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8 **DO NOT PUBLISH**

9 **UNITED STATES BANKRUPTCY COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 In re:) Case No. 94-3-1395-WTC
12) Chapter 7
13 GEORGE MICHAEL MONTROSS,)
14 Debtor.)
_____)

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16 **MEMORANDUM RE FINAL FEE APPLICATION**
17 **OF IAIN A. MACDONALD**

18 The court held a hearing on the final fee application of
19 counsel for trustee, Iain A. Macdonald, on July 23, 1998.
20 Macdonald appeared on his own behalf. Dennis D. Davis appeared
21 for creditors Aqua Associates, et al. (Creditors). Creditors
22 object to the allowance of \$29,085 sought for services performed
23 by Peter L. Robinson, on the basis that Robinson was neither
24 appointed to represent the estate nor an associate in Macdonald's
25 firm. For the reasons set forth below, the objection is
26 sustained.

1 **FACTS**

2 This court ruled in favor of defendants in a fraudulent
3 conveyance action brought by trustee. Trustee appealed.
4 Robinson performed the vast majority of legal work on that appeal.
5 Robinson was not, however, appointed to represent the estate in
6 that appeal. Instead, Macdonald, who was appointed to represent
7 trustee, hired Robinson as a contract attorney on an hourly basis.
8 At the hearing and in his fee application, Macdonald acknowledged
9 the following facts regarding his professional relationship with
10 Robinson.

11 (1) Robinson specializes in appellate law, and once headed
12 the appellate department of a San Francisco law firm.

13 (2) Robinson signed the appellate brief, argued the appeal
14 before the Bankruptcy Appellate Panel, and performed two-thirds of
15 the attorney work hours spent on trustee's appeal.

16 (3) Macdonald employs two associates, Marta M. Guzman and
17 Kaipo K.B. Young, on a continuing basis. Macdonald has utilized
18 Robinson's services only in the present case and in one prior
19 case. Robinson also worked for other attorneys and clients while
20 he worked for Macdonald.

21 (4) Macdonald maintains office space for Guzman and Young at
22 his Embarcadero Center law offices. He does not maintain office
23 space for Robinson.

24 (5) Macdonald lists Guzman and Young as attorneys in his
25 firm in the telephone book and attorney listing services. He does
26 not list Robinson.

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1 (6) Robinson performed no more than 20 percent of his work
2 on the present case in Macdonald's offices. The remaining work
3 was performed at Robinson's home and in public law libraries.

4 (7) Macdonald has paid Robinson for the work in question.
5 Any amount owed by the estate is owed to Macdonald, not to
6 Robinson.

7 (8) Macdonald paid Robinson less than the amount he seeks to
8 charge the estate for Robinson's services.

9 (7) Macdonald also seeks compensation for the time he spent
10 reviewing Robinson's work.

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12 **ANALYSIS**

13 An attorney must be appointed by the court before that
14 attorney may receive compensation from the bankruptcy estate for
15 services performed for the estate. See In Shirley, 134 B.R. 940,
16 943-44 (9th Cir. BAP 1992). When a law firm has been appointed to
17 represent the estate, however, it is not necessary that every
18 member of that firm be separately appointed. "Regular associates"
19 of the firm are covered by the appointment of the firm. Rule
20 2014(b) of the Federal Rules of Bankruptcy Procedure provides:

21 If, under the Code and this rule, a law partner-
22 ship or corporation is employed as an attorney, or an
23 accounting partnership or corporation is employed as
24 an accountant, or if a named attorney or accountant is
25 employed, any partner, member, or regular associate of
26 the partnership, corporation or individual may act as
27 attorney or accountant so employed, without further
28 order of the court.

Macdonald does not contend that Robinson is a "partner" or
"member" of his firm. The question here is whether Robinson was a
"regular associate" of Macdonald's law firm. I have found no

1 published decisions that define what is required for an attorney
2 to be a "regular associate."

3 For the reasons set forth below, I determine that Robinson is
4 not a "regular associate" of the Law Offices of Iain A. Macdonald.

5 First, Robinson is not regularly employed by Macdonald. He
6 works for Macdonald only sporadically, and does not work exclu-
7 sively for Macdonald.

8 Second, Robinson is not known as an attorney who regularly
9 works for Macdonald. Macdonald does not advertise that Robinson
10 works in his office. Robinson does not perform his work for
11 Macdonald at Macdonald's office. Although Macdonald has many
12 cases in this court, I had no prior knowledge that Macdonald
13 claims Robinson to be an associate of his firm.

14 Third, Robinson is not an associate of Macdonald's firm in an
15 economic sense. Macdonald does not bear any significant overhead
16 expenses related to Robinson's work. Macdonald does not maintain
17 office space for Robinson. Robinson is not on a regular salary.
18 Macdonald has billed separately for the time he spent reviewing
19 Robinson's work.

20 Fourth, Robinson functioned as co-counsel, rather than as a
21 subordinate associate. Robinson was brought into the case because
22 of his specialized knowledge of appellate practice. He performed
23 the majority of his work by himself outside Macdonald's office.
24 Most important, Robinson occupied first chair on the appeal. It
25 was he who signed the appellate brief and argued the case before
26 the Bankruptcy Appellate Panel.

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1 The evil of Macdonald's seeking compensation for Robinson's
2 services is that Macdonald has overcharged the estate to profit
3 from services performed by co-counsel. Macdonald charged the
4 estate more than he paid Robinson. Macdonald should have arranged
5 for the estate to retain Robinson as its appellate counsel at the
6 rate Robinson agreed to work for Macdonald.

7 It is important to note that I do not decide that a contract
8 attorney who works in his or her home can never be a "regular
9 associate." I also do not decide that a "regular associate" can
10 never be lead attorney on a case. It is the unique combination
11 of facts present here that dictate the result. The fact that
12 Robinson was hired on a sporadic basis, the fact that he worked
13 outside Macdonald's office, and the fact that he performed
14 specialized work in which he assumed the lead role, when
15 considered together, indicate the Robinson functioned in the role
16 of co-counsel and not in the role of a "regular associate" of
17 Macdonald.

18 Assuming I have discretion to allow some or all of the fees
19 sought for Robinson's services, notwithstanding the fact that
20 Robinson is not a regular associate of Macdonald and was not
21 separately appointed to represent the estate, I decline to do so.
22 Macdonald is an experienced bankruptcy attorney and is charged
23 with full knowledge of Rule 2014(b). This is not a close case
24 in which Macdonald can reasonably be surprised by this court's
25 interpretation of Rule 2014(b). The evidence lends no support
26 whatsoever to Macdonald's claim that Robinson was a "regular
27 associate" of his firm. Finally, Macdonald attempted to over-
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1 charge the estate by claiming a profit margin on work performed
2 by co-counsel. Denial of the fees sought for Robinson's services
3 is an appropriate sanction to discourage such conduct.

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5 **CONCLUSION**

6 The fees sought for Robinson's services are disallowed.
7 The remainder of the fees sought are reasonable and are allowed.
8 Nothing in this order is intended to provide Macdonald any basis
9 to recover fees paid to Robinson or to avoid payment of amounts
10 due Robinson.

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Dated: _____

Thomas E. Carlson
United States Bankruptcy Judge

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