

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 02-33669

SAMUEL RICHARD HARRIS

Debtor

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***PUBLISHED:***

In re Harris, 298 B.R. 319 (Bankr. E.D. Tenn. 2003)

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EASTERN DISTRICT OF TENNESSEE**

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SAMUEL RICHARD HARRIS

Debtor

**MEMORANDUM ON EMPLOYMENT OF ATTORNEYS FOR THE DEBTOR**

**APPEARANCES:** JENKINS & JENKINS ATTYS, PLLC  
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Attorneys for the Debtor

GWENDOLYN M. KERNEY, ESQ.  
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Chapter 13 Trustee

**RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE**

The Debtor commenced this Chapter 13 bankruptcy case on July 16, 2002, with his attorney of record being Michael H. Fitzpatrick, Esq. On August 27, 2002, First Bank of Tennessee (First Bank) filed an Objection to Confirmation. First Bank then filed a Proof of Claim in the Debtor's bankruptcy case on December 16, 2002. On December 19, 2002, the Debtor filed an Objection to the proof of claim filed by First Bank (Objection to First Bank's Claim) because it was not timely filed. Through the course of prosecuting the Objection to First Bank's Claim, it became apparent to Mr. Fitzpatrick that he would be required to testify as to material facts. Due to this conflict of interest, Mr. Fitzpatrick contacted Maurice K. Guinn, Esq., who agreed to represent the Debtor concerning the Objection to First Bank's claim. Subsequently, Mr. Guinn filed a Disclosure of Compensation of Attorney for Debtor on February 26, 2003, and he proceeded to represent the Debtor in all aspects concerning the Objection to First Bank's Claim.<sup>1</sup> Mr. Fitzpatrick has continued to represent the Debtor in all other matters arising in, connected with, and relating to the Debtor's Chapter 13 bankruptcy case.

Ultimately, the Order Confirming Chapter 13 Plan (Confirmation Order) was entered by the court on July 25, 2003. Pursuant to the Confirmation Order, compensation to the Debtor's attorneys would be determined and fixed by the court. The First Interim Application of Jenkins & Jenkins Attys, PLLC and Gentry, Tipton, Kizer & McLemore, PC Attorneys for the Debtor for Allowance of Interim Compensation and Reimbursement of Expenses (Application) was filed on July 15, 2003. The hearing on this Application was held on August 6, 2003, at which time,

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<sup>1</sup> The matter was ultimately settled, and an Agreed Order Withdrawing Objections was entered by the court on June 30, 2003, allowing First Bank to withdraw its Objection to Confirmation and allowing the Debtor to withdraw his Objection to First Bank's Claim.

the court approved the requested compensation. At the hearing, the Chapter 13 Trustee questioned whether the employment of Mr. Guinn for the sole and special purpose of representing the Debtor with regards to the Objection to First Bank's Claim required court approval. The court makes the following determination regarding the Trustee's question.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (O). (West 1993).

## I

A Chapter 13 debtor is not required to obtain court approval prior to hiring an attorney. See *In re Young*, 285 B.R. 168, 170 (Bankr. D. Md. 2002); *In re Mowers*, 160 B.R. 720, 722-23 (Bankr. N.D.N.Y. 1993). Additionally, there is no statutory prohibition on a debtor being represented by more than one attorney, nor is there a requirement that a debtor's attorneys file an application for employment as a prerequisite for compensation. *Alfaro v. Vazquez (In re Alfaro)*, 221 B.R. 927, 931 (B.A.P. 1<sup>st</sup> Cir. 1998); *In re Fricker*, 131 B.R. 932, 940 (Bankr. E.D. Pa. 1991). In fact, 11 U.S.C.A. § 327 (West 1993), governing the employment of professional persons, expressly states that “*the trustee*, with the court's approval, may employ one or more attorneys[.]” 11 U.S.C.A. § 327(a) (emphasis added). This section also applies to debtors-in-possession in Chapter 11 bankruptcy cases pursuant to 11 U.S.C.A. § 1107 (West 1993). Conversely, in Chapter 7, 12, and 13 cases, “attorneys for ‘debtors’, as distinguished from attorneys employed by the ‘trustee’ or ‘debtor in possession’, need not under . . . [the Bankruptcy Code] obtain court appointment before petitioning for attorney's fees. Court appointment has been

required where attorneys represent the estate and therefore, are considered officers of the court.” *In re Urrutia*, 137 B.R. 563, 566 (Bankr. D.P.R. 1990); *accord Young*, 285 B.R. 170 n.2 (“While § 1107(a) provides that a debtor-in-possession in chapter 11 shall have virtually all of the rights of a Trustee and shall perform all the function duty and duties of the Trustee (with limited exception), [11 U.S.C.A.] § 1303 [(West 1993)] grants very limited rights and powers of a Trustee to the chapter 13 debtor.”).

Nevertheless, 11 U.S.C.A. § 329(a) requires that

[a]ny attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

11 U.S.C.A. § 329(a) (West 1993). Also, “[a]n attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney’s name, office address and telephone number, unless the attorney’s appearance is otherwise noted in the record.” FED. R. BANKR. P. 9010(b).

Even though court approval is not necessary for the employment of a Chapter 13 debtor’s attorney, compensation thereof still requires court approval. Specifically, 11 U.S.C.A. § 330(a)(4)(B) provides that

(B) In a . . . chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor’s attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the

other factors set forth in this section.

11 U.S.C.A. § 330(a)(4)(B) (West 1993 & Supp. 2003); *see also In re Taylor*, 216 B.R. 515, 522 (Bankr. E.D. Pa. 1998). In connection with § 330, Federal Rule of Bankruptcy Procedure 2016 requires that

An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth *a* detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised[.]

FED. R. BANKR. P. 2016(a).

## II

In this case, on February 26, 2003, Mr. Guinn filed the Disclosure of Compensation of Attorney for Debtor required by § 329(a). That document also served as notice in the record of Mr. Guinn's appearance, as required by Rule 9010(b). The court finds no authority requiring Mr. Guinn to otherwise be approved by the court as attorney for the Debtor in his Chapter 13 case, even for a limited or special purpose. No further action is required of Mr. Guinn regarding his employment and entitlement to any future compensation in this Chapter 13 bankruptcy case.<sup>2</sup>

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<sup>2</sup> Because both Mr. Guinn and Mr. Fitzpatrick complied with Rule 2016(a) by filing their First Interim Application for Compensation, complete with a detailed statement of the services rendered, expenses incurred, and amounts requested by each attorney, together with disclosures regarding any amounts previously paid, the court approved their joint Application and awarded the requested compensation.

An order consistent with this Memorandum will be entered.

FILED: August 8, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
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In re

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SAMUEL RICHARD HARRIS

Debtor

**ORDER**

For the reasons stated in the Memorandum on Employment of Attorneys for the Debtor filed this date, the court directs that it was not necessary as a prerequisite to the Debtor's post-petition employment of Maurice K. Guinn, attorney, who prosecuted the Debtor's Objection to the Proof of Claim filed by First Bank of Tennessee, that the employment first be authorized by the court.

SO ORDERED.

ENTER: August 8, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE