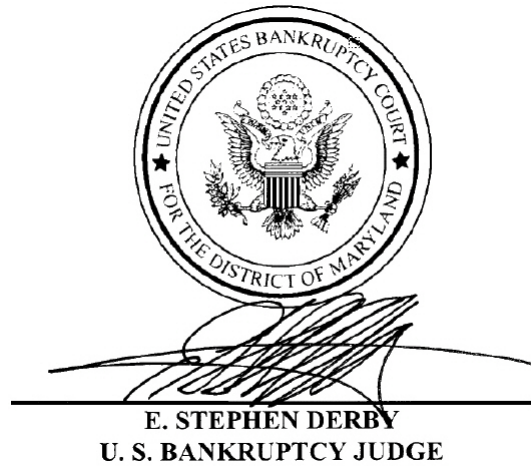


**SO ORDERED**



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Baltimore

In re:

CLEO KHARY McDUFFIE,

Debtor.

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Case No. 03-65333-SD  
Chapter 13

**ORDER DENYING APPROVAL OF FEE  
APPLICATION OF DEBTOR'S COUNSEL**

Debtor's Chapter 13 Plan, as modified on April 27, 2004 to increase plan payments slightly, was confirmed by order dated May 25, 2004. The confirmed plan specifically provided for the payment of \$1,405 in attorneys fees. Dkt. No. 34, ¶ 2(b). This was the amount specifically mentioned in the Fed.R.Bankr.P. 2016(b) statement filed by Debtor's counsel, although there was an acknowledgment that a greater amount might be appropriate. Dkt. No. 2. The Rule 2016(b) statement provided Debtor had agreed "to pay the undersigned counsel on an hourly basis and to pay \$250.00 per hour billable against a retainer of \$2,000 to be billed against at the undersigned attorney's customary hourly rate." Id. This Rule 2016(b) statement has never been supplemented, as would be required if there had been a change. Fed.R.Bankr.P. 2016(b).

The Chapter 13 Trustee's post-confirmation Notice of Claims Filed (Dkt. No. 40) listed the claim of Debtor's counsel as allowed for distribution in the amount of \$1,405. This report was filed on August 23, 2004, and no objection was filed. The Trustee's certificate of mailing included Debtor's counsel.

On November 29, 2004, Debtor's counsel filed an application for approval of \$3,630 in additional fees and \$272.75 in additional expenses to be paid by the Chapter 13 Trustee as an administrative expense pursuant to the terms of Debtor's confirmed Chapter 13 plan. None of the services for which the additional compensation is claimed were performed after the date of Debtor's confirmation hearing on April 29, 2004. No motion to modify Debtor's confirmed plan was filed to cover the additional attorneys fees. No objection to the fee application was filed after notice of it was given.

The fee application must be denied for several reasons.

First, the certificate of service was not in compliance with Local Bankruptcy Rule 9013-4(c), and the court is not able to determine that the Debtor and the Trustee were served.

Second, since no amendment to the plan was filed to increase the specific amount to be paid to counsel, the court cannot order payment through the plan as an administrative expense.

Third, no amendment to the plan was proposed to increase plan funding to cover the increased fee sought by counsel. Consequently, approval of the fee for payment through the plan as an administrative priority will have a significant, negative effect on plan distributions to creditors of which they have not been given notice. It would appear to require reevaluation of the plan by the Trustee to determine if it would continue to comply with 11 U.S.C. § 1325.

Fourth, confirmation of the plan is res judicata as to all matters included in the plan that arose before the plan was confirmed. Here the fees were specifically provided for in the plan, and all fees covered by the application were for periods prior to confirmation.

Fifth, the problem that could be created by approval of this post-confirmation request for attorneys fees to be paid through the plan is that the distributions to creditors that were anticipated by the Trustee in recommending confirmation, by the court in confirming the plan, and perhaps by creditors in not objecting would be diminished. The confirmed plan might be made not feasible. At the least, it would have to be reanalyzed as to whether it would still satisfy the requirements of 11 U.S.C. § 1325.

This court supports reasonable fees for debtor's counsel for services performed as agreed to between a debtor and counsel. However, when the first alert that additional pre-confirmation fees will be claimed as an administrative expense payable from the plan is after the plan has been confirmed, there is a sandbagging effect on the plan and the confirmation process.

Therefore, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that the fee application of Debtor's counsel is DENIED, except to the extent the fees have been paid or included in the plan amount, with leave to amend to identify a source of payment consistent with this opinion.

**End of Order**

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