

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:)	Bankr. No. 99-30061
)	
THOMAS ZANE REEVES)	Chapter 12
a/k/a Tom Reeves)	
Soc. Sec. No. 504-96-2028)	FINAL DECISION RE: FEE
)	APPLICATION BY ATTORNEY HURLEY
Debtor.)	

The matter before the Court is the application for final compensation and costs and three supplements¹ filed by Debtor's former bankruptcy attorney, James P. Hurley. This Final Decision shall constitute the Court's final findings and conclusions under F.R.Bankr.P. 7052 and 9014. As set forth below, Attorney Hurley will be allowed \$917.64 of the initial \$5,000 retainer he received as the compensation for services, sales tax on compensation, and reimbursement of expenses authorized by the Court. The balance of \$4,082.36 shall be returned to Debtor pursuant to 11 U.S.C. §§ 327, 329(b), and 330(a) due to Attorney Hurley's failure to adequately disclose a potential conflict of interest when Debtor sought to employ him as bankruptcy estate counsel.

I.

The material facts of this matter were set forth in the Court's August 14, 2000 Interim Decision and are incorporated herein by reference. A final decision was withheld pending a review of Attorney Hurley's fees in the related Chapter 12 case of *In re Arthur D. "Dean" and Emma Lu Reeves*, Bankr. No. 99-30008. In that case, the Court has now concluded that no fees will be disgorged due to Attorney Hurley's failure to disclose a potential

¹ Attorney Hurley filed a SUPPLEMENT APPLICATION to a related fee matter in *In re Arthur D. "Dean" and Emma Lu Reeves*, Bankr. No. 99-30008 on November 1, 2000. Since the SUPPLEMENTAL APPLICATION also responded to issues raised in this case, it was docketed in both cases.

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conflict of interest in representing both Arthur "Dean" and Emma Lu Reeves and their son Tom Reeves when Tom owed his father for 1998 operating expenses. As the Court discussed in its final fee decision in the Dean and Emma Lu Reeves' case, the potential conflict was not apparent at the time Attorney Hurley was employed by Dean and Emma Lu Reeves.

II.

The applicable law set forth in the Court's Interim Decision is incorporated herein by reference.

III.

When Attorney Hurley prepared the application for Tom Reeves to employ him as bankruptcy counsel and when he prepared his affidavit as the professional to be employed, Attorney Hurley recognized that Dean Reeves was a creditor of Tom Reeves. This fact was known to Attorney Hurley no later than June 11, 1999. Tom Reeves' petition was not filed until August 11, 1999. Since Attorney Hurley was currently representing Dean Reeves in his own Chapter 12 case at that time, this connection with a creditor should have been clearly disclosed in the application to employ and affidavit filed in Tom Reeves' case. Fed.R.Bankr.P. 2014(a). Creditors and the United States Trustee could then have timely considered whether to file an objection under 11 U.S.C. § 327(c). The Court could then have timely determined whether an actual conflict of interest existed that would disqualify Attorney Hurley as Tom Reeves' bankruptcy counsel. It was not enough to state in the application or affidavit that the Reeves family ranched together; the specific debtor-creditor nature of the connection between Tom Reeves and Dean Reeves was too important to omit.

As discussed in the Court's Interim Decision, it was Attorney Hurley's duty to disclose his representation of creditor Dean Reeves in the application to employ and affidavit in Tom Reeves' case. The information should not have to have been ferreted out of Tom Reeves' schedules. Disclosure in another document or another format, such as the § 341 meeting of creditors or a deposition, does not supplant the requirements of Rule 2014(a). Also, as noted in the Interim Decision, this is not the first case in which Attorney Hurley has failed to fully comply with § 329(a) and Rule 2014(a). Accordingly, a fee sanction will be imposed in this case since the debtor-creditor relationship between Tom Reeves and Dean Reeves existed when the employment application and affidavit were filed in Tom Reeves' case and this fact was readily known by Attorney Hurley but not fully disclosed.

Attorney Hurley may keep only that portion of his \$5,000 retainer necessary to cover the pre-petition, non bankruptcy services rendered for Tom Reeves and his wife from February 24, 1999 through June 16, 1999, which total \$381.25 for 3.05 hours at \$125 per hour. Associated sales tax that also may be paid from the retainer is \$22.88. Costs related to these pre-petition, non-bankruptcy services that may be paid from the retainer total \$13.51.

The Court will make one exception. Fees, sales tax, and associated costs will be allowed for services rendered in connection with a preliminary agreement regarding Tom Reeves' cash collateral motion and the Bank of Hoven's turnover motion. These matters were addressed briefly at the hearing regarding Attorney Hurley's eligibility to serve as Tom Reeves' counsel. With the

Court's permission, Attorney Hurley and counsel for the Bank of Hoven completed a preliminary agreement to govern while Tom Reeves retained new counsel. Fees, taxes, and costs totaling \$500 will be allowed for these specific bankruptcy-related services. It was difficult for the Court to calculate this allowance item by item, date by date because related services regarding Debtor's plan were being performed simultaneously. However, \$500 represents a reasonable expenditure of about 3.5 hours of service by Attorney Hurley plus some related costs.

Based on the \$417.64 allocation for pre-petition, non bankruptcy work and the \$500 allowance for services and costs related to Debtor's cash collateral motion and the Bank of Hoven's turnover motion, Attorney Hurley shall return \$4,082.36 of his \$5,000 retainer to Tom Reeves, as provided by § 329(b)(2).

An appropriate order will be entered.

Dated this 13th day of January, 2001.

BY THE COURT:


Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: 
Deputy Clerk

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

JAN 23 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota



I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JAN 23 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By: 

Case: 99-30061 Form id: 122 Ntc Date: 01/23/2001 Off: 3 Page : 1
Total notices mailed: 8

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