

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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

ORDER REGARDING AMENDED APPLICATION FOR ATTORNEYS FEES

This case is currently before the Court on the amended application for compensation (Docket #67) filed by debtor's counsel. The amended fee application was filed in response to the Court's February 13, 2006, order, which approved \$1,500 in fees, but required the filing of an amended fee application to address several issues raised by the Court if counsel continued to seek fees beyond \$1,500. Unfortunately, counsel's amended fee application did not address those issues sufficiently enough for the Court to approve the additional fees requested without further information. Accordingly, should counsel seek compensation beyond the \$1,500 already paid and approved, then counsel shall supplement its amended fee application as specified below.

In its order dated February 13, 2006, the Court identified several issues for counsel to address through an amended 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.

Order (Docket #65) at 4-5.

Unfortunately, counsel's amended fee application did not address these issues sufficiently enough for the Court to approve the additional fees requested without further information. First, the Court expected counsel to identify the specific hours spent on novel, complex, or non-routine work not covered by the initial \$1,500 fee. Instead, counsel simply identified several tasks that counsel

characterized as novel, complex, or non-routine but made no effort to identify or highlight the actual hours spent on each of these tasks in its detailed fee application. Second, some of the tasks identified by counsel as novel, complex, or non-routine may fall within the work that Administrative Order 03-6 intended to be covered by the initial fee. Paragraph 5 of Administrative Order 03-6 provides in pertinent part:

5. As guidelines, the Court contemplates that the following matters will be included in the [initial] fee allowed under paragraph 3:

.....

(b) All conferences with the debtor, including timely responses to debtor inquiries, whether by telephone or in writing.

.....

(d) Negotiation and communication with priority and secured creditors, including the Internal Revenue Service.

.....

(f) Responding to inquiries made by the debtor and the Chapter 13 Trustee in furtherance of the administration of the Chapter 13 Plan.

(g) Preparation of documents and notices, including submissions based upon Trustee recommendations, the filing of suggestion of bankruptcy, routine objections to claims, amendments to schedules, voluntary dismissals, and all case related correspondence.

(h) Responding to routine objections to plan confirmation, and, when necessary, preparing, filing and serving an amended plan.

(i) Representation of the debtor at the confirmation hearing, but not including an evidentiary hearing.

.....

- (m) Representation of the debtor on one motion to reinstate case.
- (n) Representation of the debtor on routine objections to claims.
- (o) Providing such other legal services as are necessary for the administration of the case, including but not limited to, continuing to assist the debtor by returning phone calls, answering questions, and reviewing and sending correspondence.

Administrative Order 03-6 at 3-5. Counsel should explain why each of the tasks for which additional compensation is sought falls outside the scope of work that Administrative Order 03-6 intended to be covered by the initial fee. Third, and perhaps most important, there is no indication that debtor has given written consent to the specific total amount of fees being sought in the amended fee application. For the reasons noted in its prior order, the Court is likely to be much more deferential if a debtor has given his or her written consent to the specific total amount of fees being requested.

Accordingly, should counsel seek compensation beyond the \$1,500 already approved, then counsel shall supplement its amended fee application by (1) identifying or highlighting the specific hours spent on the novel, complex, non-routine tasks; (2) explaining why each of the tasks for which additional compensation is sought falls outside the scope of work that Administrative Order 03-6 intended to be covered by the initial fee; and (3), if possible, providing

the debtor's written consent to a specific total amount of fees being requested.

IT IS SO ORDERED.

/s/ Arthur I. Harris 6/7/2006
Arthur I. Harris
United States Bankruptcy Judge