

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

IN RE: )  
 )  
BRIAN E. ALLEN, ) CHAPTER 13 BANKRUPTCY  
RACHAEL E. ALLEN ) CASE NO. 93-41865  
 )  
 )  
DEBTORS )

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For the Debtors: R. WADE GASTIN  
Post Office Box 8012  
Savannah, GA 31412

Chapter 13 Trustee: SYLVIA FORD BROWN  
Post Office Box 10556  
Savannah, GA 31412

**MEMORANDUM OPINION**

Attorney for Brian E. Allen and Rachael E. Allen ("Debtors"), R. Wade Gastin, has filed this Motion for Additional Attorney Fees. Mr. Gastin seeks Two Thousand Two Hundred and Ten Dollars (\$2,210.00), less Seven Hundred Fifty Dollars (\$750.00) previously paid by the Chapter 13 trustee. For the reasons stated here, the motion will be denied in part and granted in part.

On May 3, 1990, the Honorable Lamar W. Davis, Jr., Chief Judge of this Court promulgated General Order Number 9 governing attorney's fees in Chapter 13 cases. That Order was cited by the court in In re Barger, No. 94-10901, slip op. at 4-5 (Bankr. S.D. Ga. March 28, 1995) as follows:

I have reviewed the present procedures for allowance of attorney's fees in Chapter 13 cases. This included consideration of the typical obligations undertaken by Chapter 13 attorneys, the time and effort devoted to the task, the current customary allowed fee..., the passage of time since [the] ... fee was last adjusted, and the fees customarily awarded in other districts.

Effective in all cases filed after May 15, 1990, 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 \$750.00.... Debtors' counsel are directed to file written statements pursuant to Bankruptcy Rule 2016(b) disclosing the fee arrangement with their clients.

In the event that debtors' attorney subsequently determines that an award of \$750.00 does not adequately compensate the attorney for legal services rendered, the attorney may petition for additional compensation, but shall be required to establish the reasonableness of all attorney's fees from the beginning of the case pursuant to 11 U.S.C. § 330 under the standard set in Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988).

Debtors' attorney may, of course, agree to represent debtors in said cases for a lesser amount should they choose and are urged to do so in appropriate cases when the amount and nature of the debt or other relevant factors result in less substantial expenditure of attorney's time.

Barger, slip op. at 4-5.

The court arrived at the presumptively reasonable fee taking "into consideration the typical obligations undertaken by a Chapter 13 attorney in representing a debtor, the time and effort typically devoted to the representation, and applied to that expenditure of time an hourly rate of \$100.00 to arrive at an approved fee without separate application of \$750.00."

Barger, slip op. at 7.

The General Order provides the attorney an option to the necessity of strict compliance with the Eleventh Circuit's decision regarding fee applications in the case of Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988), while at the same time incorporating the required

loadstar analysis into the court's award of attorney fees. Any attorney is always free to comply with the requirements of Norman rather than apply for the fees provided by the General Order. Compensation under the General Order is meant to serve as a convenience to counsel and an economic benefit to debtors by avoiding the necessity of spending additional compensable attorney time preparing the in-depth documentation required by Norman and, further, avoiding the time and expense attendant to an appearance before the Court at every confirmation hearing to urge the request for attorney's fees.

The General Order referred to above, and relied upon by Mr. Gastin in applying for his fees earlier in this case, has since been changed. See Barger slip op. at 8-9. However, the changes are limited to the amount to be paid as compensation<sup>1</sup> and not the services expected from a Chapter 13 debtor's attorney. At the confirmation hearing in Debtors' case, Mr. Gastin was awarded compensation pursuant to General Order Number 9. As noted in the Barger opinion, the General Order regarding attorney compensation takes "into consideration the typical obligation undertaken by a Chapter 13 attorney" in the representation of a Chapter 13 debtor. "In determining the

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<sup>1</sup> The presumptively reasonable attorney's fees for debtor representation in a case under Chapter 13 has been raised to \$950.00. GENERAL ORDER NUMBER 1995-4, Bankr. S.D. Ga. May 15, 1995. This is a result of an upward adjustment in the loadstar hourly rate applied under the General Order. However, the revised General Order is inapplicable in this case as it is limited to cases filed after March 28, 1995.

value to the bankruptcy estate of services provided, the Court is not restricted to following a mathematical formula. Rather the judge may draw on his own experience in the present case and similar cases to determine a reasonable fee." In re Wright, 1994 WL 329422, No. 93-51515 slip op. at 3-4 (Bankr. M.D. Ga. Feb. 3, 1994) (citing Citibank, N.A. v. Multiponics, Inc. (In re Multiponics, Inc.), 622 F.2d 731 (5th Cir. 1980); In re Farwell, 77 B.R. 198 (N.D. Ill. 1987)).<sup>2</sup> "Fee applications in excess of what is customary or usual for the services provided will draw a more careful scrutiny by the Court." Id. at 4 (citing In re Pair, 77 B.R. 976 (Bankr. N.D. Ga. 1987)). The Court has drawn upon its expertise regarding Chapter 13 debtors' attorney's fees and acknowledged a level of compensation which is presumptively not excessive in light of the typical obligation required to be performed by an attorney for a Chapter 13 debtor. By accepting such compensation, an attorney commits himself or herself to providing these services to a Chapter 13 debtor for the specified fee. Mr. Gastin voluntarily availed himself of the procedure provided by the General Order, and was bound to provide these services as contemplated by the General Order.<sup>3</sup>

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<sup>2</sup> Although the Wright case was decided in the Middle District of Georgia and the General Order in the Southern District differs from the procedure in the Middle District, the rationale behind the creation of such local rules and procedures regarding compensation is identical.

<sup>3</sup> The practice in this District is that attorneys almost always elect to be paid the fees provided by the General Order. No specific form of election is required. The confirmation

An attorney is not necessarily limited to the fees in the General Order as to all post-confirmation services, regardless of the difficulty of the case. Once an attorney accepts the fees provided by the General Order, the issue of whether legal services are compensable in addition to the amount provided by the General Order is one addressed on a case by case basis. A nonexhaustive list<sup>4</sup> of what may constitute typical obligations includes the following:

- 1) Prepare documents on behalf of the client, including preparing and filing the petition and plan, notifying creditors of the stay, filing creditor proofs of claim on the client's behalf, and modifying a confirmed plan;
- 2) Office and telephone conferences with the client or creditors in order to discuss objections to the plan or various claims;
- 3) Appearance at the section 341 meeting of creditors;
- 4) Appearance before the Court in the event that lien avoidance, adequate protection, dismissal, stay relief, or claims objection issues become contested matters or adversary proceedings;
- 5) Appearance at the confirmation hearing if outstanding matters remain unresolved at that time.

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order provides for the allowance of the fees. At any point up to and within ten (10) days following the entry of the confirmation order, the Court will entertain a Norman fee application in lieu of a fee award under the General Order. In the absence of such an application, the matter of considering and awarding fees for service rendered through confirmation is concluded.

<sup>4</sup> The Court offers this list only for purposes of guidance. Not every case will involve every aspect of what may be considered customary and usual.

Wright at 4-5.

If, after an attorney has accepted compensation under the General Order, the attorney can show the Court that the additional services rendered following confirmation exceed the typical obligations, the Court will award compensation for such additional services under the guidelines of Norman. The Court will not, however, reconsider the original fee award or grant a retroactive fee increase for prior services once an attorney has accepted fees under the General Order. In other words, by accepting fees under the General Order an attorney commits himself or herself to accepting such fees as sufficient compensation for tasks which may already be performed as well as additional tasks which were contemplated by the original fee award.

The Court will now review Mr. Gastin's fee application under the guidelines set forth in Norman to see if there are any services performed outside the scope of the services contemplated in the original fee award. Mr. Gastin requests a total of Two Thousand Two Hundred Ten Dollars (\$2,210.00) less the Seven Hundred Fifty Dollars (\$750.00) he has already been paid. A review of the itemized time summary prepared and filed by Mr. Gastin shows that his services in this case began on October 25, 1993, with an initial lawyer/client conference. Thereafter, the petition and schedules were prepared and filed. After objections from a co-signer, it appears that the plan had

to be modified so as to provide for a creditor to be paid in full to protect the co-signer. After attending the section 341 meeting of creditors, it was necessary to respond to creditor objections and to file a claim for a creditor. A further modification was required which removed the valuation as to the Commercial Credit claim and eliminated the provision for the payment in full of the Wachovia Bank claim. A provision for lien avoidance as to the claim of Commercial Credit was also added to the plan.

On March 22, 1994, Debtors' attorney attended the first hearing on confirmation. There were two additional confirmation hearings, April 28, 1994, and June 14, 1994. The plan was confirmed at the June 14th hearing.

In December 1994, Mr. Gastin attended a stay relief hearing. The hearing on the motion was continued to see if Debtors could satisfy the movant with additional payments. At the continued hearing on February 9, 1995, Debtors requested a further continuance. The motion was withdrawn by the movant on March 9, 1995.

It does not appear that any matter in this case required a contested hearing. All of the disputes were resolved by agreement between the Debtors and their creditors. It appears further that the services rendered in the confirmation phase of the case were virtually complete by the middle of July, 1994. The Court concludes that the services to that point were fully

compensated by the fee award under the General Order.

The next significant expenditure of time was caused by the filing of a motion for stay relief. The additional services in this case are beyond the scope of the initial fee award. Time entries related to the stay relief motion amount to 3.7 hours. Of concern is the entry dated March 9, 1995, suggesting that one half hour was spent reviewing a letter from the movant's attorney withdrawing the motion for stay relief. If that time was actually spent doing what was specified, it is excessive. Accordingly, compensation for services as described by that time entry will be disallowed.

Further, a review of the actual motion for stay relief indicates that it was based on the failure of the Debtors to make post-petition payments to the movant. The legal complexity of the issues raised by such a motion is minimal. It appears further that the time spent representing the Debtors in their stay relief matter was principally dedicated to coming to hearings where the status of the payments was monitored by the movant. It appears therefore that an appropriate amount of time which could be reasonably spent in representing the Debtors in this stay relief matter is 2.5 hours.

Lastly, there is a time entry of 1.4 hours (out of a total of 22.1 hours) spent reviewing timeslips and preparing the motion for additional attorney's fees. The General Order provides as follows:

In the event that debtors' attorney subsequently determines that an award of \$750.00 does not adequately compensate the attorney for legal services rendered, the attorney may petition for additional compensation, but shall be required to establish the reasonableness of all attorney's fees from the beginning of the case pursuant to 11 U.S.C. § 330 under the standard set in Norman v. Housing Authority of the City of Montgomery, 836 F.2d 1292 (11th Cir. 1988).

The General Order requires a comprehensive summary of services rendered from the beginning of the case in connection with any application for additional compensation. Consequently, it is necessary to prepare a comprehensive fee application such as the one submitted in this case. Such an itemization is necessary for the Court to determine whether the additional services are beyond the scope of the original fee award. For this reason, a reasonable amount of time spent preparing a comprehensive summary of these services is compensable. It appears that the 1.0 hour is reasonable to summarize the 22.1 hours shown in the application.

In conclusion, it appears that there are 3.5 hours which are compensable pursuant to the terms of this order. The Court must next determine a lodestar rate to be used in determining the fee award. This Court adopts the reasoning and conclusion of the court in the Barger case (Barger, slip op. at 8-9) in the amount of One Hundred Twenty-five Dollars (\$125.00). Accordingly, the fee to be awarded pursuant to this order

amounts to Four Hundred Thirty-seven Dollars and Fifty Cents (\$437.50). A separate order will be entered in accordance with these findings of fact and conclusions of law.

Dated this 12th day of September, 1995.

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JAMES D. WALKER, JR., Judge  
United States Bankruptcy Court

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that a copy of the attached and foregoing was mailed to the following:

R. WADE GASTIN  
Post Office Box 8012  
Savannah, GA 31412

SYLVIA FORD BROWN  
Chapter 13 Trustee  
Post Office Box 10556  
Savannah, GA 31412

BRIAN E. ALLEN  
RACHEL E. ALLEN  
1340-A Littleneck Road  
Savannah, GA 31419

This 12th day of September, 1995.

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Cheryl L. Spilman  
Deputy Clerk  
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

IN RE: )  
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BRIAN E. ALLEN, ) CHAPTER 13 BANKRUPTCY  
RACHAEL E. ALLEN ) CASE NO. 93-41865  
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DEBTORS )

ORDER

The attorney for the Debtors in this case, R. Wade Gustin, has filed a Motion for Additional Attorney's Fees. For the reasons stated in the findings of fact and conclusions of law published pursuant to Fed.R.Bank.P. 7052, it is hereby

ORDERED that additional attorney's fees are awarded to Mr. Gustin in the amount of Four Hundred Thirty-seven Dollars and Fifty Cents (\$437.50), which fees are to be paid by the Chapter 13 trustee as a distribution under the Debtors' confirmed Chapter 13 plan.

SO ORDERED this 12th day of September, 1995.

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JAMES D. WALKER, JR., Judge  
United States Bankruptcy Court

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I, Cheryl L. Spilman, certify that a copy of the attached  
and foregoing was mailed to the following:

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This 12th day of September, 1995.

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Cheryl L. Spilman  
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United States Bankruptcy Court