UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:	)	Bankr. No. 99-30008
	)	
ARTHUR DEAN REEVES	)	Chapter 12
a/k/a Dean Reeves	)	
Soc. Sec. No. [redacted]-9952	)	
	)	
and	)	
	)	DECISION RE: COMPENSATION
EMMA LU REEVES	)	OF DEBTORS' COUNSEL
Soc. Sec. No. [redacted]-5003	)	
	)	
Debtors.	)	

The matter before the Court is a review of Debtors' counsel's fees under 11 U.S.C. §§ 327, 329(b), and 330(a). This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 9014 and 7052. As set forth below, the Court concludes that no fees will be disgorged for Debtors' attorney's failure to disclose a potential conflict of interest. Fees allowed under § 330(a) will be reduced for any services performed in *In re Jimmy D. Reeves*, Bankr. No. 99-30009, that were erroneously charged against this estate.

I.

Arthur "Dean" and Emma Lu Reeves are Chapter 12 debtors who employed James P. Hurley as their bankruptcy counsel. Their two sons, Jimmy D. Reeves and Thomas A. "Tom" Reeves also employed Attorney Hurley for the same purpose in separate Chapter 12 cases, with Tom Reeves' case being filed several months later. On August 14, 2000, this Court entered an Interim Decision regarding Attorney Hurley's fee application in Tom Reeves' case:

> For two reasons, the Court concludes that some or all bankruptcy-related fees for Attorney Hurley must be

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disgorged or disallowed in [Tom Reeves'] case. First, the application to employ Attorney Hurley and his accompanying affidavit did not disclose that Debtor Tom Reeves owed money to Dean Reeves, another client of Attorney Hurley's. This information was clearly required to be disclosed under Rule 2014(a), *[Pierce v. Aetna Life Ins. Co. (In re Pierce)*, 809 F.2d 1356, 1363, (8th Cir. 1997)], and Attorney Hurley was fully aware of his representation of Dean Reeves when Tom Reeves filed his petition and the application to employ. The Court and United States Trustee should not have had to glean this information from Tom Reeves' schedules. *[In re Black Hills Greyhound Racing Assoc.*, 154 B.R. 285, 294 (Bankr. D.S.D. 1993)]. Whether Debtor Tom Reeves and the creditor, his father, consented to this concurrent representation is not material. *[In re Perry*, 194 B.R. 875, 879-81 (Bankr. E.D. Cal. 1996)]; *Black Hills Greyhound Racing*, 154 B.R. at 294. Moreover, Attorney Hurley could not unilaterally assess whether a potential conflict existed and needed to be disclosed; all connections are required to be disclosed. *Black Hills Greyhound Racing*, 154 B.R. at 292-93 (cites therein).

The second reason a disallowance of all or some bankruptcy related fees is appropriate in this case is because this is not the first time Attorney Hurley, an experienced bankruptcy practitioner, has had an actual conflict of interest when representing a debtor and this is not the first time that the Court has brought the matter to his attention. *See [In re Remmen*, 222 B.R.623, 626 (Bankr. D.Neb. 1998)]. In addition to the requirements set forth in the Bankruptcy Code and federal rules, Attorney Hurley received direct notice of the consequences of undisclosed conflicts in *[In re Marolf's Dakota Farms Cheese, Inc.* 1990 WL 495459 (Bankr. D.S.D. Oct. 17, 1990)], in which he was the debtor's counsel. He also received general notice through the published decision *Black Hills Greyhound Racing*, 154 B.R. 285, where all fees to the debtor's counsel were disallowed. There have also been other recent decisions in this District on the same or related subjects. *See In re Kirwan Ranch*, Bankr. No. 97-30004, letter op. (Bankr. D.S.D. July 14, 2000) (fees were not disgorged since they would not be repaid to the estate), and *In re Swenson*, Bankr. No. 99-10195, slip op. (Bankr. D.S.D. May 4, 2000) (disclosure problem only). One recent case involved Attorney Hurley, again as the debtors' counsel. In *In re Outka*, Bankr. No. 97-50491, slip op. (Bankr. D.S.D. April 13, 2000), there was an inadequate disclosure of a

pre-petition fee arrangement that involved an estate creditor, who was also an insider. *Id.* The Court did not disgorge fees from Attorney Hurley since the facts were a bit different than those presented in either *Marolf['s] Dakota Farms Cheese* or *Black Hills Greyhound Racing*. *Id.* In contrast, the fact situation in this case reflects a similar failure to disclosure as was discussed in both *Marolf['s] Dakota Farms Cheese* and *Black Hills Greyhound Racing*.

This case is a cardinal example of the importance of the strict standards of disclosure, which are unique to bankruptcy. *See Rome v. Braunstein*, 19 F.3d 54, 57-58 (5th Cir. 1994)(cite therein). If Attorney Hurley had disclosed in the employment application and affidavit that he was currently representing one of Tom Reeves' major unsecured creditors, the United States Trustee or another party in interest would have had a more timely opportunity to review the situation for an actual, disqualifying conflict of interest as provided by § 327(c). Instead, there was substantial activity in the case before the matter came to light. The delay in disclosure and ultimate disqualification of Attorney Hurley was inopportune for Debtor Tom Reeves, creditors, and the Court alike.

This case is also a prime example why conflicts of interest must be scrupulously avoided in bankruptcy cases. If the best interests of Dean and Emma Lu Reeves' bankruptcy estate had been fostered and if Dean and Emma Lu Reeves had acted in a fiduciary capacity for their creditors, then efforts would have been made to collect the full $64,071 from Tom Reeves. *In re Erickson*, 183 B.R. 189, 193-94 (Bankr. D. Minn. 1995)(a Chapter 12 debtor-in-possession is legally charged "with acting to preserve and enhance the estate's value so creditors' returns will be maximized")(cites therein); *accord In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 471-72 (3rd Cir. 1998); *Badami v. K.E. Joy, P.C. (In re Joy)*, 175 B.R. 303, 305 (Bankr. D. Neb. 1994)(Chapter 11 debtor in possession had fiduciary obligation to seek payment of claims from his closely held corporation). Had this account receivable been collected by their bankruptcy estate, unsecured creditors may have been paid more on their claims or, if this account receivable was secured to the Bank of Hoven, the Bank's secured claim may have been increased by $64,071. In contrast, if the best interests of Tom Reeves' bankruptcy estate had been fostered and if Tom Reeves had acted in a fiduciary capacity for his creditors, then his efforts would have been directed at insuring the claim held by his father

> was valid and in trying to work a compromise, if possible. Though it is unclear what actually happened, it appears that Tom Reeves and his creditors, so far, have gotten the better deal and that Dean and Emma Lu Reeves' creditors have been shortchanged by $64,071.
>
> Disallowing or disgorging fees for an estate professional, whether due to a conflict of interest or another problem, is a distasteful task. However, it is the means provided to the Court by the Bankruptcy Code and Federal Rules to reinforce the importance of full disclosure to insure that attorneys for debtors-in-possession remain free from biases that may color their representation.
>
> The present record indicates Attorney Hurley was already serving as counsel for Tom and Carmen Reeves, who then owed Dean and Emma Lu the $64,071, when Attorney Hurley was employed by Dean and Emma Lu Reeves' bankruptcy estate. Accordingly, a review of Attorney Hurley's fees under § 327(c) or § 329(b) is necessary in that case, also. Notice to Attorney Hurley and an opportunity for hearing will be given in that case, Bankr. No. 99-30008. The Court will then decide whether any fees should be disgorged in that case and the Court will then decide the amount of fees that should be disgorged or disallowed in this case.

In re Thomas Z. Reeves, Bankr. No. 99-30061, slip op. 11-16 (Bankr. D.S.D. August 14, 2000). The notice referred to above regarding the Dean and Emma Lu Reeves' Chapter 12 case was given on August 14, 2000. The Court directed Attorney Hurley to file under § 329(b) and Fed.R.Bankr.P. 2017(a) "an itemization of services rendered and costs incurred in contemplation [of] or related to the filing of [Dean and Emma Lu Reeves'] petition and for which [these Debtors] paid Attorney Hurley a $5,900 retainer." The Court also advised Attorney Hurley that he could request a hearing on the matter.

In response, Attorney Hurley filed an APPLICATION FOR FINAL COMPENSATION OF ATTORNEY'S FEES, COSTS, AND EXPENSES OF DEBTOR[S'] COUNSEL on

September 20, 2000. In the Application, Attorney Hurley stated he received a retainer of $5,900, he rendered 165.05 hours of service between October 8, 1998 and March 3, 2000 at $125 per hour, for total compensation sought of $20,631.25; his legal assistant rendered a half-hour of service at $44 per hour, for total compensation sought of $27.50; he incurred costs of $1,781.34; and he incurred sales tax on compensation of $1,239.53. Thus, under the Application Attorney Hurley sought a total of $23,679.62.

After reviewing the Application, the Court directed Attorney Hurley to supplement the Application specifically to address the potential conflict of interest he had in representing both Dean Reeves and Tom Reeves and to explain why Dean Reeves' claim against his son Tom was not pursued in Dean's case and when that decision was made. So that Attorney Hurley's obligations under § 330 and Fed.R.Bankr.P. 2016(a) could be fulfilled, the Court also directed Attorney Hurley to notice the Application for objections.

Attorney Hurley filed his Supplemental Application on November 1, 2000. Therein, he distinguished the Reeves' family ranching operation, which was not incorporated nor a formal partnership, from the debtor-corporation/principal shareholder arrangement he faced in *Marolf's Dakota Farms Cheese* or that another area attorney faced in *Black Hills Greyhound Racing Association*. He said he was alert to a conflict of interest in such a corporate/shareholder situation, but that he simply did not see a potential conflict between Dean Reeves and Tom Reeves.

Attorney Hurley also argued that the nature of the Reeves

family ranching operation did not present a definitive conflict of interest situation. Among the several family members who ranched together, large debts were held jointly; cows were branded individually, but were run in the same herd; and calves were identified with a common brand and sold collectively with the income and expenses prorated.[1]

Regarding in particular the 1998 debt[2] owed by Tom Reeves to Dean Reeves, Attorney Hurley stated he did not consider the debt as one raising a conflict of interest because it had been deemed uncollectible. Attorney Hurley offered that in 1998 the bank that provided the family ranch's operating funds refused to release its lien on calf sale proceeds so that family members could pay unsecured creditors' claims for that year. He said that Tom Reeves' share of these unpaid expenses was "viewed as an accounts receivable of Dean and Emma Lu Reeves, which was also subject to the lien of the bank." He also said that he, Dean and Emma Lu Reeves, and the bank agreed that their claim against Tom Reeves was worthless. Said Attorney Hurley,

The only adverse interest I saw in this situation was

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[1] Deposition testimony from Tom Reeves indicated that horse-related income and expenses were generally computed individually; there was no pro rata division of income and expenses as was done with the cattle. He said personal vehicles were also considered as separate expenses.

[2] Tom Reeves' deposition testimony, coupled with the fact that his case was filed in August 1999, indicates that Tom actually owed Dean Reeves for his share of 1998 operating expenses plus some 1999 operating expenses. Tom's schedules refer only to 1998 expenses of $64,071. Absent other evidence, that sum is presumed by the Court to include both 1998 and pre-petition 1999 expenses owed by Tom to Dean.

> between Tom Reeves and the bank. [Tom Reeves] requested that the bank release a portion of his 1998 calf proceeds to pay his share of the expenses of producing the 1998 calf crop, and the bank refused. I did not see any conflict in this situation between Dean and Emma Lu Reeves and their son, Tom Reeves. The real issue was between the bank, which held a lien on all livestock proceeds of Tom Reeves and Dean and Emma Lu Reeves, and the unsecured creditors who did not hold a lien and had provided feed, bulls, fuel, and other items necessary for producing the 1998 calf crop.

Attorney Hurley further stated that while the employment applications filed in the Dean and Emma Lue Reeves' case and the Tom Reeves' case did not disclose the 1998 debt Tom owed his parents for his share of ranch expenses, he argued that other documents in Tom's case did disclose the debt and that there was no attempt to hide this matter. Attorney Hurley also advised the Court that after Tom Reeves dismissed his Chapter 12 case (under the advice of different counsel), Tom sold his share of the ranch herd, satisfied his debt with the bank, and paid $64,617 to his parents.

II.
FAILURE TO DISCLOSE.

The law applicable to this situation is unchanged from that set forth in the Court's Interim Decision in *In re Thomas Z. Reeves*, Bankr. No. 99-30061, slip op. 6-11 (Bankr. D.S.D. August 14, 2000):

> A Chapter 12 debtor-in-possession must obtain court approval to hire an attorney to act as their bankruptcy counsel. 11 U.S.C. §§ 327, 1106(a), and 1203. Section 327 provides:
>
> > (a) Except as otherwise provided in this section, the [debtor-in-possession], with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that

> are disinterested persons, to represent or assist the [debtor-in-possession] in carrying out the [debtor-in-possession]'s duties under this title. . . .
> (c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.
> . . .

The statute presents two key requirements. The attorney may not hold an interest adverse to the estate and the attorney must be disinterested.

An adverse interest exists when two or more entities possess or assert mutually exclusive claims to the same economic interest. *In re Black Hills Greyhound Racing Association*, 154 B.R. 285, 292 (Bankr. D.S.D. 1993)(citing *In re National Distributors Warehouse Co.*, 148 B.R. 558, 560-61 (Bankr. E.D. Ark. 1992)(cite therein)). To represent an adverse interest includes serving as an attorney for an individual or entity that holds an adverse claim. *Black Hills Greyhound Racing*, 154 B.R. at 285 (citing *National Distributors Warehouse*, 148 B.R. at 561).

A "disinterested person," as defined by § 101(14) of the Code, includes one who:

> (A) is not a creditor, an equity security holder, or an insider; [and]
> . . . .
> (E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor . . ., or for any other reason[.]

The catch-all clause (E) is broad enough to exclude anyone with some interest or relationship that would even faintly color the independence and impartial attitude required by the Code and Rules. *Black Hills Greyhound Racing*, 154 B.R. at 292 (citing *In re BH & P, Inc.*, 949 F.2d 1300, 1309 (3rd Cir. 1991))(cited in *Kravit, Gass & Weber S.C. v. Michel (In re Crivello)*, 134 F.3d 831, 835 (7th Cir. 1998)). However, a Chapter 12 debtor in

possession may employ an attorney who was employed by a creditor, unless there is an actual conflict of interest to which an objection has been raised. 11 U.S.C. § 327(c).

To insure compliance with § 327, Fed.R.Bankr.P. 2014(a) requires substantial disclosure when a debtor-in-possession files an application to employ an attorney. Compliance with these disclosure requirements protects the integrity of the bankruptcy process. *In re Remmen*, 222 B.R. 623, 626 (Bankr. D. Neb. 1998). "When a professional is not disinterested, it gives an impression of impropriety and undercuts the integrity of the bankruptcy process." *Id.*

Under Rule 2014(a), an application by a debtor-in-possession to employ an attorney is required to include, among other things, "the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, *all of the person's connections with* the debtor, *creditors, any other party in interest, their respective attorneys* and accountants, the United States trustee, or any person employed in the office of the United States trustee [emphasis added]." Rule 2014(a) also requires the employment application to be accompanied by "a verified statement of the person to be employed setting forth the person's connections with the debtor, *creditors, any other party in interest,* their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee [emphasis added]."

The disclosures in the employment application and the affidavit should be complete in and of themselves. The court should not have to "ferret out pertinent information from other sources." *In re Independent Engineering Co.*, 232 B.R. 529, 531-32 (B.A.P. 1st Cir. 1999)(quoted in *In re Keller Financial Services of Florida, Inc.*, 248 B.R. 859, 883 (Bankr. M.D. Fla. 2000)); *accord Black Hills Greyhound Racing*, 154 B.R. at 295-96; *Winship v. Cook (In re Cook)*, 223 B.R. 782, 793 (B.A.P. 10th Cir. 1998). Moreover, the decision about what information to disclose is not left to the attorney "whose judgment may be clouded by the benefits of the potential employment." *In re Rusty Jones, Inc.*, 134 B.R. 321, 345 (Bankr. N.D. Ill. 1991)(quoting *In re Lee*, 94

B.R. 172, 176 (Bankr. C.D. Cal. 198[8])); *accord In re Perry*, 194 B.R. 875, 879 (Bankr. E.D. Cal. 1996); *In re Diamond Mortgage Corp. of Illinois*, 135 B.R. 78, 97 (Bankr. N.D. Ill. 1990). As this Court noted,

> The purpose of the disclosure is to let the court and interested parties determine whether that attorney can fulfill the fiduciary obligation that is owed not only to the debtor but also to the entire estate, including creditors. *Wolf v. Weinstein*, 372 U.S. 633, 83 S.Ct. 969, 10 L.Ed.2d 33 (1963) (cited in *United Utensils Corp.*, 141 B.R. at 309). The requirements of § 327(a) must be met "irrespective of the integrity of the person or firm under consideration."

Black Hills Greyhound Racing Association, 154 B.R. at 295 (quoting *National Distributors Warehouse*, 148 B.R. at 561); *accord Neben v. Starrett, Inc. v. Chartwell Financial Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 880-81 (9th Cir. 1995). Further, an actual or potential conflict cannot be waived. *Perry*, 194 B.R. at 880-81.

> Informed consent [cannot] be obtained because . . . 'the real parties in interest are the creditors, and that is not a waivable conflict.'

Id. at 880 (quoting lower court).

If the attorney to be employed fails to disclose a relationship that presents a potential area of conflict, compensation to that attorney may be denied. 11 U.S.C. § 328(c); *Crivello*, 134 F.3d at 837; *Pierce v. Aetna Life Ins. Co. (In re Pierce)*, 809 F.2d 1356, 1363 (8th Cir. 1987); *Pruss v. Pelofsky (In re Sauer)*, 222 B.R. 604, 608-09 (B.A.P. 8th Cir. 1998). An attorney who signs an affidavit under Rule 2014(a) that does not disclose potential conflicts of interest may also face sanctions under Fed.R.Bankr.P. 9011. *Pierce*, 809 F.2d at 1363 n.21; *Snyder v. Dewoskin (In re Mahendra)*, 131 F.3d 750, 758-59 (8th Cir. 1997). Further, an inquiry into the reasonableness of fees under 11 U.S.C. § 329(b) may also encompass whether the debtor's attorney represented an adverse interest. "'[R]easonable compensation for services rendered' necessarily implies loyal and disinterested service in the interest of those for whom the claimant purported to act." *Woods v. City National Bank & Trust Co.*, 312 U.S. 262, 268 (1941)(discussing the effect of an ethical violation upon the reasonableness of a fee in the bankruptcy context)(quoted in *In re Martin*, 197 B.R. 120, 128 (Bankr. D. Colo. 1996)). Damage to the

bankruptcy estate is not required for compensation to be reduced or denied; compensation may be denied regardless of whether the undisclosed connection is material or has *de minimis* impact. *Perry*, 194 B.R. at 881.

Whether to disallow or disgorge fees when an inadequate disclosure has been made is left to the court's discretion. *Crivello*, 134 F.3d at 836-39; *Sauer*, 222 B.R. at 609 (cites therein). The harsh sanction of disallowance or disgorgement must be weighed against the realities of the case, *In re Marolf Dakota Farms Cheese, Inc.*, Bankr. No. 89-50045, 1990 WL 495459 (Bankr. D.S.D. Oct. 17, 1990)(cite therein); *see Remmen*, 222 B.R. at 626, as well as the equities of the case. *Crivello*, 134 F.3d at 838. The court may consider the circumstances and motivations surrounding the failure to disclose. *Sauer*, 222 B.R. at 609-10. While even a negligent or inadvertent failure to disclose relevant information may result in a denial of all fees, willful or egregious violations more surely will. *Park-Helena Corp.*, 63 F.3d at 881-82 (cites therein); *Electro-wire Products, Inc. v. Sirote & Permutt, P.C. (In re Prince)*, 40 F.3d 356, 360-61 (11th Cir. 1994); *Keller Financial Services*, 248 B.R. at 877-907.

III.

The Court is satisfied that at the time Attorney Hurley prepared Dean and Emma Lue Reeves' application to employ him and his accompanying affidavit as the professional to be employed, he did not view Dean as Tom's creditor for unpaid 1998 operating expenses. At that time, Attorney Hurley saw Tom's failure to pay his share of the operating expenses as a consequence of the bank not releasing Tom Reeves' share of 1998 calf sale proceeds.

Sometime before a June 11, 1999 settlement conference, though, the bank advised the Reeves and their counsel that it considered Tom Reeves' unpaid share of the 1998 operating expenses to be an unsecured claim of Dean and Emma Lu Reeves against Tom. Attorney Hurley, who was representing Dean and Emma Lu Reeves and Tom Reeves

at that time, thus should have recognized a conflict of interest from that point forward.

This conflict should have been disclosed in a supplement to the employment application and affidavit in Dean and Emma Lu Reeves' case. *Kagan v. Stubbe (In re El San Juan Hotel Corp.)*, 239 B.R. 635, 647 (B.A.P. 1st Cir. 1999)(a professional employed by the bankruptcy estate must update any circumstances suggesting either an actual or potential conflict); *In re Keller Financial Services of Florida, Inc.*, 248 B.R. 859, 898 (Bankr. M.D. Fla. 2000); *In re Prudhomme*, 152 B.R. 91, 105 (Bankr. W.D. La. 1993), *aff'd on related grounds, Arens v. Boughton (In re Prudhomme)*, 43 F.3d 1000 (5th Cir. 1995). Since this is the first time the Court recalls discussing this continuing disclosure requirement in a written decision, however, no fee sanction will be imposed for this misstep.

The Court notes that it does not agree with Attorney Hurley's explanation of why Dean and Emma Lu's claim against Tom was considered valueless in their plan. Tom Reeves had other, non ranching income from participating in professional rodeos with which he may have been able to pay his share of the 1998 ranch operating expenses. There is no evidence that the bank had a lien on this other income. The impact of this incomplete assessment of the claim against Tom appears to be minimized now that Tom Reeves has paid his parents the $64,071 owed. The Trustee may be able to look to that sum as disposable income available to Dean and Emma Lu Reeves' unsecured claim holders.

Attorney Hurley's failure to disclose the conflict of interest in the application to employ him and his accompanying affidavit in Tom Reeves' case is a separate matter and will be addressed in a final decision entered in that case.

IV.

Attorney Hurley's fee request in Dean and Emma Lu Reeves' case must next be analyzed under § 330(a).[3] As the Court recently discussed in *In re Greenwood*, Bankr. No. 00-50415, slip op. (Bankr. D.S.D. Dec. 28, 2000), the standards for allowing compensation and reimbursement from the bankruptcy estate to a debtor's counsel in this District are provided by 11 U.S.C. § 330, which was amended substantially in 1994. Section 330(a)(1) essentially provides that a debtor's attorney is entitled to "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expenses." The statute also provides that:

> 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

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[3] Although no objections to the Application were filed under § 330(a), a review by the Court is still appropriate. *Walton v. LaBarge (In re Clark)*, 223 F.3d 859, 863 (8th Cir. 2000); *In re Fairbanks*, 111 B.R. 809, 811 (Bankr. N.D. Iowa 1990); *In re Carter*, 101 B.R. 170, 172 (Bankr. D.S.D. 1989).

> based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3). Further,

> 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.

11 U.S.C. § 330(a)(4)(B). The applicant bears the burden of establishing entitlement to a fee award and documenting the appropriate hours expended. *H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991). A case by case, item by item review of the fee application is appropriate. *Marolf's Dakota Farms Cheese*, Bankr. No. 89-50045, slip op. at 8 (cites omitted). The "lodestar" method of calculating the fee award is used: the number of hours reasonably expended multiplied by a reasonable hourly rate. *Chamberlain v. Kula (In re Kula)*, 213 B.R. 729, 736-37 (B.A.P. 8th Cir. 1997). The information to be included in the fee application is set forth in Fed.R.Bankr.P. 2016(a).

After reviewing Attorney Hurley's fee application, it appears that some services rendered for Debtor Jimmy Reeves in Bankr. No. 99-30009, may have been erroneously charged to this estate. Entries on numerous dates in this Application include work performed for Jimmy Reeves *and* Dean and Emma Lu Reeves. A few entries are for work for Jimmy Reeves' case only. For several entries, the particular debtor is not identified. Accordingly, the requested compensation and related sales tax and costs in this case

may need to be reduced for work performed separately or simultaneously in the *Jimmy Reeves* case.

It is possible that Attorney Hurley already apportioned his time and related costs between the two cases before completing the Application in this case. If that apportionment has been made, only limited deductions for the erroneous entries for work in Jimmy Reeves' case may be necessary. If no apportionment has been made or if more than a few entries are in error, Attorney Hurley will need to file an amended fee application with an apportionment made.

An appropriate order will be entered once Attorney Hurley advises the Court on whether he has already apportioned his time between this case and Jimmy Reeves' case.

Dated this 23rd day of January, 2001.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Judge

ATTEST:

Charles L. Nail, Jr., Clerk

By: Stan Straup
Deputy Clerk

UNITED STATES BANKRUPTCY COURT SEAL

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: 99-30008 Form id: 122 Ntc Date: 01/23/2001 Off: 3 Page : 1
Total notices mailed: 8

Debtor Reeves, Arthur Dean Box 466, Eagle Butte, SD 57625
Debtor Reeves, Emma Lu Box 466, Eagle Butte, SD 57625
Aty Hurley, James P. PO Box 2670, Rapid City, SD 57709
Trustee Lovald, John S. PO Box 66, Pierre, SD 57501
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
Aty Schrempp DuPris, Cheryl Assistant U.S. Attorney, 225 South Pierre Street #337, Pierre, SD 57501
Aty Wilbur, Brent A. PO Box 160, Pierre, SD 57501-0160
Aty Wilkinson, Todd D. PO Box 29, DeSmet, SD 57231