning the duties of a trustee and that require no legal advice, judgment, or argument are generally performed by a trustee without the assistance of an attorney. *See, e.g.; In re Kuhn*, 337 B.R. 668, 676 (Bankr. N.D. Ind. 2006)(preparation of motions to extend time to object to discharge and to exemptions is not compensable because both are “ordinary administrative responsibility of a chapter 7 trustee”).

Again, the application fails to show what legal services were needed or what issues went beyond the scope of a trustee’s statutory duty. The charge is denied.

**4. Communications Between Information Seekers**

Lisowski Law Firm, Chtd. bills \$82.50 (.3 hours)<sup>46</sup> for sending an email to the Department of Justice about “general case status.” Routine telephone calls and correspondence with information seekers are the duties of the trustee under § 704(7). *See In re*

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<sup>43</sup>June 10, 2005; June 13, 2005; and June 15, 2005.

<sup>44</sup>June 23, 2005.

<sup>45</sup>The court notes that the charges might apply to services rendered on the debtors’ motion to extend the time to file their schedules and statements. The application is not specific enough to determine what motion to extend is at issue. Vague entries are not compensable. *In re Ginji Corp.*, 117 B.R. 983, 993 (Bankr. D. Nev. 1990). Nevertheless, as explained below, the firm’s charges on the debtors’ motion to extend time to file their schedules are also denied.

<sup>46</sup>June 22, 2005.

1 *McKenna*, 93 B.R. 238, 242 (E.D. Cal. 1988).<sup>47</sup> Even if the email was a request by the trustee for  
2 information, it is still not compensable as a legal service. Requests for information are part of a  
3 trustee's duty under § 704(4) to investigate the affairs of the debtor. The application lacks any  
4 detail about what special expertise beyond that of an ordinary trustee was required to send this  
5 email. The charge is denied.

6 **5. Late-Filed Schedules**

7 The firm bills \$550 (2 hours) for services on the debtors' motion to extend  
8 time to file their schedules and statements. The bills are for talking with opposing counsel,<sup>48</sup> and  
9 preparing for<sup>49</sup> and attending the hearing.<sup>50</sup> As explained before, filing a simple motion that  
10 relates to trustee duty is generally performed by a trustee without the assistance of an attorney if  
11 there is no need for complex legal analysis or intricate argument. *In re McKenna*, 93 B.R. 238,  
12 241 (Bankr. C.D. Cal. 1988). The record shows that the debtors' motion was not opposed. The  
13 firm offers no detail in the application about why a lawyer was needed for these services. These  
14 charges are denied.

15 **B. Fees That Are Allowed**

16 **1. Objection to Exemption**

17 The firm charges \$9,282.50 (33.8 hours) for objecting to the debtors'  
18 homestead exemption. The application shows that this service relates to issues that required the  
19 special expertise of an attorney beyond that expected of an ordinary trustee. Employing counsel  
20 was warranted, and the fees are thus compensable. The court also finds that the services were  
21 necessary, authorized, and adequately documented. They are also reasonable.

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23 <sup>47</sup>*See Handbook for Chapter 7 Trustees*, United States Dept. of Justice, Executive Office  
24 for the United States Trustee, Chapter 8, ¶ M(5) (July 1, 2002)(furnishing information to parties  
on factual matters is a duty of the trustee).

25 <sup>48</sup>July 22, 2005 and July 25, 2005.

26 <sup>49</sup>July 25, 2005. This billing entry is non-descriptive as it merely says "prepare for  
27 hearings on motions."

28 <sup>50</sup>August 10, 2005.

1 This case presented a novel legal issue related to 11 U.S.C. § 522(p), which was a newly  
2 enacted provision of the Bankruptcy Code at the time of filing.<sup>51</sup> The services that were rendered  
3 for this issue are related to the § 522(p) issue, and substantial legal research and briefing were  
4 required. The court finds that these services were performed within a reasonable amount of time  
5 given the nature and importance of the issue. The firm spent 33.8 hours for services related to  
6 objecting to the homestead, which included legal research, communications, and the drafting  
7 stipulations, briefs, and motions. The court finds this to be reasonable given the complexity of  
8 the § 522(p) issue.

9 As for the rates charged for the work, the court notes that some work was performed at  
10 the firm's highest rate (\$295). Much of the work, however, was performed by the firm's second  
11 highest-priced attorney (\$275) and at the firm's lowest rate (\$200). All three rates are reasonable  
12 based on the customary compensation charged. Reasonable billing judgment is evident here,  
13 given that the more complex homestead may have required the services of a more senior  
14 attorney. In addition, a reasonable amount of time was spent.

15 These services were also necessary and beneficial to the estate and show reasonable  
16 billing judgment. The trustee ultimately prevailed on the homestead issue and recovered \$90,000,  
17 which would not have been obtained without the trustee's efforts. The recovery to the estate  
18 outweighs the cost of the services.

## 19 **2. Motion To Employ Realtor**

20 The firm bills \$1,705 (6.2 hours)<sup>52</sup> for services related to the employment  
21 of a realtor to sell the debtors' homestead. A trustee generally prepares and presents routine  
22 employment applications without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725  
23 (B.A.P. 9<sup>th</sup> Cir. 2005)(fees denied for preparing application to hire real estate broker).

24 The record shows, however, that the motion was opposed. Prosecution of the motion

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26 <sup>51</sup>This case was filed on April 25, 2005. The effective date of § 522(p) was April 17,  
27 2005.

28 <sup>52</sup>June 24, 2005; June 29, 2005; July 5, 2005; July 7, 2005; July 8, 2005; July 18, 2005;  
July 21, 2005; and July 26, 2005.

1 required a written response, a court appearance, and legal argument and advocacy. A written  
2 stipulation was also prepared.<sup>53</sup> These are services requiring the special expertise of an attorney,  
3 constitute the practice of law, and are thus compensable. They were also necessary and  
4 beneficial, adequately documented, authorized, and reasonable as to both the time spent and the  
5 fees charged. Reasonable billing judgment was rendered. While none of the work was done at  
6 the firm's lowest billing rate (\$200), it is reasonable to think that the services of a more senior  
7 attorney were required because a stipulation was executed. The amount of time spent was  
8 reasonable, and the recovery to the estate is large in comparison to the cost of the services.  
9 Accordingly, these charges are allowed.

### 10 **3. Motion To Sell**

11 \$2,547.50 (12.4 hours) is billed for a motion to sell<sup>54</sup> and to disallow pre-  
12 payment penalties.<sup>55</sup> The record shows that the motion was not opposed.<sup>56</sup> A simple,  
13 uncontested motion to sell in which there is no need for complex legal analysis or intricate  
14 argument is generally a trustee duty. *See In re McKenna*, 93 B.R. 238, 241 (Bankr. E.D. Cal.  
15 1988)(motion to sell liquor license).

16 This motion, however, required legal services in the form of legal analysis, research,  
17 preparing a legal brief, and argument because the mortgagee claimed to be owed a pre-payment  
18 penalty. The services were necessary and beneficial, authorized, adequately documented, and  
19 reasonable both as to time spent and rates charged. Reasonable billing judgment is evident, as  
20 the majority of the work was done at the lowest attorney rate in the firm (\$200), and the recovery  
21 to the estate outweighs the cost of the service. This charge is allowed.

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23 <sup>53</sup>Trustee's Motion To Enter Into Listing Agreement, Exhibit "1."

24 <sup>54</sup>July 19, 2005; July 26, 2005; October 17, 2005; October 21, 2005; November 4, 2005;  
25 November 21, 2005 - November 23, 2005; December 14, 2005; December 21, 2005; and  
December 22, 2005.

26 <sup>55</sup>October 18, 2005 - October 20, 2005; and November 21, 2005.

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28 <sup>56</sup>The debtors did not file a written opposition, and their counsel appeared at the hearing  
on December 21, 2005 and stated that "We have no objection to the trustee's request. . . ."

1 **4. Fee Application**

2 The \$500 (3.0 hours) that has been billed for preparing the application for  
3 fees, the task summary, and the court appearance are allowed. The court finds that the time spent  
4 and the rates charges were reasonable, and that they were necessary and adequately documented.  
5 Fee applications are a compensable task when legal services have been rendered. *In re Garcia*,  
6 335 B.R. 717, 729 (B.A.P. 9th Cir. 2005).

7 **5. Other**

8 Miscellaneous charges in the total amount of \$592.50 are also allowed.  
9 These include charges for: (1) communications with opposing counsel about a stipulation for his  
10 payment;<sup>57</sup> (2) communications with opposing counsel about requested information and  
11 documents;<sup>58</sup> (3) a telephone conference with a court employee;<sup>59</sup> and (4) reviewing the tape of  
12 the 341 hearing.<sup>60</sup>

13 The court awards \$419.43 for costs. Even though a substantial portion of the firm's  
14 fees have been disallowed because they are not compensable, the court finds that the costs would  
15 have been born by Lisowski in his capacity as trustee.<sup>61</sup>

16 Lisowski as trustee may submit the disallowed charges in its request for trustee fees. That  
17 request will be reviewed on its own merits.

18 **IT IS SO ORDERED.**

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<sup>57</sup>December 2, 2005, December 12, 2005, and December 19, 2005.

23 <sup>58</sup>June 9, 2005; June 15, 2005.

24 <sup>59</sup>November 7, 2005.

25 <sup>60</sup>July 25, 2005.

26 <sup>61</sup>The court recognizes that the costs should be billed by the entity that incurred them, that  
27 is, Lisowski as trustee or the Lisowski firm. The additional expense that would be incurred by the  
28 estate for the firm to separate the costs and bill correctly for them, however, is not cost effective.

1 Copies noticed through ECF to:

2 James F. Lisowski, Sr., Esq.  
3 Mark Segal, Esq.

4

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6 Copy noticed through BNC to:

7 United States Trustee  
8 August Landis, Esq.  
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10 Las Vegas, NV 89101

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