

1 to debtors' attorneys for the normal or routine events of a case.
2 For most of those years, the presumptive fees were arrived at by
3 the United States Trustee after consultation with the attorneys
4 and Standing Chapter 13 Trustees. In most instances, the Chapter
5 13 Trustees would not object to fee requests that were at or
6 below the presumptive fee set. Attorneys had the option of
7 utilizing the more cumbersome and expensive fee application
8 process when they thought it warranted.

9 Under the presumptive fee program, maximum presumptive fee
10 amounts were set for basic services in a case, usually through
11 confirmation, with certain exceptions. Events such as stay
12 relief motions, motions to dismiss, plan modifications, claim
13 objections, lien avoidance, and sale or refinance of real
14 property have been treated separately from the basic fees for
15 consumer and business cases.

16 When the Bankruptcy Code was substantially revised by
17 adoption of BAPCPA, debtors' counsel generally believed the
18 revisions would require additional work and risk to them, and
19 urged the United States Trustee to increase the presumptive fee
20 allowances to recognize the new requirements. After undertaking
21 efforts to do so, the United States Trustee determined to remove
22 his office from the process, and turned it over to the judges of
23 this Court to conduct the process.

24 The Court undertook a review of how other districts were
25 responding to the work required by BAPCPA. However, while
26 conclusory numbers were considered, the supporting documentation

1 for how those districts arrived at those numbers was unavailable
2 or not of assistance. Consequently, the Court determined by
3 General Order to require fee applications to allow us to gather
4 information to aid us in determining reasonable presumptive fees.
5 Members of the bar objected, so the Court suspended that process
6 and undertook to develop a survey of practitioners as an
7 alternative way to gather similar information. In the interim,
8 the Court adopted a set of presumptive fee guidelines which in
9 the main part the United States Trustee had been close to ready
10 to propose. With some amendments made by the Court, those
11 interim presumptive fees represented increases in both the basic
12 fees and individual event fees. For example, presumptive fees
13 for opposing a motion to dismiss had been set at \$375 for some
14 time, and was increased to \$425.

15 The present fee dispute has arisen during the time of the
16 interim presumptive fee guidelines. Debtor's counsel argues that
17 the increase to \$425 is inadequate, and he has agreed with his
18 client to \$550. In the abstract, if it were a matter solely
19 between the client and the attorney, the Court would have no real
20 interest in the matter, except to the extent the fees might
21 violate 11 U.S.C. § 329. However, counsel seeks to be paid from
22 property of the estate, and with the priority of an
23 administrative claim, which impacts all other creditors, and
24 invokes the statutory requirements of 11 U.S.C. § 330 before any
25 fees can be allowed.

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1 The Court heard argument on the Chapter 13 Trustee's
2 objection to the request for \$550, and thereafter set the matter
3 for evidentiary hearing. The Chapter 13 Trustee subsequently
4 decided to put on no evidence, but rather wanted to argue
5 reasonableness. Counsel for debtor was sworn and testified to
6 the work he performed in this case in opposing the motion to
7 dismiss. Counsel's testimony was that based on the time spent
8 and billing rates of counsel and his staff (which rates are not
9 in themselves unreasonable) the fees earned to oppose the motion
10 to dismiss were \$1,518.75. Another Chapter 13 practitioner filed
11 an unsolicited "Friend of the Court Declaration" in which he
12 asserted the average fees accrued in his firm to oppose a motion
13 to dismiss is \$1,155.

14 In this proceeding, the Court is not called upon to decide
15 whether under the lodestar approach fees of \$1,100, or of
16 \$1,518.75 are reasonable. The reason is because applicant has
17 agreed with his client to discount his fees to \$550. He did so
18 in this case, in In re Maier, No. 03-1000, and In re Rivera, No.
19 05-11230. No explanation has been proffered as to why \$550 was
20 settled upon, rather than, for example, \$600, \$800, or \$425. In
21 other words, the evidence does not aid the Court in arriving at a
22 market "reasonable fee" for the services rendered. Rather,
23 counsel is arguing that he should be allowed, as a presumptive
24 fee, whatever he agrees on with his client so long as it is below
25 the lodestar amount for the way he handles his cases.

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1 As noted, the Court has sent out a survey to the
2 practitioners, after seeking their input on what and how it
3 should ask. Sadly, very few attorneys chose to respond. This
4 applicant did not. The judges of the court are in the process of
5 reviewing all the information the Court has gathered from around
6 the country, in order to set presumptive fees for Chapter 13
7 cases. When that process is completed, the fees to be allowed
8 for routine matters will be pegged at whatever amount the Court
9 sets, and will be subject to periodic review. In the interim,
10 the applicant has not provided the Court with persuasive evidence
11 of a reason to unilaterally increase, for this attorney, the
12 presumptive fee for opposing a motion to dismiss to whatever
13 higher dollar amount he agrees on with his client. At the
14 hearing, counsel acknowledged this was a routine motion to
15 dismiss and a routine opposition. It did not involve anything
16 extraordinary, exceptional or unusual. Consequently, the
17 presumptive fee is appropriate under the circumstances. In re
18 Geraci, 138 F.3d 314 (7th Cir. 1998); In re Eliapo, 468 F.3d 592
19 (9th Cir. 2006).

20 Accordingly, fees for counsel's opposition to the Chapter 13
21 Trustee's motion to dismiss are allowed in the amount of \$425.00.

22 IT IS SO ORDERED.

23 DATED: NOV -5 2007

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26 PETER W. BOWIE, Chief Judge
United States Bankruptcy Court