UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CHAPTER 7
	)	
JASON SWIGART,	)	CASE No. 05-65323
JOAN SWIGART,	)	
	)	
Debtors.	)	JUDGE RUSS KENDIG
	)	
	)	**ORDER**

This matter comes before the court upon Debtors' motion to redeem filed on November 1, 2005. As part of this motion to redeem, Debtors' attorney filed a supplemental compensation statement. According to this statement, compensation to be paid to Debtors' attorney in connection with the motion to redeem is $600.

This opinion affirms the following:

1. Any and every fee charged or agreed to be charged must be disclosed in a fee statement filed pursuant to Fed. R. Bankr. P. 2016.
2. A supplemental statement must be filed after any agreement or payment that was not previously disclosed.
3. Every Fed. R. Bankr. P. 2016 fee statement following the initial fee statement must be filed and docketed as a separate document.
4. Fees must be reasonable. The lodestar calculation and proportionality between the fee sought and the fee for general representation in the case may be considered.

The present statement fails on two counts. First, the disclosure was inadequate in form. The statement was not filed and docketed as a separate document. Instead, the statement was filed as a part of the motion to redeem, wedged in after the certificate of service and before the exhibits.

Second, the fee is unreasonable. Debtors filed their chapter 7 petition on September 3, 2005. The accompanying Disclosure of Compensation of Attorney for Debtors filed with the petition sets forth a $575 fee for general representation in the case. It specifically excludes certain services, but is not a picture of clarity.

The court is unsure whether a motion to redeem is included in the $575 flat fee. There is an exclusion for "negotiations with secured creditors to reduce to market value…" It is unclear what this means. Additionally, pursuant to 11 U.S.C. § 329(b), there is a question as to whether $600 for the motion to redeem is excessive. In the Sixth Circuit, the lodestar method is "the appropriate method of determining a reasonable attorney's fee under 11 U.S.C. § 330."[1] In re

[1] The lodestar method consists of "multiplying the attorney's hourly rate by the number of hours reasonably

Miller, 312 B.R. 626, 628 (Bankr. S.D. Ohio 2004). The court may also consider novelty and difficulty of the issues in determining whether a fee is excessive. Id.

In the instant case, the redemption pleadings are standard. No novel or difficult issues are indicated in the motion. The motion was unopposed and there was no hearing on the motion. Further, the single transaction fee is disproportionate to the general fee that was charged for the balance of work in the case which entails client meetings, document preparation, travel and representation at the meeting of creditors, and other services. Given the fact that the general fee for the bankruptcy is $575, the fee of $600 for this motion to redeem is excessive.

It is doubtful whether a highly variable fee structure, i.e. one in which there is a base fee and many potential additional charges depending on the course of the case, would be understood by debtors to an extent that would meet an objective or subjective test of a meeting of the minds. Such a fee arrangement would require a debtor to understand a host of legal concepts along with the likelihood that such issues would require action in his case. How many debtors would be able to describe lien stripping, redemption, reaffirmation, abandonment and a host of other potential positives and negatives? Not many could and it is doubtful many would understand the likelihood of these and other legal concepts arising in their cases and the impact on their future lives depending upon the outcome. A fee agreement requires this understanding in order to be legally binding. See Halbert v. Yousif, 225 B.R. 336, 351 (E.D. Mich. 1998) ; In re Hamilton Hardware Co., Inc., 11 B.R. 326, 329 (Bankr. E.D. Mich. 1981) ; In re Whitman, 51 B.R. 502, 506 (Bankr. D. Mass. 1985).

The greater and more probable risk is that a highly variable fee agreement becomes an effective shelter, for the lawyer, from poor counseling. If a lawyer spends a sufficient amount of time with a debtor client then he or she understands the probability of various issues arising and the significance of the issues to the person. This impacts the appropriate fee to quote. In bankruptcy cases, highly variable fee agreements are less frequent because of the prevalence of fixed fees. See In re Patronek, 121 B.R. 728, 734 (Bankr. E.D. Pa. 1990) ; In re Murray, 330 B.R. 732 (Bankr. E.D. Wis. 2005). Fixed fees "are to be encouraged" because they are "simple and save time," thus resulting in lower fees for debtors. Murray, 330 B.R. at 737.

Some of these issues involve an understanding whether a particular dispute is likely to be raised by a creditor, necessitating attorney time to respond. An example is that work is more likely to be needed if the debtor is many months behind in payments on his or her only, vital motor vehicle and the secured creditor is poised to act. This increases the likelihood that the secured creditor will be filing a prompt motion for relief from stay, necessitating attorney time to oppose the motion or to obtain redemption financing. Since the attorney knows the deep extent of default, he or she understands the likelihood that payments cannot be brought current and time-consuming legal services are necessary.

Other issues require affirmative action on behalf of the debtor and the lawyer will not take action unless time has been spent to understand the specific facts. A non-purchase money security interest on household goods is one such example. Another example is a judgement lien on real estate that may be stripped.

The most highly variable fee structure protects lawyers like an insurance policy. If a time

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expended." In re Boddy, 950 F.2d 334, 337 (6th Cir. 1991).

consuming problem arises that the lawyer should have known about, then the debtor has to pay more for the lawyer's failure to inquire and understand the proper course of action at the outset. This can lead to intractable problems for debtors, such as cases that should not have been filed.

Poor practices become like a self-sustaining nuclear reaction as lawyers quote low fees, drawing clients away from lawyers providing adequate time and counseling who quote a higher fee. The "low" fee is protected by a host of potential additional charges in the event the lawyering was sub-par. The answer is not the ever-threatening "fee-for-all" but good advice up front, which can only be provided by spending adequate time.

Statements pursuant to Fed. R. Bankr. P. 2016 will be viewed carefully and failure to provide and file such additional disclosure statements should be approached with little mercy.

The motion to redeem is granted. However, Debtors' attorney is ordered to refund any fee beyond the $575 general fee that exceeds $200, as the $600 fee in the supplemental statement is excessive. Debtors' attorney has ten (10) days to request a hearing in order to object to this fee reduction, if a hearing is desired.

It is so ordered.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

JAN 05 2006

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