

1 "Rights and Responsibilities"). An amended plan was filed two days
2 later, on May 19, 2005.

3 On May 24, 2005, Angeles filed an application for approval of
4 \$1,800 in fees, \$1,000 of which she had already received as a pre-
5 petition retainer and \$800 to be received through the plan. She also
6 disclosed receipt pre-petition of the \$194 filing fee. The filing
7 of this application was unnecessary. The applicable procedures in
8 this district provide that, if a Rights and Responsibilities is filed
9 and the requested fee does not exceed an amount specified by the
10 court, the fees are presumptively approved, and no application need
11 be filed. The fee agreed upon by Angeles did not exceed the
12 specified amount.²

13 A meeting of creditors was conducted and concluded on June 23,
14 2005. No party in interest appears to have objected to the amended
15 plan and the chapter 13 trustee appears to have found the amended
16 plan consistent with the Court's and the Bankruptcy Code's
17 requirements. As a result, the amended plan was not placed on the
18 contested calendar and was confirmed on June 30, 2005 without a
19 hearing being conducted.³

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23 ²It does not appear that Angeles ever obtained an order
24 approving her fees. On February 18, 2006, she filed a certificate
25 of service of an order approving fees. However, presumably, the
order served was a proposed form of order since the docket does not
reflect the entry of an order approving her fees.

26 ³An amended order confirming this plan was filed on June 12,
2006. The only amendment appears to be the specification of the
amount of the monthly plan payment.

1 On July 25, 2005, a secured creditor, Chase Home Finance, LLC
2 ("Chase") filed a motion for relief from the automatic stay. A
3 hearing was scheduled for August 12, 2005. On August 12, 2005, the
4 attorney for Chase appeared and advised the Court that Angeles had
5 signed off on a stipulation for adequate protection. Angeles did not
6 appear. The stipulation was filed on September 1, 2005, and an order
7 approving the stipulation was filed the next day.

8 On June 15, 2006, a motion was filed seeking authorization for
9 the debtors to refinance their home. An amended motion was filed on
10 June 22, 2006. The amended motion was noticed on a default basis.
11 No party in interest objected to the motion, and on July 20, 2006, an
12 order was entered granting the motion.

13 In the mean time, on July 17, 2006, Angeles filed an application
14 for additional fees (the "Original Application"). The work for which
15 she sought these fees was described as follows:

- 16 1. Telephone calls, e-mails, correspondence
17 and conferences with Debtors, Chapter 13
18 Trustee, mortgage lender and escrow
19 officers regarding bankruptcy procedures
20 and requirements to refinance or sell real
21 property to payoff their remaining Chapter
22 Plan;
- 23 2. Preparation of pleadings, supporting
24 documents and requirement regarding
25 refinance or sell real property to payoff
26 remaining Chapter 13 Plan required by
27 Debtors, Chapter 13 Trustee, mortgage
28 lender and escrow officers.

29 The Original Application stated that Angeles had spent nine
30 hours performing these services and that her hourly rate was \$200.
31 In addition, it sought reimbursement for out of pocket expenses of
32 \$19.46 for postage. The Original Application stated in one place

1 that Angeles was seeking approval of additional fees and costs of
2 \$1,819.46.⁴ Attached to the application are time sheets reflecting
3 services provided relating to the refinance during the period from
4 May 3, 2006 through July 13, 2006 for which the charges totaled
5 \$1,800. Postage costs totaling \$19.46 are also listed. Elsewhere in
6 the Original Application, however, it is stated that fees totalling
7 \$3,000 are being requested.

8 Attached to the Original Application was an Attorney-Client Fee
9 Agreement (the "Fee Agreement"). The Fee Agreement states that the
10 debtors agreed to pay Angeles a total minimum fee of \$1,800 for her
11 services in the chapter 13 case. The Fee Agreement contains the
12 following language: "The retainer fee may not be the total fee in
13 the case. Client understands that this agreement is limited to those
14 services listed in paragraph 6."

15 Paragraph 6 states that:

16 "In return for the compensation, Attorney agrees to
17 perform the following services:
18 LEGAL COUNSELING AND EVALUATION. Legal counseling and
19 evaluation relating to chapter 13 bankruptcy.'
20 PREPARATION AND FILING OF BANKRUPTCY. Preparing and
21 filing of bankruptcy papers. Client will provide upon
22 request all the necessary documents and information
23 necessary to prepare the bankruptcy petition prior to
24 filing with the court.
25 CREDITOR INQUIRIES. Handling creditors during
26 the pendency of the bankruptcy.
27 COURT APPEARANCE. Appearing with the Client at
28 the Meeting of the Creditors/§341 hearing.

29 ⁴The Original Application stated earlier that Angeles was
30 applying for additional fees of \$3,000. This figure made no sense.
31 The Court assumed that what was intended by this reference was the
32 total of the original amount received plus the additional amount
33 requested. However, the total would have been \$3,600.

1 BANKRUPTCY PLAN. Respond to objections to plan
2 confirmation and if necessary prepare an amended
3 plan. Prepare, file, and serve one (1)
4 necessary plan modification which may include
5 suspending, lowering, or increasing plan
6 payments.

7 AMENDMENTS TO BANKRUPTCY. Prepare, file, and
8 serve necessary amended schedules. Amendments
9 to Schedule F including additions of new
10 creditors, deletions or changes after the
11 bankruptcy petition is filed shall be charged
12 \$150.00 for each amendment plus a \$20 fee
13 charged by the bankruptcy court.

14 REAL PROPERTY. Buy, sell or refinance.
15 Prepare, file, and serve necessary motions to
16 buy, sell, or **refinance real property** when
17 appropriate or contemplated by the plan.

18 OBJECTION TO CLAIMS. Object to improper or
19 invalid claims, if necessary, based upon
20 documentation or provided by the debtor.
21 Additional fees if evidentiary hearing is
22 required as stated below.

23 MOTIONS FOR RELIEF FROM STAY. Represent debtor
24 in relief from stay motions filed by secured
25 creditors to obtain possession of real property,
26 vehicles, etc. usually in default, etc.

LIEN AVOIDANCE MOTIONS. Where appropriate,
prepare, file, and serve necessary motions to
avoid liens on real or personal property.
Additional fees if evidentiary hearing is
required as stated below. [Emphasis added.]

Paragraph 9 states that "[f]or any services not covered under
this Agreement or by the...[Rights and Responsibilities], Client
agrees to pay by the hour at Attorney's prevailing rates...."

The body of the Original Application indicated that it was being
noticed on a default basis, parties in interest being given 20 days
to object. However, fee applications may not be noticed on a default
basis. B.L.R. 9014-1(b)(1)(B). Angeles also filed a notice of
hearing on the application, scheduling the hearing for August 4,
2006. However, she failed to file a proof of service of the notice.
When Angeles appeared before the Court on August 4, 2006, the Court

1 noted the procedural confusion. The Court noted that, since she had
2 filed a Rights and Responsibilities, she would be entitled to a total
3 fee of \$3,500 without a court order. However, if she wished to
4 request additional fees bringing the total higher than that, she
5 would have to renounce the application. In addition, she would have
6 to attach time sheets covering all of the services provided in the
7 case.

8 Angeles filed an amended application (the "Amended Application")
9 on September 14, 2006 and noticed it for hearing on October 6, 2006.
10 The Amended Application requested additional fees of \$3,281.25.
11 Since all Angeles did after filing the Original Application was
12 prepare and file the Amended Application, it is unclear why her
13 request increased in this fashion. In any event, she is not entitled
14 to fees for correcting her own mistakes.

15 However, the Court has now noted a more serious problem. The
16 Fee Agreement includes the services for which she is requesting
17 additional fees--i.e., the refinance of the debtors' real property--
18 within the services covered by the initial \$1,800 fee. While the Fee
19 Agreement contains some language that could be construed otherwise,
20 there is more language supporting the view that all of the services
21 described in paragraph 6 are covered by the initial fee. Thus, the
22 Amended Application will be denied with prejudice.

23 Moreover, given the language of the Fee Agreement, the Court
24 views Angeles's request for additional fees for these services at
25 worst as unethical and at best as seriously negligent. Any repeated
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conduct of this nature will likely result in the imposition of serious sanctions.

The Court may be unique in requiring a chapter 13 debtor's attorney to provide a copy of its retention agreement when the attorney applies for additional fees. The Court adopted this procedure when a previous instance of a similar nature came to the Court's attention: i.e., the attorney requested additional fees which were not authorized by the fee agreement. The Court intends to circulate this opinion to the other bankruptcy judges in this district and to post it on the website to alert them to this potential problem.

END OF DOCUMENT

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