

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	
MURL E. GEARY	)	Adversary Proceeding
(Chapter 7 Case <u>91-41356</u> )	)	
	)	Number <u>92-4127</u>
<i>Debtor</i>	)	
	)	
	)	
WILEY A. WASDEN, III, TRUSTEE	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
MURL E. GEARY	)	
and	)	
SYLVIA BROWN,	)	
CHAPTER 13 TRUSTEE	)	
	)	
<i>Defendants</i>	)	

**ORDER**

In the above-captioned Chapter 7, the Debtor, an attorney licensed to practice in the State of Georgia, and the Chapter 7 Trustee are involved in a dispute as to the Trustee's entitlement to funds received by the Debtor post-petition which arise out of pre-petition services which he rendered to various clients. The Trustee claims that pre-petition work in process is an asset of Debtor's estate. Debtor does not dispute that position, but disputes the Trustee's valuation of work in process.

A large portion of the Debtor's practice involves the representation of debtors in this court, many of which are debtors in Chapter 13 cases. By General Order 9 of this Court dated May 2, 1990, it is provided that attorneys representing debtors in Chapter 13 cases in this court will be compensated at a rate of \$750.00 per case without the necessity of filing a separate application for compensation.

Debtor filed his case on July 2, 1991, at which time he was serving as counsel of record to numerous Chapter 13 debtors. Based on the records of the Office of the Chapter 13 Trustee at the time of the hearing there was a balance due Debtor on all pending Chapter 13 cases in the amount of \$166,922.53 as of July, 1991. Of that amount many cases have been dismissed or closed in which Debtor had been allowed a fee which was not paid in full. The net result of the closing of those cases is that \$37,355.35 in allowed fees will never be collected. As a result the maximum amount payable to the Debtor for cases pending on the date his Chapter 7 was filed amounts to \$129,567.18. \$10,642.30 has been paid since July 1991 on cases which are now closed.

Debtor contends, because he is required by this court to continue the representation of debtors following confirmation of a Chapter 13 plan, that the sum of \$750.00 cannot be considered to have been fully earned on the date of the filing of his case because it represents, in part, compensation for future services rendered, the fruits of which are not property of his estate. 11 U.S.C. §541(a)(6).

The Chapter 7 Trustee contends that Debtor's entitlement to these sums was fully vested from the moment each individual Chapter 13 case was filed, citing In re Calder, 94 B.R. 200 (Bankr. D.Utah 1988). The Trustee argued that fees collected post-petition on

cases filed pre-petition became property of the estate regardless of the extent to which services were completed. I reject the contention of the Chapter 7 Trustee that the entire fee should be considered a part of the Chapter 7 estate when Debtor had a continuing obligation to represent numerous debtors before this court whose Chapter 13 cases had not progressed to confirmation. Clearly, the Calder case recognized that only those services which were rendered pre-petition but compensated post-petition were part of the debtor's estate. Id. at 203. Both sides concede that the Debtor has not maintained time records which would permit a case-by-case analysis of the precise amount of time devoted to individual files from which the court could determine what proportion of fees received in the future is attributable to pre-petition services rendered by the Debtor. In the absence of accurate time records, the court is called upon to make a determination as to what portion of a so-called "standard" attorney's fee in a Chapter 13 case is earned as of the date of filing, at confirmation, or at relevant dates in between.

I conclude that as to all cases confirmed prior to July 2, 1991, the entire amount of the allowed fee of \$750.00, or such other amount as may be allowed in a particular case, was earned. The Debtor argues that, because he has an obligation to continue rendering future services to debtors, the entire amount should not be considered as vested. I disagree. The \$750.00 fee allowed in the ordinary case will be paid to the Chapter 13 debtor's counsel regardless of whether the Chapter 13 debtor is ever required to appear in court for a subsequent hearing or for any reason calls upon his counsel for future advice or counsel. The only contingency upon the attorney's receipt of the full \$750.00 is the contingency that the debtor must continue paying into the plan for a sufficient time that the Trustee can fully fund that payment. As such Debtor's entitlement to those fees in confirmed cases, to the extent the monies are paid to the Chapter 13 Trustee, is fully vested and earned

as of the date of confirmation. It does not depend on post-petition services of the Debtor and thus does not represent "earnings from services performed . . . after the commencement of the case." 11 U.S.C. §541(a)(6).

With respect to cases which had not been confirmed as of July 2, 1991, it is obvious that Debtor had devoted time to the debtor's representation in gathering information necessary to prepare a petition and schedules and perhaps in the representation of the debtor at a Section 341 meeting and/or motion hearings that were scheduled pre-confirmation. The court is tremendously hampered by the lack of documentation which would enable the court to determine what pro-rata portion of the \$750.00 fee has been earned in each individual case. Nevertheless, I conclude that for all pre-confirmation cases the earned fee amounts to \$300.00, the amount which is paid pursuant to standing order to debtors' counsel in cases which are dismissed or converted pre-confirmation. *See pro forma* order attached hereto. This fee, subject to objection, is allowed in all such cases as this court's best estimate of the average allowable compensation.

Clearly in cases that have just been filed \$300.00 may represent slightly more than the sum that debtor's counsel is entitled to receive. On the other hand, in cases where a 341 meeting has been held and other problems have arisen debtor's counsel may have devoted more time than would be reasonably compensated by the \$300.00 allowance. Nevertheless, because of the high volume of Chapter 13 cases, and in the absence of a special application by Debtor's counsel, this court's allowance of fees in such amount is well-established. In order to be consistent I can reach no other conclusion than that for all cases filed prior to July 2, 1991, which were unconfirmed, the value of Debtor's work in process shall be valued at \$300.00 per case.

At the Court's request the Chapter 13 Trustee has calculated the value of pre-petition work in process according to the above formula to be \$24,687.89 on confirmed cases and \$50,564.61 on unconfirmed cases as of September 11, 1992. To the extent that cases are hereafter dismissed and/or closed having an unpaid balance due Debtor, said amount will be further reduced. However, as of the date of this order the Debtor must account to the Chapter 7 Trustee for the full amount of \$75,252.50.

The Chapter 13 Trustee is ORDERED to continue to remit the sum of \$3,000.00 per month to the Chapter 7 Trustee until such time as the value of Debtor's work in process as calculated herein has been paid to the Chapter 7 Trustee unless otherwise directed by subsequent order of this court.

The Chapter 13 Trustee is FURTHER ORDERED to pay to the Chapter 7 Trustee the sum of \$100.00 per case, representing the balance of attorney's fees, on all cases handled by Debtor which were confirmed more than three years ago as funds are received on such cases.

Debtor's counsel has raised the question of what the continuing duty of Debtor's counsel is in the representation of Chapter 13 debtors, post-confirmation. I rule that unless counsel for a debtor is relieved from further representation of a debtor by specific order of this court, debtor's counsel has a continuing obligation to represent clients for whom counsel has appeared post-confirmation. Counsel continue to have the right to seek additional compensation beyond \$750.00 for extraordinary representation, but must demonstrate to the court all of the applicable factors for such compensation based on total time devoted to the case from the inception of representation, together with the required

showing of necessity, reasonableness, results obtained, difficulty of the case and other factors which control this court's determination of an appropriate fee. See Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988).

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of September, 1992.