

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 92-14443

Chapter 13

THOMAS F. BARKER, JR.

Debtor

MEMORANDUM

This case is before the court upon the application of debtor's attorney, James C. Thomas, for an allowance of fees in excess of the amount that may be allowed without an itemized statement pursuant to Standing Order 93-1. For the reasons hereinafter stated, debtor's attorney is allowed a fee of \$850.00.

This case was commenced as a chapter 7. It is apparent from the file, including the time summary attached to the application, that the chapter 7 trustee identified assets owned by debtor and his spouse from which money could be recovered to provide a distribution to unsecured creditors. In order to protect his property and that of his spouse from the chapter 7 trustee, the debtor, acting through his attorney, requested conversion of the chapter 7 case to a case under chapter 13.

The chapter 13 case then proceeded routinely to confirmation on April 18, 1994. The debtor's plan, as confirmed, provides for payments of \$250.00 per month over 60 months for a 75% return to unsecured creditors. Debtor's secured creditors are being paid directly by debtor outside the plan.

On April 18, 1994, debtor's attorney filed a report of funds collected on the form generally used in this division. The report indicated that debtor's attorney had collected \$1,500.00 from the debtor or from funds of the debtor held by others, including money collected to pay the filing fee. The report did not request a specific fee for services rendered.

Acting upon the report of funds collected, this court entered an order on April 18, 1994, directing that debtor's attorney pay the filing fee from the funds collected and pay the remainder to the chapter 13 trustee. Apparently, this has not been done. The present application was filed April 28, 1994.

An award of attorney's fees to the attorney for the debtor in any bankruptcy case is governed by 11 U.S.C. §330(a)(1), which provides, *inter alia*:

". . . the court may award . . . to the debtor's attorney reasonable compensation for actual, necessary services rendered . . . based on the nature, the extent, and the value of such services, the time spent on such services, and the cost of comparable services other than in a case under this title. . . ."

This case should have been commenced as a case under chapter 13. As indicated, there were no unusual issues presented between conversion of the case to a case under chapter 13 and confirmation of the chapter 13 plan. Accordingly, based on the factors set forth above, the court concludes that a fee of \$850.00 is reasonable compensation to the debtor's attorney in this case.

The award of compensation should be paid from the funds of the debtor held by debtor's attorney. An order will be entered in accordance with this Memorandum.

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

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ORDER

In accordance with the Memorandum filed this date,

It is ORDERED that debtor's attorney shall be allowed compensation in the amount of \$850.00; and

It is further ORDERED that from the \$1,500.00 reported as collected from the debtor, \$160.00 should be paid as the filing fee (unless already paid), \$850.00 should be retained by debtor's attorney as compensation awarded herein, and the remaining \$490.00 should be forwarded to the chapter 13 trustee.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

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Chapter 13

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AMENDED ORDER

It appearing to the court that at the time this bankruptcy case was filed the filing fee was \$120.00 instead of \$160.00,

It is ORDERED that the order dated September 8, 1994, is amended to provide that from the \$1,500.00 reported as collected from the debtor, \$120.00 should be paid as the filing fee (unless already paid), \$850.00 should be retained by debtor's attorney as compensation awarded herein, and the remaining \$530.00 should be forwarded to the chapter 13 trustee.

ENTER:

BY THE COURT

entered 9/8/1994

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE