

1 bankruptcy case, including:

2 . . .

3 b. Preparation and filing of
4 any petition, schedules,
5 statements of affairs and plan
6 which may be required;

7 c. Representation of the debtor at
8 the meeting of creditors and
9 confirmation hearing, and any
10 adjourned hearings thereof.

11 Paragraph 6 of the same Disclosure of Compensation Form affords
12 an attorney the opportunity to disclose what services are not
13 included for the stated fee. That part of the form was left
14 blank, indicating nothing was excluded.

15 The case proceeded, and ultimately resulted in confirmation
16 of a plan. Thereafter, Counsel filed their "Application for
17 Award of Compensation of Attorney's Fees" (Application), which is
18 the subject of this proceeding. Notwithstanding the agreement
19 referenced in the Disclosure of Compensation Form, counsel sought
20 fees in the amount of \$7,490.10.

21 At the outset it is noted that this district has for years
22 utilized a presumptive or "no-look" fee system in chapter 13
23 cases because of economies of such a system to debtors,
24 creditors, and even court administration. The Ninth Circuit has
25 blessed this procedure. See In re Eliapo, 468 F.3d 592, 598-99
26 (9th Cir. 2006). Notwithstanding the presumptive fee, attorneys
have always been able to file a fee application instead, subject,
of course, to the statutory standards of 11 U.S.C. § 330. This
procedure too was blessed by the Eliapo court, provided counsel

1 filed a detailed fee application and established that the case
2 was "out-of-the ordinary." Id. at 601.

3 Participation in this district's presumptive fee system is
4 triggered by filing a "Rights and Responsibilities" agreement
5 executed by the attorney and the client. In this case, no such
6 document was ever filed, suggesting perhaps that the firm always
7 intended to file a fee application in this case. On the other
8 hand, Counsel declares that "the initial fee in our fee agreement
9 with Debtors was \$3,300." This suggests an intention to take the
10 presumptive fee. Taken together, it is impossible to determine
11 Counsel's intent.

12 The Application, which is less than a page long, adds to the
13 confusion. The Application states that the "agreed upon fee was
14 \$3,300.00" and that Debtors paid Counsel \$1,226.00, which is
15 inconsistent with the Disclosure of Compensation Form which
16 recites an agreed upon fee of \$2,800.00 and a payment of \$26.00.

17 Attached to the Application is a "Supplemental Declaration
18 Regarding Award of Compensation of Attorney's Fees" (Supplemental
19 Declaration), signed by attorney Diamond. It is, quite simply,
20 all over the map. It starts off saying it seeks fees from July
21 2, 2007, while the Application says the firm was hired July 6,
22 2006. The Supplemental Declaration says the case was filed July
23 19, when in fact it was filed July 17. It says the agreed fee
24 was \$3,300, in contrast with the Disclosure of Compensation Form
25 which says \$2,800. It says the agreement contemplates "one
26 hearing in chapter 7 and 13 cases and one court hearing in

1 chapter 13 cases." That is also inconsistent with the statements
2 on the Disclosure of Compensation Form. It also says that the
3 fee "does not include amendments required post-filing that are a
4 result of your (the debtors) failure to provide us with
5 information." That, too, is in contrast with the Disclosure of
6 Compensation Form filed in this case.

7 The inconsistencies aside, the thrust of the firm's pitch
8 for fees above the presumptive no-look amount is contained on
9 page 3 of the Supplemental Declaration, in which the firm states:

10
11 In sum, the debtors numerous failures to
12 provide accurate information to both their
13 attorney and the IRS caused an inordinate amount
14 of time and resources to be devoted to an
15 otherwise unremarkable matter.

16 Debtors' counsel are required to perform
17 issue specific analysis in order to calculate a
18 feasible plan proposed in good faith which devotes
19 all of a debtor's disposable income to re-payment
20 of their obligations. These debtors' actions
21 specifically frustrated the required actions of
22 their attorney.

23 This debtor's (sic) case should specifically
24 serve as instructive to the entire bankruptcy
25 system from the bench, to the UST, to the Chapter
26 13 Trustees in this district and to other
27 bankruptcy practitioners. The lesson to be
28 learned being that counsel for the debtors are at
29 the mercy of the debtor. Debtors' counsel is at
30 the debtor's mercy since counsel must rely on the
31 information given him by the debtor in
32 conceptualizing the case. If the information is
33 inaccurate or just plain false counsel is left
34 there to pick up the pieces and that time is often
35 uncompensated.

36 Nearly all of the information provided by
these debtors proved to be unreliable. This
unreliability which is the common denominator in

1 nearly all bankruptcy cases causes an inordinate
2 amount of work to complete cases and debtor's
3 counsel should not have to bear the risk of this
4 unreliability in the form of depressed chapter 13
5 fees. Had these debtors been honest with their
6 attorney from the outset of their case, numerous
7 calls to Rebecca Pennington and Regina Greene
8 would have been avoided, file review and amended
9 plan analysis avoided, and numerous confirmation
10 hearings would have been avoided as well.

11 The overriding problem in this case, according to Counsel,
12 was that although Debtors told Counsel that they had filed all
13 required tax returns, Counsel learned at the § 341 meeting of
14 creditors that Debtors had not filed returns for 2001 through
15 2006. Specifically, Mrs. Rodriguez had not filed returns for
16 2001 through 2005 and Mr. Rodriguez had not filed a return for
17 2006, and then did file but under-reported his income. Also,
18 Debtors failed to provide an accurate purchase date for their
19 vehicle. This misinformation, according to Counsel, rendered
20 this case extraordinary, justifying fees in excess of the
21 presumptive amount. The Court has several problems with this
22 argument.

23 First, the Court finds that had Counsel taken what would
24 seem to be very elemental precautions, the discrepancies would
25 have been discovered in time to avoid or provide for excessive
26 fees. Had counsel simply demanded copies of the tax returns,
they would have discovered the failure to file in time to decline
taking the case. Alternatively, counsel would have been in a
position to take the case, but to include a notation in paragraph
6 of the Disclosure of Compensation Form, that the agreed upon

1 fee does not include dealings with the IRS regarding unfiled or
2 inaccurate returns. As explained by Counsel, Debtors retained
3 Counsel on July 6 (or perhaps July 2), but the petition was not
4 filed until July 17. Counsel had ample time to verify Debtors'
5 claims that the returns had been filed. If Debtors were unable
6 to locate the returns, Counsel could have, with Debtors
7 permission, obtained tax transcripts from the IRS. In fact,
8 according to Counsel, they explained to Debtors that the petition
9 would not be filed until a copy of the 2006 return was provided,
10 but Counsel went ahead and filed anyway. Thus, the idea that the
11 attorney is at the mercy of the client is not accurate because,
12 as the chapter 13 trustee points out, there are steps the
13 attorney can take to reduce that dependency on the completeness
14 and accuracy of the client's information, including requiring the
15 client to produce documentation. The Trustee correctly noted
16 that a debtor is required by statute to produce the applicable
17 tax returns to the Trustee not less than 7 days prior to the
18 first date set for the meeting of creditors. See 11 U.S.C.
19 § 521(e)(2)(A)(I). It is difficult to imagine why production of
20 tax returns is not generally an early requirement of counsel for
21 debtors given not only the statutory requirement, but also the
22 need for hard information in designing a confirmable plan. This
23 is particularly true if, as Counsel suggests, information
24 provided by debtors is typically unreliable.

25 This brings up another problem with Counsel's argument.
26 Counsel argues on the one hand that this case is extraordinary,

1 justifying a departure from the presumptive fee. On the other
2 hand, counsel argues that the misinformation which rendered this
3 case extraordinary is in fact quite ordinary - "Nearly all of the
4 information provided by these debtors proved to be unreliable.
5 This unreliability which is the common denominator in nearly all
6 bankruptcy cases causes an inordinate amount of work to complete
7 cases"

8 Besides the internal inconsistency in counsel's argument,
9 there is also the fact that the "attorney-at-the-mercy-of-the-
10 client argument" is contrary to the attorney's duty under Rule
11 9011. Rule 9011, Fed.R.Bankr.P., provides in pertinent part:

12

13 (b) Representations to the Court. By
14 presenting to the court (whether by signing,
15 filing, submitting, or later advocating) a
16 petition, pleading, written motion, or other
17 paper, an attorney . . . is certifying that
18 to the best of the person's knowledge,
19 information, and belief, formed after an
20 inquiry reasonable under the circumstances,

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19 (3) the allegations and other factual
20 contentions have evidentiary support or, if
21 specifically so identified, are likely to
22 have evidentiary support after a reasonable
23 opportunity for further investigation or
24 discovery

22 Implicit in Counsel's argument that the attorney is at the
23 client's mercy is a notion that an attorney has no responsibility
24 to try to find out the truth, or to test any of the client's
25 representations. That notion is directly contrary to Rule 9011.
26 While a body of law concerning what Rule 9011 does require an

1 attorney to do as a "reasonable inquiry" has yet to develop, the
2 idea that an attorney could comply by just uncritically accepting
3 whatever the client says is not only contrary to Rule 9011, but
4 it also leaves the attorney exposed and vulnerable. Rule 9011
5 clearly contemplates something more. See, e.g., Hendrix v.
6 Naphtal, 971 F.2d 398 (9th Cir. 1992) (counsel's reliance on
7 client's conclusions regarding domicile not sufficient).

8 As Counsel is aware, the judges of the court have recently
9 revised the presumptive fees allowable in Chapter 13 cases, with
10 multiple opportunities for input from members of the bar. From
11 Counsel's argument that unreliability of information "is the
12 common denominator in nearly all bankruptcy cases," one might
13 infer that by this Application counsel is attempting to attack
14 the reasonableness of the presumptive fee on the ground that
15 debtors do not provided reliable information. Those concerns
16 should have been raised during the revision process.

17 Counsel also contends that Debtors' failure to provide an
18 accurate purchase date for their automobile rendered this case
19 extraordinary because it required additional analysis of the
20 lienholder's (GMAC) claim. The Court has reviewed the time
21 sheets provided by Counsel, and can identify only 1.5 hours by
22 attorney Diamond (\$450.00) and 0.3 hours by attorney Lojasiewicz
23 (\$67.50) devoted to this issue. The Court does not find the
24 incurrence of an additional \$517.50 to be extraordinary in a
25 chapter 13 case. Furthermore, as was the case with the tax
26 returns, Counsel could easily have verified this information.

1 As noted, to be entitled to fees above the presumptive fee,
2 counsel must demonstrate that the case was extraordinary or
3 unusual in a way that supports departure from the reasonable
4 presumptive fee for a routine chapter 13 case. As in Eliapo, the
5 problems faced by counsel "seem no more difficult than those
6 faced by Chapter 13 practitioners on a regular basis." 468 F.3d
7 at 601. Having failed to make such a showing, and in fact
8 arguing that this case was beset with the same shoddy information
9 common in chapter 13 cases, the Court finds and concludes that
10 the presumptive fee of \$3,300.00 is reasonable under the
11 circumstances and is allowed as an administrative claim payable
12 by the Chapter 13 trustee, less credit for the \$1,226.00 already
13 paid by the debtors.¹ The net award payable by the trustee is
14 \$2,074.00.

15 IT IS SO ORDERED.

16 DATED: AUG 18 2008

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18 
19 PETER W. BOWIE, Chief Judge
United States Bankruptcy Court

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¹ Though the Disclosure of Compensation Form states that \$26 was paid, counsel explains in the Application that the amount was really \$1,226.00.