

1 WRITTEN DECISION - NOT FOR PUBLICATION

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3 ENTERED 11/6/07

4 FILED

5 NOV 5 2007

6 CLERK, U.S. BANKRUPTCY COURT

7 SOUTHERN DISTRICT OF CALIFORNIA

8 BY DEPUTY

9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re ) Case No. 07-01663-B13

12 SHARON D. BAREFIELD, )

13 Debtor. ) ORDER ON CHAPTER 13

14 ) TRUSTEE'S MOTION FOR

15 ) REVIEW OF ATTORNEY FEES

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25 This matter is unusual in that it is a request by the

26 Chapter 13 Trustee to review, pursuant to 11 U.S.C. § 329,

attorneys fees paid by the debtor to counsel for assisting the

debtor in filing, *pro se*, a barebones petition under Chapter 13.

The Court has subject matter jurisdiction pursuant to

28 U.S.C. § 1334 and General Order No. 312-D of the United States

District Court for the Southern District of California. This is

a core proceeding under 28 U.S.C. 157(b)(2)(B).

Discussion

Ms. Johnson of the Brady firm stated by declaration that

debtor came to their firm on April 2, 2007, with a notice of a

1 foreclosure sale on real property set for April 3 at 10 a.m.  
2 Apparently, debtor had just received title to the property by  
3 grant deed from "The Good Samaritan Society, a Non-Profit  
4 California Corporation" that same date, although the deed had not  
5 been recorded.

6 The firm advised debtor that a homestead declaration should  
7 be filed immediately, and that the firm could help her file a  
8 barebones petition to stop the sale. However, because they had  
9 no time to perform all the due diligence items required under  
10 BAPCPA debtor would have to file on her own behalf. The firm  
11 asserts that debtor agreed to fees of \$2,000 for the barebones  
12 petition plus \$75 for the homestead declaration, \$35 for credit  
13 counseling, and \$55 for a credit report.

14 Credit counseling was obtained using the firm's phone lines,  
15 and the balance of items was completed. Attorney Johnson  
16 declared she accompanied debtor to the courthouse to make sure  
17 the filing was accomplished, and also prepared a Notice of  
18 Bankruptcy Filing and sent it to the foreclosure trustee by fax.  
19 According to Ms. Johnson's declaration that completed the  
20 services the firm was to provide for the \$2,000. Debtor was  
21 instructed of the date by which the balance of the petition and  
22 schedules had to be filed, and was given a timely appointment to  
23 return if she wanted to employ the firm to go forward. In the  
24 meantime, the firm learned from a third person of information  
25 that caused the firm to conclude it would not represent debtor on  
26 a going forward basis.

1 Debtor's petition was subsequently dismissed, with an  
2 express reservation of jurisdiction to review the fees paid to  
3 the Brady firm. These proceedings followed.

4 There are a number of troubling issues raised by this  
5 matter. One is that attached to Ms. Johnson's declaration is an  
6 "Itemized Billing Statement" which shows not only 6.5 hours of  
7 work on April 2, but also another 5 hours starting on April 5.  
8 However, the declaration is clear that \$2,000 would be due for  
9 the *pro se* barebones petition and that: "We also informed her  
10 that she may return to our office for the possibility of  
11 retaining us to represent her and becoming her attorney of record  
12 and after we are further retained we would prepare and do  
13 diligence to finish filing the balance of schedules and Chapter  
14 13 Plan." It is clear that the work listed in the Itemized  
15 Billing Statement starting April 5 is not part of the agreement.

16 The next troubling item is all three attorneys at the firm  
17 purporting to charge \$350 an hour, ostensibly because of the  
18 emergency nature of debtor's request. First, no evidence has  
19 been provided that debtor ever agreed to \$350 an hour. Second,  
20 there is nothing in the work undertaken to prepare a barebones  
21 petition that justifies a fee of \$350 per hour.

22 Still more troubling is the amount of time expended by  
23 attorneys to prepare a *pro se* barebones petition. Particular  
24 focus is on time of an attorney expended to accompany the debtor  
25 to the court to file the *pro se* barebones petition. Certainly,  
26 the Notice of Bankruptcy Filing is a good idea.

1           A deeper issue, which the Court is unable to resolve in the  
2 instant proceeding is the nondisclosure of the firm's involvement  
3 in the preparation of the petition, akin to judicial concerns  
4 about "ghost-writing". Courts around the country are trying to  
5 resolve how to deal with those concerns. At the same time,  
6 serious consideration is being given to the "unbundling" of  
7 attorney services, which is routine in consumer bankruptcy cases  
8 and which the California bar recognizes in the family law arena  
9 by a filed notice of limited representation. Here, no such  
10 disclosure was made by the Brady firm, arguably in violation of  
11 Rule 2016(b), Fed.R.Bankr.P., as well as 11 U.S.C. § 329(a).

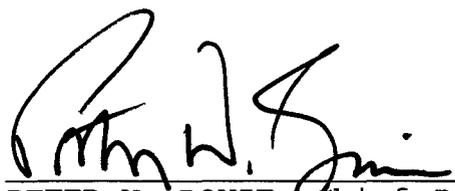
12           At the same time, the Court is mindful that the Brady firm's  
13 services were something more than those of a bankruptcy petition  
14 preparer or typing service, and merit some compensation. The  
15 Court also has concerns, however, about whether facilitating the  
16 barebones filing was in good faith when 15 days later debtor  
17 filed schedules through new counsel revealing an income shortfall  
18 over expenses exceeding \$1200 per month. Where was the income to  
19 support a chapter 13 filing in the first place? The Brady firm  
20 asserted it was unable to disclose certain information because of  
21 attorney-client privilege.

22           After hearing and further review, the Court finds and  
23 concludes that the \$2,000 in fees charged by the Brady firm  
24 exceeds the reasonable value of the services provided. The Court  
25 finds and concludes that a reasonable amount of time expended for  
26 the services provided up to filing (which is all the firm was

1 obligated to provide, according to Ms. Johnson's declaration) is  
2 4.5 hours on April 2, with reasonable hourly fees under the  
3 circumstances of \$275 for Mr. Brady and \$250 for Ms. Johnson.  
4 Total attorneys' fees allowed are \$1,175. Accordingly, \$825  
5 shall be returned to Ms. Barefield within thirty (30) days of the  
6 date of entry of this Order unless the effect of the Order is  
7 sooner stayed by a court of competent jurisdiction. Further  
8 within that same 30 days, the firm shall file with this Court a  
9 brief declaration that restitution has been made to Ms. Barefield  
10 as herein ordered.

11 IT IS SO ORDERED.

12 DATED NOV - 5 2007

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

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