

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF SOUTH DAKOTA**

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

**PIERRE, SOUTH DAKOTA 57501-2463**

**IRVIN N. HOYT**  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560

FAX (605) 224-9020

January 26, 2006

Trustee Lee Ann Pierce  
Post Office Box 524  
Brookings, South Dakota 57006

Creighton A. Thurman, Esq.  
Counsel for Debtor  
Post Office Box 897  
Yankton, South Dakota 57078

Subject: *In re David A. Schweinforth*,  
Chapter 7, Bankr. No. 02-40446

Dear Trustee and Counsel:

The matter before the Court is the *Objection to Proof of Claim Filed by Creighton A. Thurman* filed by Trustee Lee Ann Pierce and the response thereto filed by Creighton A. Thurman, Debtor's former counsel. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As discussed below, Attorney Thurman will be awarded a Chapter 13 administrative expense of \$640.00. The \$1,245.00 balance of his claim is a general, unsecured claim against the estate.

*Summary.* David A. Schweinforth ("Debtor") filed a Chapter 7 petition in bankruptcy on April 25, 2002. His original bankruptcy counsel was Creighton A. Thurman, who disclosed he was charging Debtor \$975.00 in fees and expenses (including the filing fee) and he had not yet been paid. Between the petition date and August 12, 2002, Debtor filed his schedules and statements, the meeting of creditors was held, Debtor amended two schedules, the case trustee's objection to Debtor's claimed exemptions was sustained, one creditor obtained relief from the stay, and one creditor obtained relief from the stay and abandonment. Debtor did not respond to the objection to exemptions, the relief from stay motion, or the relief from stay and abandonment motion.

Debtor voluntarily converted his case to Chapter 13 on

In re Schwinforth  
January 26, 2005  
Page 2

August 12, 2002, again with the assistance of Attorney Thurman. Debtor obtained one extension of time in which to file his plan but still did not get it filed timely. The United States Trustee moved to dismiss the case on those grounds, and Debtor finally filed his proposed plan on October 24, 2002. Over the next few months, two more creditors obtained relief from the stay, four parties objected to the plan, and confirmation of Debtor's October 24, 2002, plan was denied. Upon the United States Trustee's motion, to which Debtor did not object, the case was reconverted to Chapter 7 on February 10, 2003.

After the case was reconverted to Chapter 7, the case trustee filed a motion to sell some real property. Debtor objected, with the assistance of a new attorney, A. Thomas Pokela. A sale order was eventually entered October 14, 2003.

Attorney Thurman filed a proof of claim for legal fees of \$1,500.00. He denominated his claim as a priority claim. On September 27, 2005, Trustee Lee Ann Pierce filed an objection to his claim on the grounds it was not a priority claim and the compensation sought was for post-petition legal work. Attorney Thurman responded saying \$975.00 was for pre-petition work, sales tax, and the filing fee, and the balance was for post-petition work.

A hearing was held November 8, 2005. The Court directed Attorney Thurman to file a itemization of his services rendered. He did so. The itemization included only Attorney Thurman's post-petition services and no expenses. Based on this itemization and his disclosure of compensation, it appears Attorney Thurman rendered pre-petition services valued at \$731.13, he had pre-petition expenses (sales tax and the filing fee) of \$243.87, he rendered Chapter 7 post-petition services valued at \$270.00, and he performed Chapter 13 services valued at \$640.00.

*Discussion.* Since amended in 1994, 11 U.S.C. § 330(a) no longer permits a Chapter 7 debtor's attorney's fees to be paid from the bankruptcy estate. Consequently, they cannot be paid as an administrative expense under 11 U.S.C. § 503(b)(2).

Prior to the Supreme Court's January 25, 2004 ruling in *Lamie v. United States Trustee*, 124 S.Ct. 1023 (2004), this Court generally allowed a chapter 7 debtor's attorney reasonable compensation from the bankruptcy

In re Schwinforth  
January 26, 2005  
Page 3

estate for "basic" chapter 7 services. Such basic services included analyzing the debtor's financial condition, rendering advice and assistance to the debtor in determining whether to file a petition in bankruptcy; preparing the petition, the schedules of assets and liabilities, and the statement of financial affairs; and representing the debtor at the § 341 meeting of creditors. See, e.g., *In re Lorraine M. Hankins*, Bankr. No. 01-41241, slip op. at 3-6 (Bankr. D.S.D. May 9, 2003); *In re Robert L. Boeka, Jr.*, Bankr. No. 01-40301, slip op. at 2-4 (Bankr. D.S.D. July 11, 1996); and *In re Tommy O. and Diane E. Rice*, Bankr. No. 93-40057, slip ops. (Bankr. D.S.D. Dec. 18, 1995 and August 14, 1995). Following *Lamie*, however, the Court may no longer do so. A chapter 7 debtor's attorney may not be compensated by the bankruptcy estate for any services rendered after January 25, 2004, unless the attorney is employed by the case trustee for a specific purpose. *Lamie*, 124 S.Ct. at 1031-32; *In re Danny C. and Marla J. Wolff*, Bankr. No. 03-40853, slip op. at 3 (Bankr. D.S.D. May 17, 2004; *In re Linda L. Rosenow*, Bankr. No. 99-50365, slip op. at 4 (Bankr. D.S.D. Feb. 9, 2004).

*In re Bradley M. and Debra J. Doerr*, Bankr. No. 01-40036, slip op. at 2 (Bankr. D.S.D. August 25, 2004). Instead, a Chapter 7 debtor's attorney needs to receive, before the petition is filed, all his fees for pre-petition services and expenses. *Fiegen Law Firm v. Fokkena (In re On-Line Services, Ltd.)*, 324 B.R. 342, 346-47 (B.A.P. 8th Cir. 2005). If the attorney does not, his claim for pre-petition fees is discharged, absent a reaffirmation agreement. His claim for post-petition fees is not a claim against the estate and may be collected from the debtors or their post-petition assets.

If a Chapter 7 case converts to a Chapter 13 case, however, the result changes. The attorney's fees for Chapter 7 bankruptcy-related services rendered pre- and post-petition are treated a bit differently. While they still cannot be paid from the estate as an administrative expense, the Chapter 7 fees are an unsecured claim against the estate. 11 U.S.C. §§ 348(a) and (d).

In this case, Attorney Thurman rendered Chapter 7 services valued at \$1,001.13, and he incurred related expenses (sale tax and filing fee) of \$243.87 for total Chapter 7 fees of \$1,245.00. This

In re Schwinforth  
January 26, 2005  
Page 4

sum is a general unsecured claim against the estate to be paid under § 726(a)(2) to the extent funds are available. Any unpaid balance will be discharged.

Attorney Thurman also rendered Chapter 13 services totaling \$640.00. Under 11 U.S.C. §§ 503(b), 507(a), and 726(b), this sum shall be paid from the estate, after Chapter 7 administrative expenses, to the extent funds are available. Any balance will be discharged. An order will be entered accordingly.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

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

**NOTICE OF ENTRY**  
Under Fed.R.Bankr.P. 9022(a)

This order/judgment was entered  
on the date shown above.

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