UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: Arthur L. Abbott and Joanne M. Abbott, Debtors	Chapter 13 Case No. 11-10059

ORDER AWARDING COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR DEBTORS' COUNSEL

Jeffrey P. White and Associates, P.C. seeks an award of compensation and reimbursement of expenses in connection with its representation of the debtors in this chapter 13 case. *See* First and Final Application of Jeffrey P. White, Esq. for Compensation of Legal Services [Dkt. No. 36] (the "Fee Application"). By the Fee Application, Mr. White (or his law firm) sought compensation of $7,460.33 and reimbursement of expenses of $490.70. The chapter 13 trustee objects to that request, and suggests that a lower amount should be awarded. After the trustee objected, Mr. White agreed to a reduction of $310.50 for fees and $21.15 for expenses. *See* Dkt. No. 48.

The trustee objects to the Fee Application on multiple grounds. Several of those objections are addressed below; the others have been considered and are rejected.

I. Prior Client Approval

The Court agrees that debtor's counsel in a chapter 13 case should confer with the debtor before filing a fee application. And while it is true that nothing in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure requires a prior consultation with the debtor before a fee application can be filed or determined, that type of prior consultation is a practice that should be encouraged. Serving the fee application, along with a notice of hearing and a related objection

deadline, on a chapter 13 debtor is not a sufficient substitute for a meaningful conversation between the lawyer and the client about the lawyer's intention to seek an award of compensation under section 330.

In his response to the trustee's objection, Mr. White alleges that the Fee Application "has in fact been presented to the Debtors" and that "[t]hey have affirmatively stated that they are satisfied with Counsel's work and have no objection to the Application." *See* Response to Trustee's Objection [Dkt. No. 48], at 4. That is the precise type of allegation that should be made—if it can be made consistent with Fed. R. Bankr. P. 9011—in a fee application in the first instance. The Court recognizes that what it describes here as a salutary practice has not been a historical practice in bankruptcy cases in this District. As a result of that recognition and given Mr. White's allegation regarding the debtors' affirmative consent to approval of the Fee Application, the trustee's objection on this score in this case is overruled.

II. Vague Task Descriptions

The trustee identifies four specific task descriptions that are, in his view, insufficiently descriptive of the work performed, such that the Court cannot determine whether the services were necessary and reasonable. The Court disagrees.

The standard for allowance of fees and expenses is set forth in 11 U.S.C. § 330(a), and the applicant bears the burden of establishing its entitlement to an award under section 330. The Court is not required to check its common sense at the door when evaluating a fee request; rather, the Court can and should make reasonable inferences about the services provided by a professional person based on the descriptions supplied by that person. That makes evaluation of a fee request more of an art than a science, and bankruptcy courts are given a fair amount of latitude to determine a reasonable fee in light of the factors set forth in section 330 without

parsing each and every entry on a timesheet. *See* Berliner v. Pappalardo (In re Sullivan), 674 F.3d 65 (1st Cir. 2012).

The trustee challenges the following specific entries by Mr. White:

Date	**Description**	**Hours**	**Amount**
1/21/11	Review file; memo to staff; calendar dates	0.2	$50.00
10/21/11	Return phone call to client; answered misc questions	0.2	$50.00
11/17/11	Review email from Will Sandstead; memo to staff; notes to file	0.2	$50.00
12/31/11	Return phone call to client; answered misc questions	0.2	$50.00

Without question, these descriptions could have been better and more helpful to the Court. Mr. White easily could have described why he was reviewing the file and writing a memo to his coworkers. He also easily could have described the general nature of the questions from his client without revealing any privileged information. Mr. White could have described the subject matter of his e-mail to Mr. Sandstead on November 17 (even though other descriptions of work done on the same day permit the Court to infer that the e-mail related to the allowance of claims in the case). While the Court may be less tolerant of descriptions like these in the future, these particular descriptions are not so vague as to prohibit the Court from determining that the services meet the section 330 standard.

There is, however, one entry on February 13, 2016 that is impermissibly vague. The phrase "Review file," standing alone, is inadequate. Fees of $28.00 will be disallowed.

III. Clerical Work

A lawyer cannot be compensated at his or her hourly rate for performing clerical work. That is beyond serious debate. The more difficult endeavor is determining the type of work that is clerical (and therefore not compensable under section 330).

In general, the Court views the filing of documents on the docket as clerical work that is not compensable at attorney or paralegal rates. This is the type of work that can and should be done by a legal assistant or a secretary with proper training and little or no supervision by an attorney. As with most any rule, this one has (or likely has) exceptions. But no such exception applies here. The filing of a routine document on the Court's CM/ECF system is not compensable at attorney rates, even in circumstances where it is faster or more convenient for the attorney to file the document.

The Court will disallow (i) $25.00 of fees for filing a chapter 13 plan on March 14, 2011; (ii) $22.80 for filing a motion to allow and disallow claims on October 18, 2011; and (iii) $22.50 for filing the notice of the confirmation hearing on March 15, 2011.

IV. Excessive Fees

The trustee also seeks a reduction of $757.00 for services related to avoidance of liens. The trustee points to research by Mr. White that was excessive and unnecessarily duplicative of work on the same issue done by a paralegal in Mr. White's firm. In February 2016, Mr. White spent several hours researching judgment liens and preparing motions seeking orders stripping or avoiding those liens. The trustee objects to 2.7 hours for a total of $757.00. The Court identified 4.4 hours by Mr. White for a total of $1,232.00 on these motions.

The reasonableness of these fees must be evaluated in light of the status of the chapter 13 case at the time the services were rendered. In 2011, the Court issued an order confirming the

debtors' chapter 13 plan. That plan provided for two liens, one held by CitiMortgage, Inc. and one held by Chase Card Services, to be stripped.[1] The plan was confirmed without objection. Later, the Court issued a separate order stripping the CitiMortgage lien. *See* Dkt. No. 24. Several years later, as the debtors were preparing to request a discharge under section 1328, Mr. White filed two motions seeking orders stripping the liens of CitiMortgage and Chase Bank. *See* Dkt. Nos. 33 and 34. These are the services challenged by the trustee as being excessive.

The Court agrees that the fees sought for these services are excessive under the circumstances. There was no need, in February 2016, to spend several hours analyzing liens that had already been addressed in the case. Perhaps some amount of work was justified to obtain an order that could be recorded in the registry of deeds at the conclusion of the case. But Mr. White seeks compensation for more than that here. The Court will disallow $1,000 of the fees sought as excessive and unreasonable.

V. Estimated Fees

The Fee Application includes a request for approval of $560.00 as "[e]stimated time to close out case." Section 330 only allows compensation for services actually rendered. *See* 11 U.S.C. § 330(a)(1)(A). Quite obviously, Mr. White seeks compensation for services that had not yet been rendered when the application was filed on February 13, 2016. In other words, the services had not been actually rendered as of February 13. Since that time, the docket does not reveal any services rendered by Mr. White to the debtors, and his work in defending the Fee Application is not compensable under section 330. *See* Baker Botts, L.L.P. v. Asarco LLC, 135 S.Ct. 2158 (2015). That said, the Court understands that some modest amount of work may have

[1] Although the plan referred to an attached Schedule V, no such schedule was attached. *See* Dkt. No. 14, at ¶¶ 3(B), 10(F).

been necessary to bring the case to a comfortable resting point following the entry of a discharge, and that the work may not be reflected on the docket.

In this case, the Court will allow one hour for services to the debtors necessary to finish the case.[2] The Court does not intend to create an inflexible rule here; doing so would be unfair and, arguably, inconsistent with the Bankruptcy Code. Conversely, nothing in the Bankruptcy Code requires the Court to allow $560.00 of compensation for services that haven't been performed and that haven't been described in any detail.

VI. Conclusion

Mr. White asserts, with substantial justification, that this was a successful chapter 13 case. The debtors received a section 1328(a) discharge, and that is certainly evidence of success that informs the Court's evaluation of the Fee Application. Mr. White is entitled to reasonable compensation for his efforts. But the case was relatively straightforward, and $5,800 or so is reasonable compensation for Mr. White's efforts in this case.

The Court allows compensation in the amount of $5,771.53 and reimbursement of expenses in the amount of $469.55 under 11 U.S.C. § 330(a). These awards reflect Mr. White's voluntarily reductions in his request, and the fees disallowed by the Court as described above.

Dated: April 22, 2016

Michael A. Fagone
United States Bankruptcy Judge
District of Maine

[2] Mr. White may be paid for that one hour only if he actually provides one hour of services to the debtors and then only if those services are compensable at his professional rate.