

Attorney Fees

In re McDowell Case No. 389-31843-H13

3-2-90 HLH Not Published

The court denied an application for additional attorney fees on the ground the application was rife with errors and sought unreasonable compensation given the lack of complexity of the case.

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

MAR - 2 1990

TERENCE H. DUNN, CLERK  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

Re )  
DEWEY LEONARD MCDOWELL ) Case No. 389-31843-H  
DONNA RUTH MCDOWELL ) MEMORANDUM OPINION  
Debtors )

This matter came before the court upon a First Supplemental Petition of Debtors' Attorney For Payment of Additional Attorney Fees as an Administration Expense filed by Neil T. Jorgenson and Don Thacker of the firm of Bouneff, Chally & Jorgenson.

This is a routine Chapter 13 case by debtors not engaged in business. Following confirmation hearings in ninety-one Chapter 13 cases held on February 15, 1990, the court made a survey of the attorney fees requested for services through the hearing on confirmation in those cases and found that there were as many cases in which the attorney for the debtor sought fees of less than \$725 as there were cases seeking fees exceeding that amount. There appears to be nothing in the present case that would indicate that a reasonable fee for

1 services through the date of confirmation should exceed that  
2 median figure.

3 At the time the petition in bankruptcy was filed the firm  
4 also filed a disclosure statement showing that it had received  
5 on its fees \$425 and that its agreement with the debtors called  
6 for additional fees of \$600. The order of confirmation  
7 submitted to the court by the firm called for approval of fees  
8 of \$1,025 with \$425 paid and a balance remaining of \$600.

9 The Supplemental Petition shows receipt of the first  
10 \$1,025 and requests, in addition, fees of \$1,177 plus costs of  
11 \$16.90. If granted the total attorney fees would amount to  
12 \$2,202. However, an examination of the time records shows the  
13 total fees and costs in the case amounted to only \$1,193.90.

14 Attached to the Supplemental Petition are copies of time  
15 records starting with "Preparation of draft Chapter 13 Papers"  
16 on 4/13/89 and ending with "Preparation of Letter to client re:  
17 modified Chapter 13 Plan" on 12/08/89. It shows work by Don  
18 Thacker, attorney, Zina Nichols, whom the court assumes is a  
19 paralegal, and by Kyle Walker and Tricia Kawders, whom the  
20 court assumes are secretaries. The time spent by each is  
21 multiplied by the hourly rate charged by each to obtain a total  
22 in fees of \$1,177. No documents have been filed with the court  
23 subsequent to 11/15/89 other than the Supplemental Petition for  
24 fees and an affidavit in support. It therefore appears that  
25 the time sheets cover all of the legal services performed by  
26 the firm. If the firm is entitled to \$1,177 in compensation


1 and \$16.90 for costs advanced totalling \$1,193.90 for all its  
2 services and has received \$1,025, it would be entitled to a  
3 balance of \$168.90 not \$1,193.90.

4 This court has cautioned this firm in several past cases  
5 that the court should not be required to examine petitions for  
6 attorneys submitted by the firm to locate errors. The fee  
7 applications should be accurate. The errors in this case are  
8 egregious. Based on the firm's own time sheets and its own  
9 rates of compensation, (without any examination by the court as  
10 to whether the time spent was reasonably necessary or whether  
11 hourly rates are appropriate) it is obvious the debtors were  
12 grossly overcharged. The court believes it is not an answer  
13 to merely correct the errors and award the correct balance.  
14 Rather, since the attorneys have requested \$1,193.90 but are  
15 entitled only to \$168.90 based upon their own records, the  
16 court believes it is appropriate to deny any additional fees.  
17 The next time this occurs the court will, in addition to  
18 denying the request for fees, consider the imposition of  
19 sanctions such as requiring the firm to disgorge fees already  
20 received.

21 Because this court has had continual problems regarding  
22 the fees charged by this firm, the court will, in future cases  
23 in which the fees sought at the time of confirmation exceed  
24 \$725, require the firm not only to supply the court with a copy  
25 of its time sheets but to supply a written narrative of  
26 explanations of what unique features of the case indicate the

1 fee should be greater than the median charged by other firms.

2 DATED March 1, 1990.

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4 Henry L. Hess, Jr.  
5 Bankruptcy Judge

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cc: Robert W. Myers  
Don Thacker

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