

NOT FOR PUBLICATION IN WEST'S BANKRUPTCY REPORTER:

Case: In re Stacy C. Taylor, Case No. 03-01393

Decision: Order Addressing Debtor's Counsel's
Obligations Regarding Direct Payment of
Fees by Debtor

Decided: August 4, 2004

Attorney
for Debtor: Sari Karson Kurland

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)
)
STACY C. TAYLOR,) Case No. 03-01393
) (Chapter 13)
)
Debtor.)

ORDER ADDRESSING DEBTOR'S COUNSEL'S
OBLIGATIONS REGARDING DIRECT PAYMENT OF FEES BY DEBTOR

The court addresses a chapter 13 debtor's counsel's obligations (1) to file supplemental Rule 2016(b) statements regarding additional compensation received (other than payments authorized by court order) and (2) to seek court approval for payments of any fees from estate property, including from the debtor's postpetition earnings.

These issues are arising in a number of cases involving chapter 13 debtors' attorneys. This case is used to address the issues with no intent to single out a particular attorney. In this instance, they arise from the submission by Sari Karson Kurland, the debtor's counsel, of an application for additional compensation and amended Rule 2016(b) statement relating to \$500 worth of work performed in October 2003. The court has signed a separate order granting that application.

However, in scrutinizing the request for fees by the debtor's counsel, the court noted that the original Rule 2016(b) statement was for the amount of \$1,500, of which \$1,000 was outstanding at the time of filing. An application

for compensation for the remaining \$1,000 was never filed. Kurland has apparently already received payment of that amount. However, Kurland never filed an application to approve such compensation and never filed a Rule 2016(b) statement describing the receipt of the compensation. This is a matter of concern for the court.

First, regardless of the source of payment of fees, Rule 2016(b) requires the filing of a supplemental statement within 15 days after receipt of any additional payment. The court has a responsibility to oversee the disbursement of fees to a debtor's attorneys. See 11 U.S.C. § 329(b).

Second, the necessity of filing a Rule 2016(b) statement is heightened when payments are made from estate funds which are a potential source to fund the debtor's chapter 13 plan or living expenses, and over which the court has exclusive jurisdiction under 28 U.S.C. § 1334(e). See In re Anderson, 253 B.R. 14, 20 (Bankr. E.D. Mich. 2000). In chapter 13 cases, the debtor's postpetition earnings are estate property under 11 U.S.C. § 1306(a), and the order confirming this debtor's plan provided that property of the estate would not vest in the debtor, notwithstanding 11 U.S.C. § 1327(b).

Third, an attorney's fees ought not be paid postpetition without an order allowing the payment of the fees. Allowance

of compensation of a debtor's attorney from such estate property in a chapter 13 case is governed by 11 U.S.C. § 330(a)(4)(B) ("the court may allow reasonable compensation to the debtor's attorney"), and generally such allowed claims are paid by the trustee from a confirmed plan (see 11 U.S.C. § 1322(a)(2)) or from estate funds if no plan is confirmed (see 11 U.S.C. § 1326(a)(2)). As stated in Anderson:

When viewed as parts of an integrated structure of fee regulation, these provisions indicate a chapter 13 debtor's attorney may not collect fees from a debtor postpetition without a court order. To hold otherwise would undermine the court's authority and responsibility to monitor and control the fees of chapter 13 debtors' attorneys....

Id. at 20. See also In re Mayeaux, 269 B.R. 614, 626 (Bankr. E.D. Tex. 2001). Specifically, it is inappropriate for a chapter 13 debtor's attorney to file a Rule 2016(b) statement with this court, disclosing that additional fees remain to be paid and that the debtor is to be the source of payment, and based solely on that Rule 2016(b) statement, to then accept payment of any part of the remainder of the fees postpetition directly from the debtor. See Anderson, 253 B.R. at 20; In re Pair, 77 B.R. 976, 979 (Bankr. N.D. Ga. 1987); In re Courtois, 222 B.R. 491, 495 (Bankr. D. Md. 1998).

The court has a duty to review fee applications and this becomes an increasingly important role for the court to play

when there is no incentive for parties in interest to object to attorney's fees, which is often the case in chapter 13 cases. See Courtois, 222 B.R. at 494. As stated in Pair:

Attorneys' fees in bankruptcy cases are not matters for purely private agreement. Bankruptcy courts have a unique responsibility to examine the reasonableness of attorney's fees when an attorney is seeking compensation from assets of the bankruptcy estate.

77 B.R. at 979 (citations omitted).¹

Arguably, if certain conditions are met, an attorney may accept a deposit of estate funds to be held in trust for

¹ The court may, on its own motion, scrutinize for reasonableness funds paid or to be paid and lower the amount the debtor will be allowed to pay the attorney. The court does not always award the full amount of compensation based on a flat fee to which the debtor agreed at the outset of the case. If, for example, the case is dismissed early on with little work having been performed by the attorney, it may be unreasonable to pay the debtor's attorney the full flat fee the debtor agreed to in exchange for the attorney's being responsible for representing the debtor through confirmation of a plan.

This court, like many other bankruptcy courts, reviews fee applications after confirmation of the debtor's plan is granted or denied. Parties in interest are given notice and an opportunity to object and factors such as the time spent, the debtor's ability to pay and the quality of the services rendered determine the amount allowed by the court. See In re Barbee, 82 B.R. 470, 473 (Bankr. N.D. Ill. 1988) (citations omitted). The chapter 13 trustee and the debtor are the two parties upon whom all chapter 13 fee applications must always be served. However, pursuant to F.R. Bankr. P. 2002(i), the court will usually limit the other entities required to receive notice of the application by requiring service only on the entities who filed a request to receive all notices in the case.

payment of fees that may be allowed at a future date.² Any such arrangement, geared towards payment of the fees, establishes "a source of payment" and thus ought to be fully disclosed under Rule 2016(b). Pursuant to such disclosure, the court can scrutinize the arrangement for reasonableness. To be reasonable, the terms of the arrangement must make clear to the debtor that the funds are not to be used to pay attorney's fees unless allowed by the court, and that the funds are to be promptly refunded if the fees are not allowed prior to the close of the case, or if an order is entered disallowing the fees sought on the merits of an application. However, Kurland did not adopt this approach towards establishing a mechanism for eventual payment of approved fees. She simply took payment without any disclosure and without application.

This court uses this case to present its position on an issue that is present in many of the chapter 13 cases in this jurisdiction. Kurland and all attorneys handling debtors' chapter 13 bankruptcy cases in this court need to realize that they are not permitted to accept compensation from the debtor

² The Bankruptcy Code does not require advance court approval of the terms of employment of an attorney for the debtor in a chapter 13 case (in contrast to an attorney for a trustee whose terms of employment must be approved under 11 U.S.C. § 327).

without disclosure, and that if compensation from the debtor is to be received postpetition, it must be approved by the court.

Attorneys are thus warned that disgorgement of fees paid postpetition may be ordered based on:

- failure to file a Rule 2016(b) statement disclosing an arrangement for paying such fees or the receipt of payment (other than a payment already authorized by court order);
- failure to file an application under 11 U.S.C. § 330(a)(4)(B) and Rule 2016(a) for allowance of compensation from the estate if the source of payment is estate funds; or
- failure to obtain an order granting the application allowing payment of such fees.

In accordance with the foregoing, it is

ORDERED that within 21 days of the entry of this order, Kurland shall file (1) a supplemental Rule 2016(b) statement and (2) an application for approval of compensation, *nun pro tunc*, for the \$1,000 she received without prior court authorization in this matter to the extent the payment was from estate funds. It is further

ORDERED that the clerk shall post a copy of this order on the court's website, and, for a period of 45 days, outside the courtroom, in the clerk's office and outside the room used for chapter 13 meetings of creditors.

Dated: August 4, 2004.

S. Martin Teel, Jr.
United States Bankruptcy Judge

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