
13 NEWS[®]

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PRACTITIONER'S

FORUM :

**DEBTOR'S
ATTORNEY FEE
APPLICATIONS:
PROCEDURAL
CONSIDERATIONS**

*By Mary T. Powers
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In December of 1992, Judge Mahoney and Judge Minahan adopted a General Order governing Chapter 13 cases. Among other issues addressed in that General Order was the issue of attorney fees in Chapter 13 cases. The purpose of this article is to review the procedure for obtaining approval of attorney fees in a Chapter 13 case in Nebraska, and to comment on the procedure.

Prior to the adoption of the General Order, there was almost no scrutiny or regulation of attorney fees in Chapter 13 cases. Attorneys would propose as part of the plan that the trustee would pay the fees, and would specify in the plan what the amount of



the fees were to be. An order confirming the plan was in effect an order approving the fees. The Chapter 13 Trustee occasionally objected to fees, but there were no guidelines for the trustee to follow.

It should also be noted that prior to the adoption of the General Order, there were no motions to confirm. The filing of a Chapter 13 case, and obtaining confirmation of the Chapter 13 Plan, did not require much more effort than filing a routine Chapter

7. The only difference was that a plan had to be prepared and attached to the schedules. The Trustee obtained the order confirming the plan, and the debtor's attorney was not required to give notice to anyone of the plan.

The only major task remaining for the debtor's attorney was the claims process, and if the case was simple with no secured creditors, there was really nothing left to do.

Under Neb. R. Bankr. P. 2016 a fee application is required whether counsel is to be paid by the Trustee or has received a retainer pre-petition from the debtor or a third-party.

Except in Chapter 7 cases, a fee application shall also be filed if debtor's attorney received a prepetition bankruptcy retainer or payment from property of the debtor, or from property of a person or entity other than the debtor. In the case of a

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prepetition retainer or payment, and except in Chapter 7 cases, the fee application shall be filed even if no further compensation is sought in connection with the bankruptcy case.

The rule goes on to say that the court may by standing order establish a fee which may be allowed without the filing of a detailed time summary to the fee application, in which case the application may simply recite the total number of hours expended on services with a general description of the services rendered.

The General Order governing Chapter 13 does specifically allow such applications so long as the debtor is seeking \$1,000 or less in compensation. The court has included a sample fee application in the General Order.

In general, most debtors' counsel attempt to file the fee application at the same time as the Motion to Confirm. The debtor is required by the Code to commence payments within thirty days of the filing of the plan. The trustee cannot disburse any funds until the plan has been confirmed, or a specific order of the court has been entered directing the trustee to do so, e.g., an Order for Adequate Protection. Often the trustee has accumulated enough to pay a substantial portion, if not all of, the attorney fees by the time the plan is confirmed. Generally, the trustee

will pay attorney fees prior to all other claims. Under the new rules, the trustee cannot do that if no order has been entered allowing the fees. If there is no order allowing fees at the time the plan is confirmed, the trustee will disburse the funds to creditors, and will continue to pay creditors until an order allowing fees is entered.

Although the Court has allowed attorneys to ask for fees of \$1,000 or less without an itemization of time, it seems that counsel is still required to maintain time records. Neb. R. Bankr. P. 2016. It is also wise to maintain time records even if you anticipate \$1,000 being sufficient to compensate you for the time expended for a Chapter 13. Since Chapter 13 cases last from three to five years, there is usually some problem down the road that will require your attention. It may be amending the plan, resisting a Motion to Dismiss or a Motion for Relief, or preparing and filing a Motion to Incur Additional Debt. These all require time. If you have already applied and received \$1,000, the rules seem to say that once you seek compensation in excess of \$1,000,- all your time must be itemized to obtain court approval for amounts over \$1,000. If you do not keep track of your time, your life will become one of indentured servitude.

Having lived under this new system for two and one-half years now, I have two major comments. One: A \$1000 fee was ample compensation for a routine

Chapter 13 under the old rules, i.e., prior to the requirement of motions to confirm, mailing notice, etc., but may be insufficient for a routine case under the new rules. Two: A rule should be adopted allowing a flat fee in the neighborhood of \$150 to \$200 for the routine motions that seem to come up so often, e.g., Motion to Incur Debt, Motion to Sell Real Property, Motion to Suspend Payments, Motion to Modify Plan, Motion Resisting Motion for Relief.

I believe that I have cases that are relatively simple and routine, and that \$1000 may still be ample compensation. I know other attorneys would disagree. However, the second point I feel very strongly about. Because of the rigidity of the system, in that it requires a motion and notice to all creditors every time you turn around, I sometimes feel that I am in a straight jacket. The fees for these simple matters in most cases require an itemization of time because by this time the debtor's attorney would have had the \$1000 allowed by the Court. Now he or she is exceeding the \$1,000 and must itemize according to the General Order. I personally find preparing itemized fee applications more work than the underlying substantive motion for which I am filing the fee application. Some attorneys may disagree. I would welcome any comments from attorneys with respect to the contents of this article.



This month's article was contributed by Mary T. Powers, Attorney at Law. Ms. Powers received her Bachelors degree from the University of Nebraska at Omaha in 1978, and graduated from Creighton University School of Law in 1981. She is engaged in general practice and bankruptcy practice with emphasis on debtor representation.



DID YOU KNOW?

The Chapter 13 Trustee cannot disburse funds prior to confirmation unless she receives an Order allowing such distribution. See U.S.C. §1326(a)(2).

Processing cutoff for checks in November will be the third (3rd) Wednesday of the month or November 15, 1995. Checks will be mailed on the 4th Wednesday of the month or November 22, 1995. Cutoff for confirmation orders is Thursday, November 9, 1995.

BANKRUPTCY CLERK'S OFFICE PARTICIPATES IN A 'DAY OF CARING'



[Participants from Omaha office of the U.S. Bankruptcy Clerk: (front row left to right) Suzanne Kohl, Cheri Sorenson, Nancy Gerlach, Denny Christensen, and Sue Moraine; (back row left to right) Lisa Smith, Jackie Armstrong, Alice Baker-Smith, Diane Zech, Katie Burns]

OMAHA EXPERIENCE:

By Katie Burns

Remember the "Good Old Days" of barn raising, bringing in the crops, etc.? On August 28, 1995 ten staff members of the Omaha Clerk's office volunteered for the "Day of Caring" sponsored by the United Way/Combined Federal Campaign. Catholic Social Service was our assigned agency. Diane Zech,

Nancy Gerlach, Jackie Armstrong, Suzanne Kohl, Cheri Sorenson, Alice Baker-Smith, Lisa Smith, Sue Moraine, Denny Christensen, and Katie Burns pulled weeds, mulched, trimmed bushes, painted drive way curbs, and swept the walks and driveway. We found out that Catholic Social Services only had three maintenance men for their large complex of buildings.

We were all concerned with

the heat index that day which was in the 100's but we were very determined to give it our best shot. Catholic Charities staff were very organized and had plenty of ice tea and ice water for us to consume with a promise of a good lunch. At lunch we ate like hired hands in from the fields at harvest time. A couple of the sisters joined us at our tables and told us about their mission statement and hope for their future endeavors at Catholic Charities.

We could not have participated without the support staff we left behind to do our work and theirs too. It was a joint effort in which we could all be proud. "Maining the fort" were Mrs. Napier, Kim Anderson, Karen Howard, Sue Seiter, Debbie Kucirek, Laurie Fitzgerald, and Patty Scheibelhofer. Diane Zech, Chief Deputy Clerk, led the group of volunteers.

At the end of the day, it was a job well done, and we had a feeling of great pride in what we had accomplished!

LINCOLN EXPERIENCE:

By Jayme Moore

The 1995 Day of Caring in Lincoln was held on September 7, 1995. There were 20 agencies participating with approximately 40 different projects. A total of 215 volunteers came together in the joint effort to make a difference in the community.

The Lincoln Clerk's Office had the privilege of volunteering for the Prevent Blindness Nebraska Eyecare for the Homeless Program.



(Lincoln office: (left to right) [front] Donna Soukup, Jayme Moore; (middle) Anna Schundrenko, Jan Toman, Cindy Euchler; (back) Elaine Minner, Cheryl Oliver)

There was rich reward in imagining each pair of recycle eyeglasses enabling someone to see the world in a whole new light! The project required us to sort and clean glasses in preparation for a prescription reading and placement.

The Prevent Blindness Staff of regular volunteers related their own personal experiences of sharing the joy with individuals seeing the world before their eyes become clear for the first time. A very touching story was related about a young mother expressing her thanks for being able to see her child for the first time. This story and the feeling that anyone can help others just by caring, made our day a heart warming experience.

Katie Burns and Jayme Moore are both generalists with the U.S. Bankruptcy Clerk's Office. They have been so employed for 15 years and 8 years respectively.

editor's comment

This newsletter is being published to facilitate communication between the Chapter 13 Trustee's Office and the many people we serve. The information is not meant to constitute legal advice or recommendations to individuals. If you would like to contribute an article, conference or program information, law review article, book review, comment, or question for further feedback from others, please call me directly or mail your item to:

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