

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK03-81043
)	
TIMOTHY L. DRUMHELLER and)	CH. 13
DEBRA A. DRUMHELLER,)	
)	
Debtor(s))	

ORDER

Hearing was held in Omaha, Nebraska, on November 5, 2007, regarding Filing No. 48, Supplemental Application for Compensation, filed by Albert Burnes, and Filing No. 49, Resistance, filed by the debtors. Albert Burnes appeared as debtors' counsel and Timothy and Debra Drumheller appeared.

Counsel for the debtors has filed a supplemental fee application, Filing No. 48. In it, he requests supplemental fees in the total amount of \$3,822.28 to be allowed. However, acknowledging that there will be insufficient funds flowing through the plan to allow the Chapter 13 trustee to pay that full amount, counsel requests that \$1,520.28 be paid through the plan and the balance, \$2,302.00, be paid directly by the debtors after discharge. The debtors have objected. They feel that once the case is over, it should be over and they should not be responsible for additional fees or payments to the trustee or other creditors. They also have expressed surprise at the total and they feel they did not receive timely information about what the case was likely to cost.

At confirmation, the attorney fees were allowed in the amount of \$1,800.00 and \$200.00 was allowed for expenses. Fees listed in the supplemental fee application are in addition to the originally allowed amounts.

Appendix "O" to the Amended Local Rules of the United States Bankruptcy Court for the District of Nebraska provides at paragraph 1, in pertinent part, "[E]xcept for any pre-petition retainer, counsel for the debtor may not receive fees directly from the debtor. Fees shall be paid through the Plan unless otherwise ordered." By its terms, Appendix "O" prohibits counsel from collecting fees directly from the debtors, either pre-discharge or post-discharge, except for the initial retainer. Prior to the adoption of Appendix "O" on January 28, 2005, the attorney fee procedures in effect with regard to Chapter 13 cases were included in General Order 02-05 which was filed August 13, 2002. In General Order 02-05, at paragraph 6 on page 5, the language is "[E]xcept for any pre-petition retainer, counsel for the debtor may not receive fees directly from the debtor. Fees shall be paid through the Plan unless otherwise ordered." So, the language of the attorney fee provision in the General Order in effect on the day the petition in this case was filed, April 1, 2003, and the language in the current Appendix "O" is the same. The policy has not changed and direct fee payments by the debtors to counsel are not allowed.

Almost all of the work in this case was performed in 2003 and 2004. Only 3.8 hours of attorney and legal assistant time is shown on the supplemental fee application after 2004. Had counsel filed a supplemental fee application following completion of the majority of the work in the middle of 2004, there probably would have been enough time left for payments on those fees to be made through the Chapter 13 plan, assuming they would have been allowed at that time. Filing a supplemental fee application in 2004 would also have allowed the debtors to understand, at an early date, the amount of time counsel was putting into their case.

Because local rules prohibit direct payment of fees and because, as a matter of policy, debtors should not be required to pay additional attorney fees after obtaining a Chapter 13 discharge, only \$1,520.28 of the fees requested on the supplemental fee application are allowed. The balance is disallowed.

IT IS ORDERED: The Supplemental Application for Compensation (Fil. #48) is allowed in part. Payment of fees of \$1,520.28 may be made through the Chapter 13 plan. The remainder of the requested fees are disallowed.

DATED: November 14, 2007

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Albert P. Burnes
Timothy L. & Debra A. Drumheller
Kathleen Laughlin
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.