

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Chapter 13
)
DONALD COLON, and) Case No. 05-16774
SHARON COLON,)
) Judge Arthur I. Harris
Debtors.

ORDER GRANTING APPLICATION FOR COMPENSATION IN THE
AMOUNT OF \$1,700 AND DENYING, WITHOUT PREJUDICE,
APPLICATION FOR COMPENSATION BEYOND \$1,700

On April 26, 2006, debtors' counsel filed an application for compensation (Docket #34), requesting \$2,990.67 in total fees. On May 18, 2006, the Chapter 13 trustee filed an opposition (Docket #35). For the reasons that follow, the application for compensation is granted in the amount of \$1,700. Should debtors' counsel still seek compensation beyond the \$1,700 disclosed in the statement of compensation (Docket #1 at 27 of 30), Chapter 13 Fee Agreement (Docket #4), and Statement of Rights and Responsibilities (Docket #5), then counsel shall file a revised fee application as specified below within 30 days.

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. *See* Administrative Order 03-6 at ¶5 (listing the types of services the

Court contemplated would be included as part of the initial fee). 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 debtors and the debtors' counsel agreed to regarding fees. Absent evidence of some other arrangement, the Court will assume that the debtors and debtors' counsel agreed to a basic fee of \$1,700 *to be supplemented for novel, complex, or non-routine work at an hourly rate of \$200 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 debtors' 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*. While counsel is free to negotiate an agreement based strictly on an hourly rate, such an agreement would require a detailed fee application and Court approval for *any* fees, not just those fees that exceed \$1,700. In this case, however, counsel submitted a proposed confirmation order, which the Court entered on November 3, 2005, approving a "no look" fee of \$1,700, and counsel submitted no detailed fee application until April 26, 2006.

At this time, the Court cannot discern what debtors and debtors' 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 debtors and debtors' counsel have opposing interests and the debtors no longer have an attorney representing the debtors' interests. Indeed, the attorney's interests concerning fees may be diametrically opposed to the debtors' interests. Such situations should be prevented from occurring whenever possible.

Accordingly, the Court approves \$1,700 in fees as previously agreed in the initial statement of compensation, Chapter 13 Fee Agreement, and Statement of Rights and Responsibilities. Should counsel seek approval of fees beyond \$1,700, counsel shall file a revised fee application within 30 days. The revised fee application shall identify the additional hours spent specifically on novel, complex, or non-routine work, as opposed to services that were included in the agreed-upon \$1,700 fee. *Ideally, counsel would include the debtors' written consent to the specific total amount of fees being sought in the revised fee application.*

IT IS SO ORDERED.

/s/ Arthur I. Harris 5/30/2006
Arthur I. Harris
United States Bankruptcy Judge