

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>IN RE: RENE GUTHRIE HORNE,</b>	)	
	)	<b>CASE NO. 04-01065</b>
<b>Debtor.</b>	)	
	)	<b>CHAPTER 13</b>
	)	

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**MEMORANDUM DECISION**

The matter before the Court is the Final Application for Allowance of Compensation in the total amount of \$2,853.45 filed by counsel for the Debtor. A hearing was held on the Application on July 10, 2006. At such time, the Chapter 13 Trustee orally objected to the Application on the ground that it was excessive for the services rendered. For the reasons noted below, the Court concludes that the Application should be granted in the amount of \$2,156.04.

**FINDINGS OF FACT**

On March 11, 2004, the Debtor filed a voluntary petition in this Court for relief under Chapter 13 of the Bankruptcy Code. According to the Disclosure of Compensation of Attorney for Debtor that was filed with the petition, the Debtor agreed to pay her attorney \$1,500.00 for representation in her Chapter 13 bankruptcy case.<sup>1</sup> Prior to filing her bankruptcy petition, the Debtor paid her attorney \$645.00; thus the balance due her attorney was \$855.00.

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<sup>1</sup> The Disclosure of Compensation provides that this fee does not include “[r]epresentation of the debtor in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding.”

On October 18, 2004, the Debtor's Chapter 13 plan was confirmed. The confirmation order entered November 1, 2004 provided that the Chapter 13 Trustee would pay the Debtor's attorney "the sum of \$1500.00 less \$645.00 heretofore paid, which is fixed as a reasonable fee pursuant to 11 U.S.C. Section 329 for services rendered the Debtor herein and as hereafter supplemented."

On July 26, 2005, the Chapter 13 Trustee filed a Motion to Dismiss or Convert alleging that the Debtor failed to make a \$1,000.00 lump sum payment as provided in her confirmed plan. On August 11, 2005, the Debtor's attorney filed a Motion to Suspend the Lump Sum Payment and an Application for Compensation requesting \$152.59 for legal services rendered in responding to the Chapter 13 Trustee's Motion to Dismiss or Convert.

Counsel for Washington Mutual Bank filed a Motion for Relief from the Automatic Stay on October 11, 2005. The Debtor's attorney filed an Answer to the Motion for Relief on October 13, 2005. An agreed order denying the Motion for Relief and setting forth provisions on which relief would be granted was entered on November 16, 2005.

An order granting the Application for Compensation for \$152.59 was entered on December 2, 2005. However, the Chapter 13 Trustee's Motion and the Debtor's Motion remained unresolved at that time. On December 5, 2005, the Debtor's attorney filed a Second Application for Compensation requesting \$647.54 for legal services rendered in responding to Washington Mutual's Motion for Relief.

On February 24, 2006, counsel for Washington Mutual Bank filed a Motion to Vacate the November 16, 2005 agreed order denying the Motion for Relief explaining that the order failed to contain a provision requested by the Debtor's attorney and agreed to by counsel for Washington Mutual Bank. A consent order vacating the November 16, 2005 order was

entered on February 27, 2006 and a corrected agreed order denying the Motion for Relief but containing provisions on which relief would be granted was entered on March 3, 2006.

On June 1, 2006, counsel for the Debtor filed a Motion to Sell and a Motion to Shorten the Notice Requirement seeking permission for the Debtor to sell her home and apply the sale proceeds to her Chapter 13 plan. An agreed order granting both the Motion to Sell and the Motion to Shorten Notice was entered on June 19, 2006. The approved contract provided for a sale of the home for the sum of \$94,950.00, an amount significantly greater than the balance due on the Washington Mutual mortgage debt. As a result of the joint efforts of the Debtor and her counsel, the former was able to effect a sale of her home upon reasonable terms which permitted the payment in full of the mortgage debt, the payment in full of the confirmed Chapter 13 plan provisions, and the realization of the equity in the property sufficient to pay for counsel's legal services and leave a balance for the Debtor's "fresh start" upon the successful completion of her case. The Debtor did not appear at the hearing upon her counsel's Final Application for Compensation and upon inquiry from the Court counsel stated that he understood that his client consented to the compensation he sought.

Counsel for the Debtor filed his Final Application for Compensation on June 21, 2006 requesting \$2,853.45 in legal fees and expenses. Attached to the Final Application are invoices showing the time billed by the attorney and his paralegal/secretary. The attorney's time is billed at \$175.00 per hour and the paralegal/secretary's time is billed at \$75.00 per hour. The Final Application requests fees as follows:

<b>Invoice #</b>	<b>Description</b>	<b>Amount Requested</b>
2957	Motion for Relief from Stay	\$651.25
3030	Motion for Sanctions, Negotiations	\$1,107.50
3086	Motion to Sell, Motion to Shorten Notice	\$675.00
3087	Motion for Compensation	\$397.50
2932	Postage Expenses	\$6.29
3063	Postage Expenses	\$15.91
	<b>Total</b>	<b>\$2,853.45</b>

The attorney billed his time at \$175.00 per hour in preparing and defending the Second Application for Compensation and the Final Application for Compensation. Under established practice in the District, counsel's travel time and time spent preparing and defending fee applications are to be billed at 75% of the regular hourly rate. The total amount sought by counsel at his standard rate with respect to his applications for compensation is \$262.50. Accordingly, Invoice #3087 is reduced by \$65.63.<sup>2</sup>

Invoice #3030 provides 0.5 hours of the paralegal/secretary's time in filing a Motion for Sanctions and 1.0 hours of the attorney's time for a Court appearance on such Motion. A review of the docket entries for this case reveals no entries for either the filing of a motion for sanctions or any appearance by counsel upon such a motion. While it is true that pursuant to Bankruptcy Rule 9011(c)(1)(A) a motion for sanctions may not be filed initially with the Court and therefore that such a motion may indeed have been drafted and served on opposing counsel, it is manifest that the Court cannot allow compensation for services which turned out

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<sup>2</sup> The Court partially allowed time billed by the paralegal in preparing the applications for compensation. *See infra* p. 6. The Court then adjusted the allowed times to reflect billing at 75% of the paralegal's regular hourly rate. *See infra* p. 7.

not to be actually performed. Accordingly, Invoice #3030 will be reduced by \$212.50.

The invoices contain the following entries for paralegal/secretarial services which appear to relate to clerical services, such as typing and scanning documents, and administrative services, such as closing an office file.

<b>Invoice #</b>	<b>Description</b>	<b>Amount</b>
2957	2.0 hour - Draft response, filing with the clerk, scan appraisal documents, service of a response	\$150.00
2957	0.1 hour - Close file	\$7.50
3030	0.5 hour - 12/5/05 Transcribe order, facsimile, e-mail and u.s. mail to Ms. Stewart	\$37.50
3030	0.5 hour - Transcribe correspondence to the Trustee, email and service via U.S. Mail	\$37.50
3030	1.0 hour - Transcribe Motion for Sanction, Motion for Show Cause, Notice of Hearing, service on counsel	\$75.00
3030	0.1 hour - Close the file	\$17.50
3086	1.5 hour - Scan contract in pdf format, Transcribe Motion to Sell, Motion to Shorten Notice, obtain hearing date, CMF Filing, service of the same, correspondence to Rene Horne - update file 6/1/06	\$112.50
3086	0.3 hour - Transcribe Order to Sell, E-mail correspondence to the Trustee	\$22.50
3086	0.3 hour - Service of Order to Sell - close matter	\$22.50
3087	0.8 hour - Transcribe 2nd Motion for Compensation, Notice of Hearing, obtain hearing date, CMF filing, service of documents 12/5/05	\$60.00
3087	1.0 hour - Transcribe Final Motion for Compensation, scan invoices in pdf format, Notice of Hearing, service of documents 6/13/06, organize and update file	\$75.00

With respect to the above entries, in each case where paralegal services are billed for drafting or transcribing pleadings or other documents, counsel's time for dictating the

documents is likewise billed. The Court will allocate one hour of the paralegal's two hour time entry recorded in Invoice #2957 to typing services. The Court will allocate one hour of the paralegal's aggregate two hours of time entries recorded in Invoice #3030 to typing services. The Court will allocate one hour of the paralegal's aggregate 2.10 hours of time entries recorded in Invoice #3086 to typing services and .10 hour to file closing. The Court will allocate 0.9 hours of the paralegal's aggregate 1.8 hours of time entries recorded in Invoice #3087 to typing services.

#### CONCLUSIONS OF LAW

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. Consideration of applications for compensation of Debtor's counsel is a "core" bankruptcy matter pursuant to 28 U.S.C. § 157 (b)(2)(A) and (B).

The burden is upon the Debtor's counsel to prove that the services were actually rendered, reasonable and necessary. *See* B. Russell. *Bankruptcy Evidence Manual* § 301.41, at 821 (2006 ed.). Invoice #3030 contains an entry of 1.0 hour of the attorney's time described as "Dictate Correspondence to the Trustee after Court appearance related to agreed order that should have been submitted to the Court for filing in November of 2004." The Court concludes that this entry is unreasonable as it should not take an attorney billing at an \$175 hourly rate one hour to draft a letter following up on a recent court appearance. The letter itself has not been presented to the Court. The Debtor's attorney has not offered any explanation as to why it took a full hour to dictate such a letter. While a detailed substantive letter may well require an hour or

even much more of counsel's time, such is not routinely the case and the Court is not satisfied that counsel has established that any such amount of time was justified for this letter.

Accordingly, the Court will allow 0.5 hour of the attorney's time and reduce Invoice #3030 by \$87.50.

The Court has allocated 3.90 hours of counsel's paralegal's time entries to typing services. It is the Court's belief and conclusion that such services, when counsel's time in dictating the documents in question has been separately charged, are part of the attorney's overhead and not properly treated as paralegal services. *See Missouri v. Jenkins*, 491 U.S. 274, 287 n.9 (1989); *Thigpen v. Piedmont Prime Care of Danville*, No. 00-00053, slip op. at 1 (Bankr. W.D. Va. Apr. 30, 2001). Similarly the Court perceives the paralegal's time for file closing is a part of the attorney's overhead and should not be charged additionally to the client.

Accordingly, the Court will disallow 4.20 hours of the paralegal's time entries, which results in a reduction of \$315.00. While the Court's estimate of the time involved in such services is approximate and even arguably somewhat speculative, it is more fair to counsel than simply disallowing the time entries entirely.

The Court has previously noted that charges for travel and compensation applications under the established practice of this Court will be approved only to the extent of 75% of the standard hourly rates. Accordingly, as previously noted in the Finding of Fact section of this Decision, counsel's charges for his fee application charged at his \$175 hourly rate have been disallowed in the amount of \$65.63. The paralegal's allowed time entries in the amount of \$67.50 associated with such fee applications should also be allowed only to the extent of 75% of such entries, yielding a disallowance of \$16.88. The Court has also disallowed in the

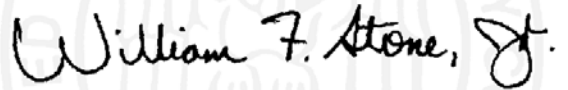
Findings of Fact section of this Decision charges for the paralegal's filing and counsel's appearing before the Court on a motion for sanctions on the ground that while such services may have been projected at the time the invoice in question was prepared, the Court's docket entries do not substantiate that such services were actually rendered.

The disallowed portions of counsel's fee application may be summarized as follows:

Motion for Sanctions - Services not rendered	\$ 212.50
Typing and file closing services properly included in attorney's overhead	\$ 315.00
Dictation of Letter to Chapter 13 Trustee - Unreasonable amount of time	\$ 87.50
25% of attorney's and paralegal's allowed entries associated with fee applications	\$ 82.41
<b>Total Disallowance</b>	<b>\$ 697.41</b>

The net award to Debtor's counsel shall be \$2,133.84 for services and \$22.20 for reimbursement of postage expenses. Accordingly, an order in accordance with the provisions of this Memorandum Decision shall be entered contemporaneously herewith.

This 12th day of July, 2006.



William F. Stone, Jr.

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UNITED STATES BANKRUPTCY JUDGE