

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RUSSELL D. RICE,
dba Rice's Auto Service
Center,
Debtor.

Case No. 87-1554-C J
Chapter 7

ORDER ON APPLICATION FOR FEES

At Des Moines, in the Southern District of Iowa, on the 16th day of May, 1988.

On April 25, 1988 one of the attorneys for the debtor filed an application for fees for services rendered in connection with the debtor's Chapter 11 case. On the same date the attorney filed an application for permission to withdraw as counsel in the Chapter 7 case. The court has authorized the withdrawal of attorney in a separate order. The application for fees, however, requires further analysis.

The debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on June 9, 1987. On June 18, 1987 the debtor filed an application to employ attorneys Leo G. Nopoulos and Beverly Wild to represent him as debtor in possession. The application indicated that neither attorney held an interest adverse to the debtor or creditors. An order authorizing employment of attorneys was entered on June 29, 1987. On March 25, 1988 the debtor filed a motion

to convert his Chapter 11 case to a Chapter 7 case. An order converting the case was entered on March 29, 1988.

The attorney's application for fees requests compensation for services performed and itemized on Exhibit A at his usual hourly rate of \$60.00 per hour. Exhibit A reflects 8.2 hours expended and thus the attorney requests \$492.00. Since Bankruptcy Rule 2002(a)(7) only requires notice to all creditors of hearings on application for compensation in excess of \$500.00, the attorney's application for fees was not given a bar date for objections. The court, however, has independent authority to determine the reasonableness of all fee requests. In re Pettibone Corp., 74 B.R. 293, 299-300 (Bankr. N.D. Ill. 1987).

Upon review of the case file the court has discovered that attorney Nopoulos is listed on the debtor's schedules as an unsecured creditor with a claim in the amount of \$2,044.58 for attorney's fees. The debtor's statement of financial affairs also indicates that Mr. Nopoulos has set off portions of debt by having auto repair services performed on his vehicle at the debtor's place of business. The Eighth Circuit Court of Appeals has held that an attorney who is a prepetition creditor is not disinterested for purposes of 11 U.S.C. section 327(a). In re Pierce, 809 F.2d 1356, 1362 (8th Cir. 1987). 11 U.S.C. section 328(c) also provides that "the court may deny allowance of compensation for services ... of a professional person... if, at any time during such professional person's employment under section

327 or 1103 of this title, such professional person is not a disinterested person." This subsection provides a penalty for undisclosed conflicts of interest. Accordingly, the debtor's attorney is denied compensation for services performed after the filing of the petition.

The requirement of disinterest contained in section 327 does not apply to services rendered prior to the time the petition is filed. See Kotts v. Westphal, 746 F.2d 1329 (8th Cir. 1984). The attorney's itemization reveals that 6 hours were spent on prepetition matters. Since these services benefitted the Chapter 11 estate, the court will allow \$360.00 as an administrative expense against the Chapter 7 estate pursuant to 11 U.S.C. section 503(b). However, payment of the attorney fees as an administrative expense is postponed until the Chapter 7 trustee determines availability of funds in the estate. In re National BuyRite, Inc., 10 B.R. 380, 381 (Bankr. N.D. Ga. 1981).

THEREFORE, based on the foregoing analysis, the court hereby grants attorney Leo G. Nopoulos fees in the sum of \$360.00 to be paid as an administrative expense upon a determination of the availability of funds by the trustee.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE