

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
)
CLOICE E. AND MARY ANN LYBARGER,)
)
) BK NO. 89-30122
Debtors.)

MEMORANDUM

This matter is before the Court on the U.S. Trustee's objection to the application for compensation filed by the debtors' attorney, Charles W. Courtney, Jr. Courtney received a retainer of \$2,000.00 from the debtors at the outset of this bankruptcy case. His application includes an additional \$2,307.00 for costs and services rendered during the case.

11 U.S.C. §330(a)(1) provides that, after notice and hearing, the Court may award to an attorney reasonable compensation for actual and necessary services rendered. The majority view is that fees are allowable under §330 only when charged for services that have actually benefited the bankruptcy estate. See In re Holden, 101 B.R. 573 (Bankr. N.D. Iowa 1989).

The Trustee contends that Courtney's application includes charges for services rendered for the benefit of the debtor personally rather than the estate. The Trustee challenges, inter alia, charges for time spent representing the debtor in an adversary proceeding in which Magna Bank of Belleville objected to discharge of certain debts. Courtney admits that 11.5 hours of the disputed charges were incurred due to the adversary proceeding, but urges the Court to adopt the view that fees

which benefit the debtor are compensable because they help effectuate the debtor's fresh start. See In re Diehl, 80 B.R. 1 (Bankr. D. Me. 1987).

The Court agrees with the holding of In re Holden. The estate should bear the burden only of fees for which it receives a benefit. Upon careful review of Courtney's fee application, it is apparent that 11.5 of the total 52 hours of work benefited only the debtors personally. The allowed 40.5 hours at Courtney's rate of \$80.00 per hour, less the \$2,000.00 retainer, results in \$1,240.00 being compensable from the estate.

The Trustee also challenges \$85.00 in charges for the cost of copies of transcripts of two §341 meetings. However, those charges appear to be actual necessary expenses incurred in Courtney's representation of the debtors. Such expenses are reimbursable under 11 U.S.C. §330(a)(2). Total costs reimbursable from the estate are \$195.00.

See written order.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: MARCH 22, 1991