



UNITED STATES BANKRUPTCY COURT  
for the Northern District of California

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The following constitutes  
the order of the court. Signed September 2, 2016

Stephen L. Johnson  
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In re	)	Case No.: 12-51081 SLJ
JOHN M. COLLETT and	)	
JENNIFER A. COLLETT,	)	Chapter 13
	)	Date: August 18, 2016
Debtors.	)	Time: 10:00 a.m.
	)	Court: 3099

**ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR  
ATTORNEY'S FEES**

Debtor's counsel Susan Silveira ("Counsel" or "Silveira") filed an application for fees and costs ("Application"). She seeks an award of \$6,275.00 and \$75.28 in fees and costs. This amount is in addition to a prior award of \$5,400 by order entered on August 29, 2012. Debtor Jennifer A. Collett filed an opposition to the fees arguing they exceeded what Debtors agreed to pay and were unnecessary.<sup>1</sup> She appeared and argued her objection. Devin

<sup>1</sup> This was filed as a joint case but co-debtor John M. Collett died in 2015. The court will use Debtor in the singular when referring to Jennifer Collett only.

1 Derham-Burk, the chapter 13 trustee (“Trustee”), also objected to the fees, arguing that if  
2 allowed they would require a large increase in the plan payment. Finally, Susan Silveira  
3 appeared in support of her Application.

4 **BACKGROUND**

5 Debtors, represented by Silveira, filed this chapter 13 case on February 13, 2012. The  
6 Rule 2016(b) Statement indicated that Debtors agreed to pay \$5,400 for legal services  
7 rendered or to be rendered in this case, with \$2,000 having been paid prior to the filing of the  
8 petition. The remaining balance of \$3,400 was to be paid through the chapter 13 plan, which  
9 did not provide for any dividend to unsecured creditors. The second amended plan was  
10 confirmed on August 28, 2012. It required Debtors to pay \$140 per month for three months,  
11 then \$200 per month for two months, and then \$285 per month for the remaining duration of  
12 the 55-month plan.

13 Counsel filed her Application on July 22, 2016, approximately eight months before the  
14 deadline by which Debtors must complete all plan payments pursuant to 11 U.S.C.  
15 § 1325(b)(4). According to Trustee’s response, approval of the fees as requested would  
16 require Debtor to increase her monthly plan payments from \$285 to \$859 per month. Trustee  
17 indicated that creditors have been paid and any plan payments going forward will apply to  
18 Counsel’s administrative claim. Debtor asserted that she did not receive any itemized billing  
19 statements prior to the Application, which was the first time Debtor became aware of  
20 additional fees beyond the \$5,400.

21 **DISCUSSION**

22 In this division of the Northern District of California, debtors and their lawyers are  
23 required to execute a Rights and Responsibilities document which explains how they will  
24 cooperate with each other, and specifies the costs of the case. Debtors indicated they  
25 understood that Counsel’s flat fee in this case would be \$5,400, which was comprised of  
26 \$2,750 for the base case, \$850 for real property claims, \$1,500 for an operating business, and  
27 \$300 for more than 25 creditors. The Rights and Responsibilities specify that “in addition to  
28 these initial fees, in the following situations the attorney may apply to the court for additional

1 fees shown below which shall be approved upon application[.]” Following this section is a  
2 list of additional services, including amending schedules (\$400 to \$600), and other specified  
3 services. The Rights and Responsibilities further provide that additional fees can be sought:  
4 “[I]f the above fees ordered by the court are not sufficient to compensate the attorney for the  
5 legal services rendered and costs incurred in the case, the attorney further agrees to apply to  
6 the court for approval of such fees and costs, attaching a supporting declaration with time  
7 records justifying that said fees and costs are merited and have not been compensated within  
8 the amounts previously ordered.” Finally, the Rights and Responsibilities signed by both  
9 Debtors and their Counsel state “Fees shall be paid through the plan unless otherwise  
10 ordered.”

11 The Application indicates that \$8,400 in fees was attributable to the “Main Case.” An  
12 additional \$875 was attributed to “Objection to Confirmation.” And \$2,400 was attributed to  
13 Loan Modification. The total fees sought for the case is \$11,675. Because \$5,400 has already  
14 been approved and paid, the remaining balance is \$6,275 (plus costs of \$75.28).

15 The standard for awarding fees in a chapter 13 case is found at 11 U.S.C.  
16 § 330(a)(4)(B), which provides, “In a chapter 12 or chapter 13 case in which the debtor is an  
17 individual, the court may allow reasonable compensation to the debtor’s attorney for  
18 representing the interests of the debtor in connection with the bankruptcy case based on a  
19 consideration of the benefit and necessity of such services to the debtor and the other factors  
20 set forth in this section.” Those factors include a finding that the fees represent services  
21 performed in a reasonable amount of time commensurate with the complexity, importance,  
22 and nature of the problem, issue, or task. *See* 11 U.S.C. § 330(a)(3)(D).

23 Counsel had several essential tasks in this case. First, Counsel had to assist Debtors in  
24 obtaining two loan modifications on their residence. She also had to get the plan approved by  
25 the court, a task that required two amended plans. Trustee also objected to Debtors’  
26 exemptions, which was eventually resolved.

27 Having reviewed the Application in detail, I find that the services associated with the  
28 loan modifications, totaling \$2,400 in fees, were completely justified. It is clear from the time

1 entries and the narrative that Counsel worked hard to push the two loan modifications through  
2 Wells Fargo’s processing centers. Both loans were eventually modified (although only one  
3 modification was specifically approved by the court. *See* Docket No. 47). The fees of \$875  
4 associated with resolving the objections to confirmation are similarly justified, reasonable,  
5 and benefited Debtors.

6 The balance of the request, \$8,400, is too high. Based on a review of the docket and  
7 the time entries, it appears the balance of the work in the case was the ordinary sort of  
8 counseling associated with any chapter 13 filing. Often, there is a flurry of activity at the  
9 inception of the case, with many telephone calls and meetings between lawyers and clients.  
10 The bankruptcy schedules and statement of financial affairs require careful attention and, at  
11 times frequent amendments. A debtor’s counsel will attend the § 341(a) meeting of creditors,  
12 field creditor calls, and communicate with debtors on payments under the plan and life under  
13 chapter 13.

14 Much of those typical activities occurred here. However, the Application does not, as  
15 the Rights and Responsibilities require, “justify[] that said fees and costs are merited *and have*  
16 *not been compensated within the amounts previously ordered.*” (emphasis added). Counsel  
17 states that “there was a lot of back and forth” about the necessity for the filing, and that she  
18 had to “engage[] in a substantial amount of pre-bankruptcy planning work due to the  
19 fluctuating decisions of the clients...” She argues this took more than the usual amount of  
20 time.

21 The court and Debtor must be appreciative of Counsel’s efforts but the explanation  
22 does not clearly support additional fees. The base case fee of \$2,750 when this case was filed  
23 in 2012 (which has since been adjusted upward) was intended to cover an ordinary chapter 13  
24 filing. Counsel is seeking \$8,400 for the work normally covered by that \$2,750 fee. Nothing  
25 in Counsel’s papers suggest this filing was extraordinary. Counsel simply had clients who  
26 required more attention than other clients. The results were typical of a chapter 13 case.  
27 Moreover, many of the time entries involving 0.1 hours appear to have been momentary  
28 reviews of claims filed, emails received, or other administrative tasks. For example, many

1 entries indicate that Counsel has received and reviewed a notice of mortgage payment change.  
2 It is not reasonable to bill \$250 per hour for work that is mostly administrative in nature.

3 Counsel should be aware the court is concerned about two issues that were not  
4 addressed directly in the Application or at oral argument.

5 First, the court is troubled by Debtor's allegation that Counsel did not send her  
6 periodic billing statements informing her of the accruing fees, a fact which Counsel did not  
7 dispute at the hearing. While it is true that neither California law nor bankruptcy law requires  
8 an attorney to send clients periodic billing statements, Cal. Bus. & Prof. Code § 6148(b)  
9 (California law requires an attorney to provide a billing statement within ten days only if  
10 requested by the client and the client may make such a request every 30 days), it is good  
11 practice to do so.

12 Providing periodic billing can be seen as a component of good client communication.<sup>2</sup>  
13 See California Rule of Professional Conduct 3-500 and California Business and Professions  
14 Code § 6068(m). To avoid this problem in the future, Counsel may benefit by following this  
15 suggestion: "Rules of Professional Conduct are floors, not ceilings. Regular billing  
16 statements are an essential tool to let your clients know what you are doing and to manage  
17 client expectations. There is a cost to generating regular billing statements but the cost pales  
18 in comparison with the cost of unhappy and surprised clients, the type of clients who are  
19 prone to complain to the State Bar. Bills should be seen as a means of communicating the  
20 value of the attorney time to the client and one of the tools an attorney has to avoid client  
21 surprises." David Cameron Carr, *Billing Statements: An Essential Client Relations Tool*, San  
22 Diego County Bar Association (July 2, 2012).

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26 <sup>2</sup> It is possible that Counsel's regular fee agreement reflects the arrangement for billing  
27 but the retainer agreement signed in this case was not before the court.

1 Counsel should be aware that if she intends to seek additional fees in a chapter 13  
2 case, she should be apprising her clients early and often of the accruing obligations through  
3 regular billing. No one likes surprises, least of all chapter 13 debtors.

4 The second issue has to do with the timing of the Application and the appearance that  
5 it was only filed because there may be additional room in Debtor's plan for payment of fees.

6 Before touching on that point, the court is compelled to note that from a review of the  
7 Application, it is clear the bulk of the fees Counsel seeks now were incurred prior to  
8 confirmation of Debtor's chapter 13 plan. The total of these preconfirmation fees would have  
9 exceeded what was allowable under the formula set out in the Rights and Responsibilities.

10 The court wonders if the plan would have been confirmable if Counsel had indicated an  
11 intention to seek fees in excess of those allowed under the Rights and Responsibilities.

12 Now that Debtor is nearing the end of her plan, Counsel seeks additional fees. She has  
13 calculated that Debtor can afford to pay these fees by increasing her monthly payment until  
14 the conclusion of her plan but no specifics were provided. Trustee rightly observes that  
15 Debtor would need to substantially increase her remaining payments under the plan to cover  
16 the fees that Counsel now seeks.

17 From the record in this and other cases, it appears Counsel has a practice of waiting to  
18 the end of chapter 13 plans to see whether there is room under debtor's plans for a fee  
19 application.<sup>3</sup> If she is aware that she has additional fees in a chapter 13 case, she must make  
20 it her practice to ask for those fees *earlier and with more frequency*. Waiting until the end of  
21 a chapter 13 case to make a lump-sum fee request leaves debtors with little recourse to stretch  
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24 <sup>3</sup> Counsel argued at the hearing that the court has the power to extend the term of the  
25 plan beyond 60 months, citing *In re Brown*, 296 B.R. 20 (Bankr. N.D. Cal. 2003). In *Brown*,  
26 the trustee requested dismissal of the bankruptcy case because the plan would not be  
27 completed in 60 months, despite debtor being current on plan payments. The court declined  
28 to dismiss the case, holding that the court has discretion to dismiss under § 1307(c). In this  
case, there is no motion to dismiss pending and no motion to modify the plan beyond 60  
months. It is not clear the case applies on its facts to this situation because the legal standard  
for a motion to dismiss is not implicated here.

1 out the payments over time through a plan modification and can make a plan financially  
2 unworkable as a result. In effect, by delaying to make the fee application and not informing  
3 debtors of the additional fees, Counsel’s actions, regardless of her intentions, prejudice  
4 debtors by holding debtors’ discharge captive and potentially sinking the very plan that  
5 debtors and Counsel fought so hard to confirm and complete. Counsel should change this  
6 practice if, indeed, it is her practice.

7 Finally, the court has to address Counsel’s contention that that she be allowed to  
8 collect her fees from Debtor post-discharge. That is not permitted under the express terms of  
9 Debtor’s plan, which specifies that all administrative claims are paid under the plan. *See In re*  
10 *Cripps*, 549 B.R. 836, 862 (Bankr. W.D. Mich. 2016)(“the [debtors’] plan provides that any  
11 compensation awarded to Applicant is to be paid through the plan as an administrative  
12 expense. According to the plan, this is the only means by which the Applicant can be paid for  
13 its fees and expenses, and the plan continues to control unless and until it is modified.”); *In re*  
14 *Hansen*, 223 B.R. 775, 778 (Bankr. D. Or. 1998)(“A Chapter 13 discharge discharges the  
15 debtor from all unsecured debts provided for by the plan ... Thus, in Chapter 13, if a  
16 confirmed plan provides for the postconfirmation services of the debtor's counsel, the Chapter  
17 13 discharge bars collection of the debt for those services.” (Citations omitted)).

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1 **CONCLUSION**

2 I conclude that the \$8,400 sought for base case work should be reduced to \$5,000.  
3 This reduction is intended to adjust the award to a reasonable figure that properly reflects the  
4 work done in the case and the results achieved. The fees associated with the loan  
5 modifications and plan objections are allowed in full.

6 In conclusion, counsel is authorized these fees:

7	Main (base) case fees	\$5,000.00
8	Loan modification	2,400.00
9	Objection to confirmation	<u>875.00</u>
10	Total	<u>\$8,275.00</u>
11	Less: Fees previously awarded and paid	<u>(5,400.00)</u>
12	Total remaining fees	<u>\$2,950.00</u>
13	Plus, costs	<u>75.28</u>
14	Award, to be paid as administrative expense	<u>\$3,025.28</u>

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16 IT IS SO ORDERED.

17 \*\*\* END OF ORDER\*\*\*  
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ECF Notifications