

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Chapter 13
)
KIMBERLY HARTUP,) Case No. 04-24014
)
Debtor.) Judge Arthur I. Harris
)

ORDER

This case is currently before the Court on the application for compensation (Docket #59) filed by debtor's counsel. The application is unopposed; however, the current fee application raises several concerns that the Court believes can best be resolved by requiring debtor's counsel to file a revised fee application.

Accordingly, should debtor's counsel seek compensation beyond the \$1,500 already paid and disclosed in the statement of compensation (Docket #1 at 33 of 39) and Statement of Rights and Responsibilities (Docket #3), then counsel shall file a revised fee application as specified below within 30 days.

The current fee application seeks approval of \$7,500 in attorney's fees, of which \$1,500 was paid before the Chapter 13 case was filed. The fee application lists the services of three different attorneys in increments of quarter-hours, instead of the six-minute or tenth-of-an-hour increments required under the Guidelines for Compensation and Expense Reimbursement of Professionals (General Order 93-1). The application includes a total of 58.25 hours, with hourly rates of \$175 for one

attorney and \$225 for two other attorneys, which differs from the \$175 per hour included in the Statement of Rights and Responsibilities signed by the debtor and debtor's counsel. Based upon the hours and rates in the application, counsel identifies a total billing figure of \$11,856.25, although the application seeks approval of only \$7,500. There is no indication that the debtor has specifically agreed in writing to pay the \$7,500 figure requested by debtor's counsel.

The disclosure statement filed with the petition on November 2, 2004, indicates that counsel "have agreed to accept \$1,500.00" for legal services with a balance due of \$0. The disclosure statement further provides in pertinent part:

5. 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]
6. By agreement with the debtor(s), the above-disclosed fee does not include the following service:

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The Statement of Rights and Responsibilities is signed by the debtor and debtor's counsel and is dated October 26, 2004. It indicates an initial fee of

\$1,500, with the balance of \$0 being paid by the Chapter 13 Trustee after confirmation. It also provides for Court approval of additional fees for certain legal services not covered by the initial fee. These specific services and additional fees are listed in pages 6 and 7 of the Statement of Rights and Responsibilities. The Statement of Rights and Responsibilities also provides that the attorney may need to provide legal services to the debtor that are not covered by the initial fee charged:

Such services include: handling novel, complex, or non-routine motions, oppositions to motions, or objections to claims; representation in connection with an evidentiary hearing; or representation in adversary proceedings. These types of proceedings may be billed at reasonable hourly rates, and the attorney shall file a fee application in compliance with Bankruptcy Rules 2002 and 2016, setting forth, at a minimum, as to each activity for which a fee is requested the identity of the person performing such services, the billing rate for such person, the services performed, the dates of the services, and the amount of the time expended. The attorney's current hourly rate is \$175.

The Court is also concerned about the accuracy of the fee application because the Court's own records indicate that attorney Shelly R. LaSalvia appeared at hearings on behalf of the debtor on April 28, 2005, and July 21, 2005, yet a different attorney is identified in the fee application.

In developing a standardized Statement of Rights and Responsibilities, it was the Court's intention that attorneys for debtors in Chapter 13 cases could

receive a total fee of up to \$1,700 for work in a typical Chapter 13 case, without a detailed fee application and without regard to the actual hours needed to prosecute the case. Additional services outlined in the Statement of Rights and Responsibilities, including work on novel, complex, or non-routine motions would be compensated at an hourly rate, provided that counsel filed a detailed fee application.

In the present case, it is unclear precisely what the debtor and the debtor's counsel agreed to regarding fees. Absent evidence of some other arrangement, the Court will assume that the debtor and debtor's counsel agreed to a basic fee of \$1,500 *to be supplemented for novel, complex, or non-routine work at an hourly rate just for such additional work*. The Court believes that this is the arrangement contemplated by the Statement of Rights and Responsibilities. In other words, the debtor's counsel agrees to bear the risk that routine work may take longer than anticipated but retains the right to seek additional compensation for novel, complex, or non-routine work at an hourly rate *just for such additional work*.

The Court acknowledges that this case has involved at least some non-routine work, and debtor's counsel may be deserving of additional compensation for such additional work. At this time, however, the Court cannot discern what debtor and debtor's counsel have actually agreed to regarding fees.

One of the purposes behind the Statement of Rights and Responsibilities was to eliminate or at least reduce the awkward possibility of fee disputes where the debtor and debtor's counsel have opposing interests and the debtor no longer has an attorney representing the debtor's interests. Indeed, the attorney's interests concerning fees may be diametrically opposed to the debtor's interests. Such situations should be prevented from occurring whenever possible.

Accordingly, the Court approves \$1,500 in fees already paid. Should counsel seek approval of fees beyond the \$1,500 already paid, counsel shall file a revised fee application within 30 days. The revised fee application shall clarify what the debtor and debtor's counsel have agreed to regarding fees and identify the additional hours spent specifically on novel, complex, or non-routine work. Ideally, counsel would include the debtor's written consent to the specific total amount of fees being sought in the revised fee application.

IT IS SO ORDERED.

/s/ Arthur I. Harris 2/13/2006
Arthur I. Harris
United States Bankruptcy Judge