

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 02-2720-CH
MARVIN R. MITCHELL and	:	
MARLENE M. MITCHELL,	:	
	:	Chapter 7
Debtors.	:	
	:	

**ORDER—ITEMIZATION COSTS AND ATTORNEY FEES
AND OBJECTION THERETO**

This matter pends on the court’s award of costs and attorney’s fees to chapter 7 trustee Charles Smith. On May 9, 2003, after notice and hearing, the court entered an order holding Debtors Marvin R. and Marlene M. Mitchell in contempt for failing to comply with the court’s January 27, 2003 order to turnover property. In its decision, the court determined that Trustee should recover his reasonable costs and attorney fees for bringing the contempt motion, and ordered him to submit itemization of those costs and fees within twenty days of the entry of the order. The court provided that Debtors would have ten days from notice of the itemization to offer specific objections to the items claimed by Trustee.

On May 27, 2003, Trustee filed an Itemization of Costs & Fees in Prosecuting Contempt. Trustee claimed 41.6 hours in his capacity as attorney at an hourly rate of \$165.00; .7 hours for Legal Assistant Sandra Stucker at an hourly rate of \$75.00; and 53.9 hours for Legal Assistant Nicole B. Engelhardt at rate of \$75.00. Trustee billed the travel time at half of the effective rate. The total hours claimed were 97.3 yielding a total of \$9,159.00 in fees. Trustee also claimed expenses for photocopies, postage, facsimiles,

and long distance calls totaling \$294.64. Trustee did not claim any mileage expense for driving to and from the hearings.

Debtors filed an objection to the itemization on June 3, 2003. Debtors alleged that Trustee's lack of specificity in describing certain items prevented them and the court from ascertaining the reasonableness of the work. They also contended that certain items represented an unnecessary duplication of effort by Trustee and an assistant. Debtors ask the court to disallow compensation for the duplication of services as unnecessary, and either disallow or order the Trustee to provide more detail concerning the items identified as lacking specificity.

When federal courts award attorney fees the preferred method of calculating the amount is the lodestar method. Chamberlain v. Kula (In re Kula), 213 B.R. 729, 736-37 (B.A.P. 8th Cir. 1997). The lodestar amount is also used as the typical sanction for attorney fees. In re Zepecki, 224 B.R. 907, 911 (Bankr. E.D. Ark. 1998). Accordingly, when awarding professional fees, bankruptcy courts should either make a lodestar calculation or a finding that the lodestar method is not appropriate under the particular circumstances of the case. In re Kula, 213 B.R. at 736.

The lodestar calculation is made by multiplying the number of hours reasonably expended by a reasonable hourly rate. P.A. Novelly v. Palans (In re Apex Oil Co.), 960 F.2d 728, 731 (8th Cir. 1992). It presumably reflects the novelty and complexity of the issues; the skills and experience of counsel; the quality of representation; and the results obtained. Id. at 732. In rare and unusual circumstances, the amount may be adjusted upwards or downwards. Id.; In re Kula, 213 B.R. at 736. The court may rely on its own knowledge and experience in determining the reasonableness of attorney fees without the

need for independent evidence. In re Pothoven, 84 B.R. 579, 583 (Bankr. S.D. Iowa 1988); In re Zepecki, 224 B.R. at 911.

In Pothoven, this court set out the guidelines used in the determination of the reasonability of costs and attorney fees. At a minimum, the itemization for attorney fees should describe the activity performed, the date it was performed, the attorney or other professional who performed the work, the time spent on the work, and the individual's hourly rate. In re Pothoven, 84 B.R. at 583-84. Without an explanation, the activity performed generally will not be compensable. Id. at 584. Counsel should be specific in the description of the activities performed and should not lump several activities into a single entry. Id. Hours that are excessive, redundant, or otherwise unnecessary will be disallowed. Id. at 584-85. Duplicative court appearances will not be compensated. Id. at 585. Services performed by paralegals, law clerks, or administrative staff, while encouraged as cost-saving measures, are subject to the scrutiny of the court. Id.

Along with the itemization, the party requesting compensation should submit a description of each professional for whom compensation is sought. "Such a narrative or firm résumé should enable the court to determine the appropriate hourly rate which is customarily charged in the community by someone who possesses similar skill, experience, expertise, stature, and reputation. Id. at 584.

This court has determined professionals may claim compensation for travel time to and from a location at half of the normal billing rate unless it is shown that the time was used more productively. Id. at 585. Counsel may also claim compensation for travel expense. Id.

Finally, the court notes that “[c]ounsel is presumed to be sufficiently experienced and to have an adequate background in the applicable law.” Id. As a consequence, time spent on legal research is not always necessary and compensable. The court recognizes that issues will arise where additional research is necessary. Such research can be compensated; however, the court will limit the compensable hours to those that it finds to be necessary.

In this case, the court agrees with Debtors that the 97.3 hours and \$9,159.00 claimed by Trustee are excessive amounts to prosecute the contempt notwithstanding the numerous exhibits used and the obvious recalcitrance on the part of Debtors. Accordingly, the court has reviewed the itemization and makes the following determinations. The court will state the time to the one tenth of an hour and use Trustee’s abbreviations of CLS for Charles L. Smith, attorney; SLS for Sandra Stucker, Legal Assistant; and NBE for Nicole B. Engelhardt, Legal Assistant.

At the outset, the court notes that Trustee did not provide a description of the professionals seeking compensation. However, Debtors did not object to the hourly rates set forth in the itemization. Moreover, on July 10, 2001, Trustee filed an application to employ himself as attorney for the trustee and employee legal assistants from his law firm to assist in the case. Trustee set his hourly rate at \$165.00 and that of the legal assistants at \$75.00 per hour. Debtors did not object to the application, and on July 17, 2002, the court entered an order approving the application. Therefore, based on the lack of objection and the court’s knowledge of the attorney and the customary rate in the community, the court finds the hourly rates to be reasonable.

Turning to hours claimed, the court begins by allowing compensation for February 18 & 19, 2003 without modification. It appears that this time was spent determining whether the contempt proceeding was appropriate and determining how to proceed under the local rules. The court will also allow compensation for the work done on February 24, 25, & 28. The court determines that these entries reflect time spent in preparing, drafting, and submitting for filing the motion for contempt. The review of the numerous transcripts to ascertain Debtors' use of the name Mitchell Farms was reasonable. However, the court notes that the entries stating "worked on file" provide little information upon which to determine the reasonableness of the time spent. In large part, the court's allowance of such time is based on its own knowledge and experience concerning such matters.

For the dates March 5, 10, 11, 12, 17, & 18, the court will allow 2 hours for CLS for work done concerning the trial brief and determining what evidence to present at the hearing. This time encompasses the review of the documentary evidence, determining which documents would be identified on the exhibit list, and editing the trial brief prepared by NBE. The court will allow 2 hours for NBE preparing the witness and exhibit list and to mark exhibits. The court will allow 1 hour for NBE for researching the contempt motion and 1 hour for drafting, proofing, and revising the hearing brief.

The court appreciates that the actual time spent on the research and drafting may well have greatly exceeded this amount of time. However, the court finds that such effort was unnecessary in this instance. Under the local rules in effect at the time that the motion was filed, Trustee was required to include citation to authority upon which the motion was based and a concise and clear statement of the alleged facts upon which the

motion was made. L.R. 14 (a)(2). Generally, a pre-hearing brief is not necessary unless the case is complex or novel theories are presented. The parties are free to submit pre-hearing briefs, if they believe the briefs would be helpful to the court, but they are not necessary in all cases.

This matter did not contain complex legal issues or novel theories. As noted in its decision, a civil contempt motion requires the moving party to prove that an order of the court was in effect, the defendant knew of the order, and the defendant knowingly failed to comply with the order. Mayex II v. Du-An Products, Inc. (In re Mayex II Corp.), 178 B.R. 464, 470 (Bankr. W.D. Mo. 1995). Debtors essentially conceded that they knew of the order and its effectiveness. The issues at hearing concerned whether Debtors knowingly failed to comply with the order, a fact-sensitive question. Accordingly, the court will disallow any additional time concerning research and brief drafting.

The court will also disallow compensation for the other identified activities. The telephone call entries lack the required specificity for the court to determine their necessity, and the other entries appear to relate to the brief or to the exhibits for which the court allowed compensation.

Trustee requests compensation for travel time and time attending the three hearings on the contempt motion. The court is aware that three hearings on a single contempt motion is an inordinate number. However, Debtors precipitated the necessity for the hearings and must bear Trustee's cost for attending. Likewise, Debtors were aware that all local panel trustees had rejected appointment and the current trustee resided in Council Bluffs. Therefore, they cannot be heard to argue that it is unreasonable for him to bill for travel time from Council Bluffs.

On March 19, April 10, and May 1, Trustee traveled from Council Bluffs to Des Moines to attend hearings on the contempt motion and requests travel time at half of his normal rate. The court finds the amount of 5 hours round trip to be reasonable and will allow a total of 15 hours for CLS. The court additionally finds the time spent at each hearing of 2 hours, 1 hour, and 3 hours to be necessary and compensable. The court will allow CLS compensation at his full rate 6 hours.

Debtors argue that the hours billed for NBE for travel and attendance at the hearing are duplicative and unnecessary. They claim that the appearance of Trustee in his capacity as attorney was sufficient to prosecute the contempt, and that the matter did not necessitate NBE's presence at the hearing. The court agrees with Debtors.

The court finds that service provided by NBE at the hearing was duplicative of those of CLS in a similar fashion to having two attorneys represent Trustee, notwithstanding the fact that the legal assistant was compensated a lower rate. Consequently the court will disallow compensation for NBE for attending the hearings.

Trustee additionally requests compensation for preparation in anticipation of each hearing. Although he claims varying amounts of time spent, the court will only allow one hour of preparation of each hearing for a total of 3 hours. The court finds that this amount would allow CLS sufficient time to prepare for the hearing. The court will also allow .9 hours for telephone conferences with Debtors' attorney on April 30, concerning the hearing and a possible continuance. Finally, in light of the compensation allowed, the court will disallow as unnecessary the remaining entries concerning additional work on exhibits, faxes to the court on the day of the hearing, and time spent drafting summaries of the hearing for Trustee's file.

Finally, Trustee requests compensation in the amount of \$294.64 for photocopies, postage, facsimile transmission, and long distance calls. Debtors have not objected to the request for costs. The list of expenses does not state what documents were copied, why items required postage, and to whom and for what purpose the long distance calls were made. By comparing the time sheets with the costs, the court can deduce that the calls were calls to the court or to Debtors' counsel. Certain photocopies were probably exhibits sent to the court and opposing counsel and postage costs were incurred in the process. Since Debtors did not object to the costs, the court will allow the amounts requested with the caveat that the statement of costs should include enough specificity to show for what each cost was incurred.

In sum, the court will order the Debtors to compensate Trustee for the following professional fees: 13 hours at \$165.00 for \$2145.00, along with 15 hours at \$82.50 for \$1237.50 for Charles S. Smith's fees; .2 hours at \$75.00 for \$15 for Sandra Stucker's fees; and 8.6 hours at \$75.00 for \$645.00 for Nicole B. Engelhardt. Said fees total \$4,042.50. Debtors shall also reimburse Trustee for expenses in the amount of \$294.00.

ORDER

IT IS ACCORDINGLY ORDERED that Debtors Marvin R. Mitchell and Marlene M. Mitchell shall pay Trustee Charles L. Smith \$4,042.50 for fees and \$294.00 for expenses incurred in prosecuting the motion for contempt.

RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT