



Honorable Gary Spraker
United States Bankruptcy Judge



Entered on Docket
May 22, 2019

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re:)	Case No. 17-11846-gs
)	Chapter 13
MICHELE L. ROBERTS,)	
)	<u>Hearing</u>
Debtor.)	Date: March 28, 2019
)	Time: 2:30 p.m.

**ORDER GRANTING IN PART AND DENYING IN PART
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

On March 28, 2019, the court heard Haines & Krieger's (H&K) Application for Compensation and Reimbursement of Expenses No. 1 (Application) (ECF No. 113) as part of the chapter 13 duty calendar. At oral argument, the court requested additional information regarding the basis for the \$20,140.50 in fees for which H&K sought court approval. H&K has filed the Declaration of George Haines (ECF No. 138) (Haines Declaration) in support of its Application, together with a revised spreadsheet identified as Exhibit A (ECF No. 139). The spreadsheet attached to the Haines Declaration details total fees in the amount of \$19,975.50.

The court has reviewed the Application and the Haines Declaration, but begins its analysis with the standards applicable to the Application. Section 329(a) governs compensation concerning debtors' counsel and provides:

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C. § 329(a).

Section 330(a)(4)(B) further requires that “[c]ompensation paid to the attorney for a chapter 13 debtor must be reasonable considering the benefit to the debtor and the necessity of the services.” *In re Pedersen*, 229 B.R. 445, 448 (Bankr. E.D. Cal. 1999). Section 330(a)(4)(B) also requires court approval for any compensation to be paid to counsel representing a chapter 13 debtor. Rule 2016 further provides that:

(a) ... An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, [and] the source of the compensation so paid or promised....

(b) ... Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 15 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code.... A supplemental statement shall be filed and transmitted to the United States trustee within 15 days after any payment or agreement not previously disclosed.

Fed. R. Bankr. P. 2016.

Consideration of H&K’s right to compensation begins with its Disclosure of Compensation of Attorney for Debtor(s) filed at ECF No. 25 (Disclosure). In the Disclosure, H&K certified under 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b) “that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$6,796.00
Prior to the filing of this statement I have received	\$ 499.00
Balance Due	\$6,297.00

Per the form of the Disclosure, H&K agreed,

In return for the above-disclosed fee, I have agreed to render legal services for all aspects of the bankruptcy case, including:

a. Analysis of the debtor’s financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;

b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;

c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;

d. Representation of the debtor in adversary proceedings and other contested bankruptcy matters;

e. [Other provisions as needed] (left blank)

The Disclosure contained no exclusion or limitation of legal services to be rendered in the bankruptcy case.

Almost two years after the bankruptcy filing, H&K filed an amended Disclosure of Compensation of Attorney for Debtor(s) (ECF No. 111) (Amended Disclosure). H&K filed the Amended Disclosure concurrently with its Application and the debtor's sixth amended plan. The Amended Disclosure excludes 18 forms of legal services from H&K's stated fee, including motions to continue imposition of stay, motions to sell, and adversary actions. It does not, however, reflect any change in the total amount of fees H&K agreed to accept for "legal services," which this court will refer to henceforth as "basic services."

In its Application, H&K seeks court approval of compensation for the following services: basic services; motion to sell; modification of plan; adversary proceeding; preparation of fee application; and other. H&K did not originally break out the time by each category, but based upon Exhibit A to the Haines Declaration, the court calculates the following matters and fees sought by H&K:

Chapter 13 Services	\$11,939.00
Motion to Approve Selling Real Property	\$ 1,346.00
Motion to Hear Matter on Shortened Time	\$ 540.00
Motion to Continue Stay	\$ 908.50
Motion to Hear Matter on Shortened Time	\$ 540.00
Adversary Complaint v. O'Donnell	\$ 3,792.50
Communications	\$ 440.00
Fee Applications	\$ 469.50
TOTAL FEES SOUGHT	\$19,975.50

H&K has also voluntarily agreed to reduce its fee application by \$5,878.00, thereby reducing the total fees sought to \$14,097.50 (H&K calculates total fees, less the \$5,878.00

1 reduction to be \$13,763.50). There is no allocation of the voluntary reduction amongst the fees
2 sought. Rather, H&K has simply reduced the total fees sought.

3 The Haines Declaration provides a narrative for why the fees in this instance have
4 greatly exceeded the original fee H&K agreed to accept for the chapter 13 bankruptcy. It does
5 not, however, attach the retainer agreement. Nor does it detail why an Amended Disclosure
6 was filed two years later after substantial fees were already incurred that appeared to be
7 covered within the initial Disclosure.

8 The court construes the Disclosure as originally committing H&K to provide all
9 bankruptcy services within the chapter 13 for a flat fee of \$6,796.00. Again, the Disclosure did
10 not exclude any services.

11 The Haines Declaration does makes it clear that this case required extra attention and
12 time on additional matters that support the Amended Disclosure. However, the Amended
13 Disclosure did not change the fees H&K accepted for legal services. It follows then that those
14 fees for services covered by Amended Disclosure, and those necessary for representation of the
15 debtor, remained covered by the flat fee. This is commonly referred to as “basic services.”
16 While the scope of basic services is ill-defined, it clearly captures the services necessary for the
17 formulation and confirmation of a plan. *See* ECF No. 111 at p. 1, paras. 5.b. and 5.c. (“In
18 return for the above-disclosed fee, I have agreed to render legal service for all aspects of the
19 bankruptcy case, including... b. Preparation and filing of any...plan which may be required;
20 [and] c. Representation of the debtor at the...confirmation hearing, and any adjourned hearings
21 thereof...”). In this regard, all of the fees H&K have billed under “Chapter 13 Services”
22 appear to be basic services covered by the flat fee as stated in the Disclosure and Amended
23 Disclosure. Therefore, the court shall disallow the billings set forth in the Chapter 13 Services
24 category in excess of the disclosed fee of \$6,796.00. *See In re Snyder*, 445 B.R. 431, 441
25 (Bankr. E.D. Pa. 2010) (“Counsel is seeking an award of fees that is nearly three times the flat
26 fee amount identified in his 2016(b) Statement. In a case like this, where all of the services
27 which counsel rendered to the debtor were included in his flat fee based on his 2016(b)
28 Statement, such a fee request is neither reasonable nor acceptable.”) [emphasis omitted]; *see*

1 also *In re McNeilly*, 2017 WL 3737536, at *8-9 (Bankr. D. Conn. Aug. 28, 2017) (limiting
2 attorney compensation to the amount disclosed in the Disclosure of Attorney Compensation,
3 where the disclosure filed with the court did not exclude the services for which compensation
4 was sought at the time those services were rendered: “Approving compensation in amounts or
5 for terms not disclosed would degrade the importance of Rule 2016.”); *In re Simpson*, 2014
6 WL 2536079, at *1 (Bankr. D.D.C. June 5, 2014) (“The following time entries (for work
7 allegedly not covered by the flat fee) are disallowable because they fall within the scope of that
8 task covered by the flat fee....”)

9 In this case, the court is also unclear why the motion to continue the stay, and the
10 concomitant motion for shortened time under 11 U.S.C. § 362(c)(3)(B) to consider the
11 continuation of the stay, were not included within the basic chapter 13 services. Experienced
12 chapter 13 counsel such as H&K should be well aware of the need to continue the automatic
13 stay in a second bankruptcy filed within a year of a prior bankruptcy. A review of the docket
14 shows that H&K were the debtor’s counsel in the prior chapter 13, dismissal of which
15 necessitated the motion to continue the stay in this bankruptcy.

16 H&K did include continuation of the stay as an excluded service within its Amended
17 Disclosure. However, the Amended Disclosure was filed more than a year and a half after
18 those services were performed. Accordingly, the court finds that such services were not
19 excluded from the disclosed basic services when rendered. For these reasons, the court will not
20 approve the fees for services related to the continuation of the automatic stay or the related
21 motion to shorten time to hear that matter.

22 The court has similar concerns for the time billed for “Communications” and “Fee
23 Applications.” This time is fairly minimal. Nonetheless, both communications and preparation
24 of an application for approval of fees are within the contemplation of a chapter 13 counsel’s
25 basic services. Because Nevada does not have a no look fee, and fees are not approved through
26 the plan process, a fee application is necessary even if limited to basic services as set out in the
27 Disclosure. The court also notes that neither category of service was excluded in either the
28 original or Amended Disclosure (though the court is hard pressed to understand how such

exclusion would be reasonable absent unusual circumstances). Accordingly, the time related to these services shall also be deemed encompassed within the \$6,796.00 “basic fee” set forth in the Amended Disclosure.

Based upon its calculation, the court shall approve attorney fees in the total amount of \$12,474.50 calculated as follows:

Chapter 13 Services	\$ 6,796.00
Motion to Approve Selling Real Property	\$ 1,346.00
Motion to Hear Matter on Shortened Time	\$ 540.00
Motion to Continue Stay	\$
Motion to Hear Matter on Shortened Time	\$
Adversary Complaint v. O'Donnell	\$ 3,792.50
Communications	\$
Fee Applications	\$
TOTAL FEES ALLOWED	\$12,474.50

The court approves all costs sought in the total amount of \$505.30. Reducing this balance by the \$499.00 previously paid by the debtor, the total approved in outstanding fees and costs is \$12,480.80, calculated as follows:

Total Fees Approved	\$12,474.50
Total Costs Approved	\$ 505.30
Less Fees Previously Paid	(499.00)
Outstanding Approved Fees and Costs	\$12,480.80

For these reasons,

IT IS HEREBY ORDERED that the Application for Compensation and Reimbursement of Expenses No. 1 (ECF No. 113), as modified by the Declaration of George Haines, Esq. in Support of Application for Compensation Filed on February 18, 2019 and its accompanying exhibit A (ECF Nos. 138, 139) is GRANTED in part and DENIED in part as set forth above. The court will allow fees in the amount of \$12,474.50 and expenses in the amount of \$505.30.

IT IS FURTHER ORDERED that the debtor's counsel may retain fees in the amount of \$499.00, which were paid directly by the debtor to counsel pre-petition. Deducting this amount from the total approved fees and expenses, the balance of \$12,480.80 is approved for distribution to the debtor's counsel through the Chapter 13 Trustee.

IT IS FURTHER ORDERED that fees awarded through the Application shall be paid as an administrative priority claim. The Chapter 13 Trustee shall commence disbursements of the

1 awarded fees upon confirmation or dismissal awarding fees to the debtor's counsel, and shall
2 continue disbursements until such award of fees is paid in full.

3 IT IS SO ORDERED.

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5 Copies sent to all parties via BNC.

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