

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:)
)
RICHARD A. OVERBY and)
)
CAROL OVERBY, d/b/a Farmers,)
)
)
Debtors.)

CASE NO. 89-10129-INH

CHAPTER 12

AND

IN RE:)
)
SHIRLEY ANN QUALE,)
)
d/b/a Farmer,)
)
)
Debtor.)

CASE NO. 89-10185-INH

CHAPTER 12

MEMORANDUM OF DECISION

The matters before the Court are the Applications for Final Compensation and Reimbursement of Expenses filed by Debtors' counsel, Terry J. Sutton, in each of the above-captioned cases. These are core proceedings pursuant to 28 U.S.C. § 157(b)(2). A hearing was held on the Application filed in In re Overby, Bankr. No. 89-10129-INH, on October 16, 1990. By consent of Applicant, no hearing on the Application filed in In re Quale, Bankr. No. 89-10185-INH, was held and Applicant's arguments at the Overby hearing were considered in support for both Applications. This ruling shall constitute Findings and Conclusions as required by Bankr. R. 7052.

I.

Overby. Debtors filed a petition for Chapter 12 relief on July 31, 1989. David L. Ganje was initially authorized by the Court to serve as Debtors' counsel. Upon Ganje's withdrawal on January 16, 1990, Debtors employed Applicant. Debtors' plan of reorganization, as restated, was confirmed April 12, 1990. Applicant filed his Application for Final Compensation and Reimbursement of Expenses on June 8, 1990. The United States Trustee filed objections based on Applicant's failure to have his employment by Debtors approved by the Court and his failure to file the disclosure of compensation required by 11 U.S.C. § 329(a) and Bankr. R. 2016(b). A hearing was held October 16, 1990. The Court directed Applicant to file an appropriate motion for retroactive authorization of his employment by Debtors. This Motion was filed

November 5, 1990 and the Order approving the retroactive employment was entered November 13, 1990. The fee application was taken under advisement.

Quale. Debtor filed a Chapter 12 petition for relief on December 12, 1989. By Order entered January 2, 1990, Debtor was authorized to employ Applicant as her attorney. Debtor's plan of reorganization, as restated, was confirmed by order entered August 3, 1990.

Applicant filed his Application for Final Compensation and Reimbursement of Expenses on September 10, 1990. By letter dated October 29, 1990, the Court informed Applicant that the Court's objections to this Application were the same as the Court's objections to his fee application in Overby. The Court also asked for clarification of the time spent on a telephone call placed on March 13, 1990. Applicant was directed to request a hearing on this Application, if desired. A hearing was not requested. By letter dated October 31, 1990, Applicant acknowledged that the time spend on a telephone call to Debtor on March 13, 1990 was erroneously entered in the fee application as six hours rather than six-tenths of an hour.

II.

Under 11 U.S.C. § 330(a)(1), a court may award "reasonable compensation for actual, necessary services rendered by ... any paraprofessional persons employed by [a professional employed under 11 U.S.C. § 327]." The Bankruptcy Courts of this District, while allowing compensation for paraprofessionals, have held that a secretary cannot merely be deemed a paraprofessional for compensation purposes. The paralegal's qualifications must be established in order for the fee applicant to receive hourly compensation for the legal services performed by the paralegal. In re Yankton College, 101 B.R. 151, 164 (Bankr. D.S.D. 1989).

While legal secretaries acquire vast knowledge of the subject matter and are certainly an integral part of any law office, their service is generally considered one of many items that make up the cost of office overhead which in turn is reflected in the hourly rate charged by the attorney.

Id. at 159 (citing In re Hanson, Bankr. No. 386-00136, slip op. at 5 (Bankr. D.S.D. March 8, 1989)). See also In re Grimes, 115 B.R. 639, 646 (Bankr. D.S.D. 1990).

The Court now recognizes that a more objective standard is needed for identifying paralegals whose services may be compensated under § 330. Acceptance of something less than certification has led to compensation for the services of some attorneys' assistants who have been designated as paralegals while other attorneys have included the services of their assistants and secretaries in the attorney's overhead. While attorneys are to be commended for reducing legal costs by delegating tasks to skilled staff members when possible, the Court must insure that compensation of paralegals under § 330(a)(1) is not an arbitrary product of a person's office title. Accordingly, the Court concludes that compensation under § 330 may only be awarded for legal¹ services performed by a certified legal assistant. Fee applications that request compensation for paralegals should identify the paralegal and set forth their certification by a recognized paralegal organization or school². Future applications that include a compensation request for the services of the same paralegal may reference an earlier compensation order which recognized that paralegal's certification.

III.

Compensation for a professional under § 330(a) is based on "the nature, the extent, and the value of such services, the time spent of such services, and the cost of comparable services other than in a case under [the Bankruptcy Code]."

¹ "Non legal" or secretarial services, whether performed by a professional or not, are not compensable under §330. In re Yankton College, 101 B.R. 151, 159 (Bankr. D.S.D. 1989).

² The South Dakota Legal Assistants Association, Inc., which is affiliated with the National Association of Legal Assistants, Inc., is the governing organization that certifies legal assistants (paralegals) in this state. Currently, certification through that organization may be obtained through examination or based on a person's training, education, and/or experience as a legal assistant. That organization may be contacted through Debra Niemi, NALA/SDLAA Liaison, of Bangs, McCullen, Butler, Foye & Simmons, P.O. 2670, Rapid City, SD 57709.

Twelve factors³, set forth in Johnson v. Georgia Highway Express, Inc., 488 f.2d 714 (5th Cir. 1974), and recognized by this Court in Grimes, 115 B.R. at 642-44, are to be considered in arriving at a reasonable compensation award. The question presented here, one that is central to the twelve Johnson factors, is whether Applicant's requested hourly rate of \$110 is appropriate.

In consideration of the legal complexity of these cases, the results obtained, the Applicant's experience, reputation, and ability, and reasonable fees for reorganization cases in this area, the Court concludes that a reasonable hourly rate for Applicant's services in these cases is \$90. While Applicant was able to obtain confirmed plans for these Debtors, neither complex litigation nor the advancement of novel or difficult legal theories were necessary in either case. Further, the Court cannot conclude that Applicant's experience and skill in bankruptcy law at this time warrant premium rates. The \$90 per hour rate is more akin to the rates of other attorneys in the area with similar experience and skills. See Grimes, 115 B.R. at 644; In re Pothoven, 84 B.R. 579, 584 (Bankr. S.D. Iowa 1988).

An order will be entered directing Applicant to provide the Court with proof of his paralegal's certification within 10 days. If the staff member is not a certified legal assistant, no fees will be awarded for their services. When that issue is resolved, the Court will enter appropriate orders awarding Applicant compensation for services, which reflect the hourly rate recognized above and the corrected time entry on the Quale fee application for the telephone call on March 13, 1990, and reimbursement of expenses.

Dated this _____ day of November, 1990.

BY THE COURT:

³ These twelve factors are: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal services properly; 4) the preclusion of other employment due to the acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the experience, reputation, and ability of the attorneys; 10) the "undesirability" of the case; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. Johnson, 488 F.2d at 717-19.

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:)
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RICHARD A. OVERBY and)
CAROL OVERBY, d/b/a Farmers,)
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Debtors.)
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CASE NO. 89-10129-INH

CHAPTER 12

ORDER RE: TERRY L. SUTTON'S
APPLICATION FOR FINAL
COMPENSATION AND REIMBURSEMENT
FOR EXPENSES

Pursuant to the Memorandum of Decision entered this date,

IT IS HEREBY ORDERED that Terry J. Sutton shall file within ten days of entry of this Order a statement indicating whether the staff member for whom compensation for legal services was sought in the Application for Final Compensation and Reimbursement for Expenses is a certified legal assistant.

Dated this 14th day of November, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

IN RE:)
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SHIRLEY ANN QUALE,)
d/b/a Farmer,)
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Debtors.) ORDER RE: TERRY L. SUTTON'S
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Dated this _____ day of November, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)