

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON**

ELIZABETH L. PERRIS
BANKRUPTCY JUDGE

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April 19, 2006

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Re: In re Debra Johnson, Case No. 04-36802-elpl3
Trustee's Objection to Paralegal Hourly Rates

Dear Counsel:

The purpose of this letter is to give you my determination of the reasonable paralegal hourly rate that will be allowed in connection with Brian Lynch, Chapter 13 Trustee's ("trustee") objections to several applications for supplemental compensation filed by Vanden Bos & Chapman, Muir & Troutman, and Snyder & Associates (collectively, "applicant firms"). The cases have been consolidated for the purposes of resolving these objections.

Initially, the court made an inquiry as to the reasonableness of the hourly rates charged by the paralegals of the applicant firms. The paralegals of Vanden Bos & Chapman bill at an hourly rate of \$160 per hour, the paralegals of Muir & Troutman bill at an hourly rate of \$150 per hour, and the paralegals of Snyder & Associates bill at an hourly rate of \$145 per hour. Trustee objected to the applications after the court's inquiry. Evidence on the reasonableness of the paralegal fees was presented at the trial held on February 24, 2006.

1. Legal Standard

Under § 330(a)(4)(B) of the Bankruptcy Code,¹ courts may award reasonable compensation to "the debtor's attorney for

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (prior to 2005 amendment).

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representing the interests of the debtor . . . based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." Section 330(a)(3) provides the following additional guidance to courts in determining the amount of reasonable compensation to be awarded:

the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§ 330(a)(3).

It is important to note that the court's award of attorney fees is discretionary, "bounded by (1) whether the compensation is reasonable and (2) whether the services were actually rendered and were necessary." In re Temple Retirement Cmty., 97 B.R. 333, 336 (Bankr. W.D. Tex. 1989)(citing In re Nucorp Energy, 764 F.2d 655, 658 (9th Cir. 1985)). Section 329(b) allows a court to "deny compensation to the debtor's attorney, cancel an agreement to pay compensation, or order the return of compensation paid, if such compensation exceeds the reasonable value of the services provided." 3 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 329.01 (15th Ed. Rev. 2005); § 329(b).

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A customary review of a fee application under § 330 starts with a determination of the "lodestar." In re Eliapo, 298 B.R. 392, 398 (9th Cir. BAP 2003). "'The lodestar determination has emerged as the predominate element of the analysis' in determining a reasonable attorney's fee award." Morales v. City of San Rafael, 96 F.3d 359, 363 (9th Cir. 1996), amended on other grounds, 108 F.3d 981 (9th Cir. 1997)(citing Jordan v. Multnomah County, 815 F.2d 1258, 1262 (9th Cir. 1987)). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." Morales, 96 F.3d at 363.

In the present cases, the court must determine the "reasonable hourly rate," which is in dispute,² to calculate the lodestar. There are a number of factors that are subsumed in the calculation of the hourly rate, including: "the novelty and complexity of the issues, the special skill and experience of counsel, the quality of the representation, the results obtained and the superior performance of counsel." Faubion v. City of Prineville, No. CV-00-976-HU, 2001 WL 34041782, at *1 (D. Or. Nov. 7, 2001). In determining a reasonable hourly rate, the court must look at the prevailing market rates in the relevant community. The fee applicant has the burden of showing that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation. Id. at *4.

Although the lodestar method is the primary and customary approach, it is not the exclusive method for calculating fees under § 330, and § 330 does not mandate its use. Eliapo, 298 B.R. at 398. Ultimately, the bankruptcy court must determine if the price charged for a specific legal service is reasonable under all of the circumstances. Id. at 400.

2. Analysis of Evidence Presented Concerning "Comparably Skilled Nonbankruptcy Practitioners"

A significant amount of trial time was spent in an effort to answer the question of what is "customary compensation charged by comparably skilled practitioners in cases other than cases under

² The number of hours spent and the necessity of the services is not in dispute.

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this title" under § 330(a)(3)(E). Mr. Vanden Bos asserted that "the area of law in Portland where the practitioners compare most closely to bankruptcy practitioners would be commercial litigation," because the attorney hourly rates indicated in the "Oregon State Bar survey for the speciality fields in Portland of commercial litigation and bankruptcy are virtually identical." Affidavit of Robert J Vanden Bos at ¶ 23. Mr. Vanden Bos asserts that the paralegals employed in a bankruptcy practice should be paid at a similar rate as paralegals employed in a commercial litigation practice.

Mr. Vanden Bos's approach is not supported by the statutory language. The statute speaks in terms of "comparably skilled practitioners" not "comparably compensated practitioners." There is no evidence that "comparable compensation" is the result of "comparable skills" in different areas of practice. Many factors may influence compensation rates, e.g., firm size, client size, client policies, and collection issues.

Mr. Vanden Bos relied heavily on the testimony and research performed by his expert, Serena Morones. Ms. Morones performed a survey of hourly rates charged by paralegals of law firms that included five or more self-described "commercial litigators." The evidence provided by Ms. Morones's testimony is problematic in two ways: First, the evidence was presented under the assumption that commercial litigators are "comparably skilled" nonbankruptcy practitioners, and therefore, commercial litigation paralegals are comparably skilled to bankruptcy paralegals. There was little or no evidence presented that a typical commercial litigation paralegal's skill set is, in fact, comparable to the skill set of the applicant firms' bankruptcy paralegals. In this regard, the evidence presented is deficient. Second, Ms. Morones's survey includes medium to large law firms with five or more commercial litigators. Presumably, the firms in her survey are firms with more than five attorneys. The three applicant firms in this case each have fewer than five attorneys. I do not believe that the firms in Ms. Morones's survey are an accurate comparison to the firms whose fees are at issue in this case. Therefore, I give little weight to Ms. Morones's testimony and her survey evidence.

Mr. Ostrovsky's survey of domestic relations paralegals in the Portland area was also deficient. In many regards, domestic relations practice appears more comparable to bankruptcy practice

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than does commercial litigation. Both involve a large volume of cases, there is heavy use of forms, and the number of actual trials is limited relative to the total number of cases. There are 175 domestic relations practitioners listed in the Portland yellow pages under the "Divorce and Family" category. Affidavit of Kent V. Snyder at 3:9-10. Mr. Ostrovsky testified at trial that his assistant randomly chose 20 firms to call, and she received information from only 6 of those firms. I am not confident that his survey is truly representative of the domestic relations paralegal market. Further, there was limited evidence provided of a domestic relations paralegal's skill set as compared to that of a bankruptcy paralegal. Thus, I will give little weight to Mr. Ostrovsky's testimony concerning the hourly rates of comparable domestic relations paralegals.

3. Years of Experience as a Factor to Consider in Determining Reasonable Rate

Mr. Vanden Bos asserts that years of experience is a determinative factor to consider in deciding an appropriate billing rate for paralegals. However, I find Mr. Ostrovsky's testimony persuasive that years of experience in determining a paralegal's hourly rate is decreasingly important after the first three years. After three years, the particular paralegal's effectiveness, efficiency, and ability to move the case along is much more important than how many years they have been in the position. Mr. Ostrovsky testified that the first three years of paralegal work experience is similar to that of a new attorney in that "they need a lot of hand holding." A similar comparison exists in that an attorney with 30 years of experience does not necessarily command a higher rate than an attorney with 10 years of experience. After the initial learning curve is overcome, the level of skill and value of the service provided depends upon the individual. For example, Lawrence Jacobson, one of Mr. Troutman's paralegals, has 6 years of experience as a paralegal and he works unsupervised for long periods of time. This is work with which the supervising attorney does not need to become involved, and therefore, produces a savings to the client. On the other hand, evidence was presented of a paralegal with 36 years of experience who commands a \$125 hourly rate. I conclude that, once a paralegal has at least 3 years of experience, there is not a direct correlation between hourly rate and years of experience. Although years of experience is a factor to consider in determining a reasonable hourly rate, it is not dispositive.

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4. Vanden Bos & Chapman's Niche within the Bankruptcy Bar

The evidence presented indicates that Vanden Bos & Chapman occupies a niche within the consumer bankruptcy bar in that they specialize in particularly difficult cases with complex issues. Todd Trierweiler's testimony was that he frequently refers cases with novel or difficult issues to Vanden Bos & Chapman, and that Vanden Bos & Chapman is not a firm that focuses on a "higher volume, garden-variety type consumer debtor bankruptcy." Affidavit of Todd Trierweiler at ¶ 16.

Vanden Bos & Chapman's speciality is the handling of complex bankruptcy cases with novel issues, which requires special skill and experience on the part of its attorneys and paralegals. I personally have tried two very complex chapter 13 cases in the recent past in which Vanden Bos & Chapman represented the debtor. See Affidavit of Robert J Vanden Bos at ¶ 15f, ¶ 15g. I conclude that the fact that Vanden Bos & Chapman specializes in cases that are more complicated than the "garden-variety type" bankruptcy case requires its paralegals to have additional skills and renders it reasonable for that firm to charge higher rates than its competitors who focus largely on the high volume, more "garden-variety type" bankruptcy cases.

The fact that Vanden Bos & Chapman commands a higher rate does not mean that it is reasonable for every other firm to follow suit by charging similar rates. Both Mr. Troutman and Mr. Snyder testified at trial that they decided to raise their paralegal rates after seeing how much Vanden Bos & Chapman billed for their paralegals. There has been no evidence presented showing that Muir & Troutman or Snyder & Associates are in the same specialty niche as Vanden Bos & Chapman. Rather, based on the evidence and my own experience handling chapter 13 cases for more than 10 years as a judge, it is reasonable to conclude that Muir & Troutman and Snyder & Associates are closer to what Todd Trierweiler referred to as the "higher volume, garden-variety type consumer debtor bankruptcy" firms. That is not to say that Mr. Troutman's and Mr. Snyder's firms do not take on particularly difficult or complex cases, but that is not their speciality as it is with Vanden Bos & Chapman. While Muir & Troutman and Snyder & Associates sometimes represent debtors in litigated cases, those cases have not been as complex as those handled by Vanden Bos & Chapman.

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5. Analysis of Evidence Presented of "Marketplace"
Paralegal Rates

There is a dispute here over what the relevant marketplace is from which the court should measure a reasonable paralegal rate. At trial, evidence was presented that larger firms, such as Stoel Rives, Lane Powell, Perkins Coie, and Preston Gates, had bankruptcy paralegals who billed at a rate between \$140 and \$165 per hour. However, the fact that those firms bill their paralegals at rates upwards of \$140 per hour does not mean that it is reasonable for the applicant firms to bill at similar rates. Mr. Ostrovsky testified:

The rates are not anomalies; they represent a different market. The [larger firms] do not solicit or commonly accept consumer debtor cases. Small firms such as mine routinely get individual debtor referrals from such large firms. These firms tend to represent parties in matters of high monetary value. Regardless of the skill level involved, such work tends to command higher hourly rates . . . The skills involved may or may not be more difficult than keeping track of multiple Chapter 13 cases, but more money is involved and the market tends to place a higher value on them.

Affidavit of Jan S. Ostrovsky at 12:45-13:20.

I agree with Mr. Ostrovsky that the definition of the relevant marketplace includes both the buyer and seller of paralegal services. Therefore, it is important to consider who the clients are in determining a reasonable paralegal rate. There are significant differences between the marketplace of the applicant firms in this case as compared with the larger firms such as Stoel Rives. As Mr. Ostrovsky testified, the clients of firms like Stoel Rives are generally Fortune 500 companies and large institutional lenders. Those firms generally do not accept individual clients seeking Chapter 13 or Chapter 7 bankruptcy relief.

Further, under Faubion, the fee applicant has the burden of showing that the requested rates are "in line with those prevailing in the community for *similar services* of lawyers of reasonably comparable skill and reputation." Faubion v. City of Prineville, No. CV-00-976-HU, 2001 WL 34041782, at *4 (D. Or.

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Nov. 7, 2001)(emphasis added). It cannot be said that firms such as Stoel Rives provide *similar services* if they do not generally provide services to financially distressed individuals who are likely to use Chapter 13 or Chapter 7 bankruptcy.

Therefore, in defining what is the relevant marketplace of the applicant firms for the purpose of determining a reasonable paralegal rate, I am focusing on firms in the Portland area that provide services to individual debtors for Chapter 13 or Chapter 7 bankruptcies.

Both Vanden Bos & Chapman and the trustee provided evidence of the rates charged by paralegals at Portland area firms with a bankruptcy practice. In making my determination of a reasonable paralegal rate, I have referred to Vanden Bos & Chapman's Exhibits #49a and #53 and Trustee's Exhibit A. The range of rates provided by both parties were essentially the same: Paralegal rates in the exhibits ranged from \$75 per hour up to \$185 per hour, with the three applicant firms having most of the paralegals charging more than \$135 an hour.

Some of the paralegals who commanded rates upwards of \$140 per hour had unusual skills or qualifications that distinguished them from the rest of the group. First, the bankruptcy paralegal at Ball Janik currently bills at \$175 per hour, although in 2005 she billed at \$145 per hour.³ Of all of the testimony we received regarding the work of paralegals, hers was the only work described as "extraordinary." Next, Greene & Markley has a paralegal who bills at \$150 per hour. She is a CPA and a former Internal Revenue Officer who works exclusively on tax returns. Sussman Shank employs a paralegal who bills at \$140 per hour who is an attorney not licensed in Oregon.

According to the evidence provided, firms such as Perkins Coie, Preston Gates & Ellis, Rothgerber Johnson & Lyons,⁴ and

³ I have included Ball Janik's paralegal fee information, because Ball Janik performs services for trustees in Chapter 7 cases, although there is no evidence that it accepts Chapter 7 debtors as clients.

⁴ I include Rothgerber Johnson & Lyons only because Mr. (continued...)

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Stoel Rives have paralegals who bill at rates exceeding \$135 per hour. I do not consider these firms to be part of the relevant marketplace, because they do not accept individual clients seeking Chapter 13 or Chapter 7 bankruptcy. Further, there is insufficient evidence that their paralegals and those of the applicant firms are comparably skilled. Therefore, I will not consider the rates charged by paralegals of these firms when computing a reasonable rate for the paralegals of the applicant firms.

Apart from the unusual cases and the firms who do not provide services for individual Chapter 13 and Chapter 7 bankruptcies, the range of paralegal rates in the relevant marketplace is between \$75 per hour and \$135 per hour, with a large cluster of paralegals billing between \$110-\$125 per hour. The paralegal rates for the three applicant firms at \$145, \$150 and \$160 per hour exceed the rates charged by most firms in the defined marketplace.

6. Application to Specific Firms

Taking into consideration the evidence presented by the parties and the rule of law provided by § 330 of the Bankruptcy Code, I find that the paralegal hourly rates charged by Vanden Bos & Chapman, Muir & Troutman, and Snyder & Associates are not reasonable. A review of the marketplace has shown that, apart from the applicant firms, the high end of the paralegal hourly rate range in a Chapter 13 and Chapter 7 practitioner firm is \$135 per hour, whereas the low end is around \$75 per hour.

a. Muir & Troutman

Muir & Troutman has provided evidence that its paralegals are entitled to bill at the high end of the range of market rates. First, I found persuasive Mr. Ostrovsky's trial testimony that Mr. Troutman's paralegal, Lawrence Jacobson, was particularly effective in his ability to work independently to

⁴(...continued)

Vanden Bos chose to include Rothgerber's paralegal rates in Exhibit #49a. Although the Rothgerber firm is currently working on a matter before this court, that firm is out-of-state counsel from Colorado and is not technically a "Portland-area firm."

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move cases along without any attorney supervision. Mr. Troutman has submitted evidence that his other paralegal, Robyn Ford-Turnbull, is similarly effective and efficient. Further, Mr. Troutman has presented evidence that he also provides Chapter 12 services, which would require additional knowledge, skill, and familiarity on the part of his paralegals, which would justify a slightly higher billing rate than a pure Chapter 13 and Chapter 7 practitioner's firm. Therefore, I find that a reasonable paralegal rate for Mr. Jacobson and Ms. Ford-Turnbull is \$135 per hour.

b. Snyder & Associates

I also find that Snyder & Associates has established that its paralegals are entitled to bill at a rate at the high end of the range of market rates. Upon review of the evidence provided by Mr. Snyder of the responsibilities of his paralegals, I find that all of his paralegals are highly experienced, have significant client contact and work independently without attorney supervision. His paralegals demonstrate experience, effectiveness, and efficiency similar to the paralegals of Muir & Troutman. Therefore, I find that a reasonable hourly rate for paralegals at Snyder & Associates is \$135 per hour.

c. Vanden Bos & Chapman

As discussed in part 4, Vanden Bos & Chapman occupies a certain niche within the consumer bankruptcy bar that distinguishes that firm from any other firm within that bar. Vanden Bos & Chapman has provided the court with significant evidence establishing that it is reasonable for it to bill its paralegals at a rate slightly higher than the market rate. Certainly, the paralegals at Vanden Bos & Chapman perform the same routinized services of the "run of the mill" Chapter 13 and Chapter 7 bankruptcy cases. However, because Vanden Bos & Chapman routinely accepts difficult cases that other firms refer to Vanden Bos & Chapman because of its expertise, its paralegals must also have the adeptness, experience, and knowledge base to work on the complicated types of cases that are Vanden Bos & Chapman's speciality. Therefore, I find that a reasonable paralegal hourly rate for Vanden Bos & Chapman is \$150 per hour.

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7. Conclusion

I conclude that the paralegal hourly rates billed by each of the applicant firms are not reasonable. I find that for Muir & Troutman and Snyder & Associates, \$135 per hour is a reasonable hourly rate for their paralegals. I find that for Vanden Bos & Chapman, \$150 per hour is a reasonable hourly rate for its paralegals. Within 21 days of the date of this letter ruling, Mr. Snyder, Mr. Troutman and Mr. Vanden Bos should submit orders allowing additional compensation for the difference between the reasonable rate that I have determined here and the amounts previously awarded for each of the cases.

Very truly yours,

ELIZABETH L. PERRIS
Bankruptcy Judge