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

In the matter of:	)	
	)	
EVA MAE WINGSTER	)	Chapter 13 Case Number <u>99-40784</u>
	)	
LEON DONLEVY MOORE	)	Chapter 13 Case
LILLIE BELL MOORE	)	Number <u>99-40793</u>
	)	
<hr/>	)	
HORACE H. WARREN	)	Chapter 13 Case
ROSEMARIE D. WARREN	)	Number <u>99-40809</u>
	)	
<i>Debtors</i>	)	
	)	

**ORDER ON TRUSTEE'S OBJECTIONS  
TO ATTORNEY'S FEES**

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The facts in the three above-captioned cases are identical. In each case, Debtor's counsel agreed to represent Debtors in the preparation, filing, and prosecution of a Chapter 13 bankruptcy case for an agreed upon fee of \$1,100.00 to be paid out of disbursements from the Chapter 13 Trustee following confirmation. (*See Disclosure of Compensation of Attorney for Debtor attached to respective Debtors' petitions.*) In each case, a meeting of creditors pursuant to 11 U.S.C. § 341 was duly scheduled. In each case, the Debtors appeared at the appointed date and time for the creditors' meeting, but Debtor's counsel was absent. In each case, another member of the bar of this district acted as substitute counsel for Debtor and the Trustee was able to conduct and conclude the Section

341 meeting without delay. In each case, confirmation of the Debtor's case was recommended by the Trustee and was approved by the Court without objection. In each case, the Chapter 13 Trustee filed objections to compensation of counsel in the amount of \$1,100.00 due to Debtor's counsel's failure to appear at the creditors' meeting and requested, pursuant to General Order 1998-1 of this Court, that attorney's fees be reduced by the sum of \$200.00. In no case did Debtor's counsel maintain time records or produce time records in Court in support of the fee application.

#### CONCLUSIONS OF LAW

\_\_\_\_\_ General Order 1998-1 provides as follows:

To fulfill the requirements of 11 U.S.C. § 330(a), the Court periodically reviews the reasonableness of compensation awarded by the Court to counsel representing Chapter 13 debtors. Having conducted such periodic review it is therefore ORDERED that:

(1) General Order 1995-4 filed May 15, 1995, is vacated.

(2) Effective in all cases filed after December 31, 1998, a claim for attorney's fees for services rendered and expenses advanced to a Chapter 13 debtor will be deemed automatically approved by the Court, in the absence of an objection, so long as said claim does not exceed the sum of \$1,100.00. The \$1,100.00 fee contemplates appearance by counsel of record for the debtor at the Section 341 meeting and all hearings. Said fee shall be payable as follows: Up to the first \$500.00 by payments from the Trustee as soon as practicable following confirmation. The balance of \$600.00, or less if applicable, in payments from the Trustee following the initial disbursement at a rate not to exceed \$50.00 per month. Debtors' counsel are directed to file written statements pursuant to Bankruptcy Rule 2016(b) disclosing the fee arrangement with their

clients. Debtors' attorney may, of course, agree to represent debtors for a lesser amount and are required by the Code of Professional Responsibility to do so in appropriate cases when the amount and nature of the debtors or other relevant factors result in the expenditure of substantially less attorney's time. In the event debtors' attorney subsequently determines that an award of \$1,100.00 does not adequately compensate the attorney for legal services rendered, the attorney may petition for a reasonable attorney's fees disclosing all time expended in such representation from the beginning of the case under the standards set in 11 U.S.C. § 330 and Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11<sup>th</sup> Cir. 1988).

(emphasis in original). This General Order has been adopted by the Judges of this Court in observance of the Court's obligation to establish and make awards of attorney's fees for debtors' counsel in cases filed under Title 11. 11 U.S.C. § 330(a)(4)(B) provides as follows:

- (B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

Those factors are enumerated as follows:

- (a)(1) After notice to the parties in interest and the United States Trustee and a hearing, subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103–

- (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner,

professional person, or attorney and by any paraprofessional person employed by such person; and

(B) reimbursement for actual, necessary expenses.

(3)(A) 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.

11 U.S.C. § 330(a).

General Order 1998-1 establishes a mechanism for allowance of attorney's fees up to \$1,100.00 in amount unless a party in interest objects. When an objection to a proposed fee is lodged, the burden of proof to establish what constitutes a reasonable fee remains on the applicant at all times. *See In re W. G. Shuckers, Inc.*, 232 B.R. 524, 528 (Bankr. S.D.Ga. 1999).

In each of these cases, Debtor's counsel failed to appear and represent the Debtors at the Section 341 meeting. No tangible, demonstrable harm was suffered by the Debtors or any creditor in the case, nor were the proceedings delayed as a result of Debtors' counsel's failure to appear. However, the seemingly all too commonplace practice of attorneys, who are not regularly associated in practice with another, acting as substitute counsel for debtors is not in accordance with counsels' obligation to make appearances on behalf of the client, absent a formal substitution of counsel and the receipt of leave of Court. In many cases, substitute counsel appears at the last minute, without any advance knowledge of the merits of a debtor's case and without any prior contact with the debtor, simply to fill an empty chair. While debtors thus represented are better off than if no one appeared at all, it is unprofessional for debtors to be treated in this manner. When debtors contract with an attorney for representation in a Chapter 13, they contract with a specific attorney to represent their interest, not to hire a subcontractor. I recognize that many times substitute counsel are adequately briefed in advance, may meet the client, and may perform the duties of counsel equally as proficiently as counsel who was actually hired in the case. Nevertheless, counsel who was hired has not fulfilled his or her professional responsibilities to appear at each hearing on behalf of the debtor. It was precisely this unfulfilled obligation which led to the inclusion of that language of General Order 1998-1 which reads as follows:

The \$1,100.00 fee contemplates appearance by counsel of record for the debtor at the Section 341 meeting and all hearings.

Because counsel did not fulfill this obligation in these cases, and the Trustee

filed an objection, the burden of establishing a reasonable fee shifted to the applicant. Since the applicant maintained no time records and was unable to make any proffer to the Court how much time had been devoted to the case, the most critical element in establishing a reasonable fee was missing.

The Court, in its discretion, however, is still called upon to set a fee and under established precedent may draw on the its own experience in doing so. W. G. Shuckers, Inc., 232 B.R. at 528. An examination of the files in each of these cases reveals nothing remarkable about them nor any unduly time-consuming, unique, or difficult issues which arose in them. Very likely, a substantial reduction in the fee could be justified based on the relative simplicity of the cases, counsels' lack of time and billing records, and the aforementioned failure to appear at the 341 Meeting. Nevertheless, because the implementation of this rule is in its infancy I have concluded that it is not necessary, in these cases, to assess a substantial fee reduction in light of the fact that the cases were effectively prosecuted to confirmation without any tangible loss or harm to any party in the case, or any additional administrative burden on the Court. Accordingly, I will allow a fee in the amount of \$950.00, the lodestar Chapter 13 fee which existed prior to the implementation of General Order 1998-1.<sup>1</sup>

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<sup>1</sup> Absent from the record is any evidence to explain: (1) Why counsel was absent - that is, was there good cause? (2) Was substitute counsel arranged for in advance? (3) Did substitute counsel meet with the Debtor? (4) Did the client consent to the substitution? (5) Did Debtors' counsel file a formal substitution of counsel and request for leave of court? (6) Did substitute counsel timely brief Debtors' counsel on the outcome of the hearing so as to facilitate subsequent prosecution of the case? (7) Was the case thereafter effectively prosecuted? (8) How much, if anything, was substitute counsel paid for services rendered? (9) How much time did Debtor's counsel devote to this case? The answers to these questions would obviously affect, for better or worse, the amount of fee awarded. Applicants with the burden of proving their fee entitlement must offer evidence on these points in order to maximize their fee. The absence of proof will, in the future, result in further fee reductions.

In future cases, repetitive acts by counsel similar to this, which cause harm to the debtor, delay proceedings, or impose administrative burden upon other parties or upon the Court, will result in substantially more severe fee reductions.

SO ORDERED.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_ day of August, 1999.