

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:)	
)	Chapter 13
JAMES K. BEDARD and)	
KELLEY P. BEDARD,)	Case No.: 17-20105-PGC
)	
Debtors.)	

**ORDER ON FIRST APPLICATION
FOR COMPENSATION OF LEGAL SERVICES
ON AN INTERIM BASIS**

This matter is before the court on the First Application for Compensation of Molleur Law Office (“MLO”) (the “Fee Application”), through which MLO seeks an interim award of compensation and reimbursement of expenses of \$5,550.88 for work performed between March 7, 2017 and December 11, 2017. No party objected to the Fee Application, but the court kept the matter on for hearing to inquire as to the propriety of MLO accepting a post-petition retainer of \$1,500 from Mr. and Mrs. Bedard (the “Debtors”). The first hearing was held on January 10, 2018, and the court continued the hearing until January 24, 2018, for MLO to provide authority supporting the receipt of a post-petition retainer, or to revise the process by which it receives compensation so that it did not receive post-petition property directly from the Debtors. Prior to the second hearing, MLO filed a status report.

The facts are not disputed. In order to prevent the impending foreclosure sale of their residence, the Debtors filed for bankruptcy protection, *pro se*, on March 10, 2017. Three days later, the chapter 13 trustee filed a motion to dismiss and four days after that, the Debtors filed an application to pay the \$310 filing fee in installments. The application was granted and the Debtors were permitted to pay the filing fee in four equal monthly installments beginning on March 17, 2017. On March 20, 2017, MLO made its first appearance in this case on behalf of

the Debtors. Nearly three weeks later, MLO filed a disclosure of compensation as required by 11 USC § 329(a) and F.R.Bankr.P. 2016(b). That disclosure does not state exactly when MLO received the retainer. It simply provides that the retainer was received before the filing of the disclosure. The Debtors also proposed a chapter 13 plan which, as modified, would create a reserve of \$4,475.93 for administrative expenses and attorneys' fees and expenses. Several months later, in December 2017, MLO filed the Fee Application, ¶ 3 of which states that MLO received \$1,500 from the Debtors pre-petition. This was an error, as evidenced by the detailed billing records attached as Exhibit B to the Fee Application, which reflects payment of a \$1,500 retainer on March 17, 2017. MLO confirmed that the retainer was paid post-petition in its status report and at the two hearings in January.

The sole issue is whether it is proper for MLO to accept a post-petition retainer from the Debtors.¹ MLO says it is, and likens the payment to an under-budgeted but critical post-petition vehicle or furnace repair which should be excluded from the disposable income calculation. But that analogy is not persuasive and misses the critical difference between payment for everyday household expenses and payments to debtors' counsel which are strictly regulated by the Code and the Rules. E.g., 11 U.S.C. §§ 327, 328, 329 and 330; F.R.Bankr.P. 2016, 2017; D.Me. LBR 2016-1. In the chapter 13 context, this court reads the Code and the Rules to create a fee regulation scheme whereby debtors' counsel may not receive post-petition payments from debtors without prior court approval. Other courts tackling this same question have reached similar conclusions. In re Berg, 356 B.R. 378, 380 (Bankr. E.D. Pa. 2006) (“[A]n attorney may not receive post-petition payments from property of the estate without application to and approval of the court.”); In re Jensen, 2008 WL 2550556, at *5 (Bankr. E.D. Pa. June 18, 2008)

¹ The necessity or reasonableness of MLO's work for the Debtors has not been challenged and is not the focus of this order on interim relief.

(“Counsel may not obtain and record a post-petition/pre-confirmation mortgage on property of the debtor's estate to secure the payment of legal fees without court approval.”); In re Stein, 502 B.R. 81, 85 (Bankr. E.D. Pa. 2013). “To hold otherwise would undermine the court's authority and responsibility to monitor and control the fees of chapter 13 debtors' attorneys, and would interfere with the court's exclusive jurisdiction over estate property under 28 U.S.C. § 1334(e).” In re Anderson, 253 B.R. 14, 20 (Bankr. E.D. Mich. 2000).

Having concluded that MLO’s retention of the \$1,500 post-petition payment is not authorized by the Code and Rules, what is the appropriate remedy? This court has extensive discretion in determining this answer. In re Sullivan, 674 F.3d 65, 68 (1st Cir. 2012); In re Bosse, 407 B.R. 444, 446 (Bankr. D. Me. 2009). Given that MLO improperly took a post-petition retainer from the Debtors without prior court authorization in contravention of the Code and the Rules, this court will decrease the award of the fees sought by \$500 and order the disgorgement of the \$1,500 retainer. As a result, based upon the record the court hereby orders as follows:

The Fee Application is granted in part and denied in part;

MLO is awarded \$4,894.20 as reasonable compensation for actual, necessary services rendered between March 7, 2017 and December 11, 2017, and \$156.68 as reimbursement for actual, necessary expenses, for a total award of \$5,050.88;

This award is made on an interim basis under 11 U.S.C. § 331; and

MLO shall disgorge \$1,500 to the Debtors and the Debtors shall hold this amount for a period of 60 days for the chapter 13 trustee to determine whether any further proceedings concerning these funds are necessary or appropriate. If no such pleading has been filed by the trustee within 60 days, the Debtors are free to use the funds as they see fit.

Dated: January 30, 2018

/s/ Peter G. Cary
Judge Peter G. Cary
United States Bankruptcy Court