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**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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In re:

GERALD V. EBORN,

Debtor.

Bankruptcy Number 94B-25640

Chapter 13

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**ORDER DISALLOWING FEE APPLICATION**

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**THIS MATTER** is before the court on the objection of Gerald V. Eborn (Debtor), the chapter 13 debtor herein, to the fee application (Application) filed by his former counsel Sherri Flans Palmer, Esq. of Sherri Palmer & Associates (Palmer). The Application seeks allowance of \$809.25, less a discount of \$19.25 for a total of \$790.00. Palmer received and has credited a pre-petition retainer of \$340. The remaining balance is \$450.00. The Debtor's objection to the Application requests disallowance of the remaining \$450 that Palmer seeks to be paid from the estate.

The Debtor is now represented by Jory L. Trease, Esq. (Trease). Trease is Palmer's former employee and was so employed at the time the Debtor's case was filed on November 7,

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1994.<sup>1</sup> On June 5, 1995, Trease filed a Notice and Appearance by Substitute Counsel for Debtors. On June 29, 1995, Palmer filed a Withdrawal of Counsel.<sup>2</sup>

At the hearing on the objection to the Application held on August 9, 1995, Trease, Palmer and the Debtor testified. From the testimony, the court makes the following:

### **FINDINGS OF FACT**

1. Palmer's billing system consists of the following:
  - a. An appointment book in which clients' future appointments are recorded. The time scheduled for appointments reflects the anticipated time the appointment will take with the client. Palmer does not record the actual time spent with the client.
  - b. Notations on the outside of a client's case file regarding certain services performed for the client. The notations do not represent the actual time spent in service to the client, but instead the customary time such a service would ordinarily take based upon Palmer's experience.
  - c. Some type of computer listing for telephone calls. The computer listing functions only part of the time.
  - d. Handwritten notations made on papers located within the file that indicate services rendered on behalf of the client. From the handwritten notations on the various papers in the file, the amount of time believed to have been spent to perform a task is extrapolated. The actual time spent performing the service is not recorded.

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<sup>1</sup> There appears to be an ongoing dispute between Trease and Palmer that is irrelevant to these proceedings.

<sup>2</sup> There is no Order authorizing withdrawal and substitution of counsel in violation of Local Rule 542.

2. The itemization on the Application that reflects the Debtor's various office visits with Palmer or her staff represents the amount of time scheduled for any particular appointment, not the amount of time actually spent by Palmer or her staff with the client. Other time entries that appear on the Application reflect the amount of time Palmer estimated it would take to accomplish a particular service for the Debtor, not the actual time spent.

3. The following time entries that are designated as being performed by "A" or attorney, allegedly represent time spent by Trease on the Debtor's case:

12-16-94	Preparation	case for upcoming hearing	0.9	\$112.50
12-16-94	Preparation	discuss case requirements with client		
		after 341 hearing	.03	\$ 37.50

4. Trease did not perform the indicated services for the Debtor, nor did he expend the time indicated in these entries contained in the Application.

5. The time entries and services attributed to Trease for 12-16-94 were recreated from handwritten notes made by Trease during or while waiting for the Debtor's §341 meeting on a paper listing the Debtor's matrix of creditors. The handwritten notes do not indicate any services performed or time spent on behalf of the Debtor. They indicate, instead, tasks to be accomplished on behalf of the Debtor in the future, or matters that may become issues in the case.

6. No underlying documentation could be found by Palmer in the Debtor's case file to support most of the time entries indicated in the Application from 10-04-94 to 12-16-94, at which point the court terminated inquiry and testimony into specific time entries.

7. The following time entry was recreated from prior fee applications. It represents customary or anticipated time, and not actual time spent on behalf of the Debtor.

6-23-95	Preparation	Fee Application	.05	\$62.50
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8. Palmer performed many other services for the Debtor without including the time entries or services on the Application.

9. Palmer did not place into evidence any original detailed time records that could be construed as contemporaneously maintained records of services actually performed and time actually spent. Instead, she testified through reference to a file consisting of a multitude of loose papers, hand-written notes and Post-it Notes. She testified that the file was in disarray because it had been dropped.

10. Palmer anticipated the Debtor's case would be eligible for confirmation pursuant to Standing Order Number 3.<sup>3</sup>

From the above findings of fact, the court makes the following

#### **CONCLUSIONS OF LAW**

The issues are before the court pursuant to 28 U.S.C. § 1334(b) and D. Ut. # 404 of the United States District Court for the District of Utah referring bankruptcy cases and proceedings to this court for hearing and determination. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A) and (B) involving the administration of the estate and the allowance or disallowance of claims against the estate. The court is authorized to enter a final order.

11 U.S.C. § 330 states:

(a) (1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329,

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<sup>3</sup> Standing Order Number 3, paragraph 5, indicates that in a case confirmed by consent, debtor's attorneys whose total fees in a case are \$900 or less may, upon confirmation of the plan and subject to a timely filed Objection of a party in interest, receive approval of their fees and costs without the requirement that a fee application be filed in the case.

the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103--

- (A) reasonable compensation for actual, necessary services rendered by such trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and
- (B) reimbursement for actual, necessary expenses.

(4) (B) In a chapter 12 or chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interest of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.

The evidence indicates the time entries on the Application do not represent the actual time spent or services rendered to the Debtor by Palmer. In some instances the time entries represent an estimation or approximation of the amount of time taken in other cases to perform similar services. In other instances the time entries represent estimations of time incurred for services to the Debtor that were determined prior to any service ever being performed. In still other instances, the time and service entries are pure fiction.

Palmer's time keeping methodology is irregular at best. It does not reflect the maintenance of meticulous contemporaneous time and expense records that accurately represent the date the service was performed, the person performing the service, a concise description of the service, the time increment in tenths of an hour and the lodestar extension.<sup>4</sup> Since the Application does not contain an accurate representation of the time actually expended, it is

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<sup>4</sup> These criteria have existed in this court for years and should be well known to an attorney who has practiced in this jurisdiction as long as Palmer. *See In re Jensen-Farley Pictures, Inc.*, 47 B.R. 557, 582 (Bankr. D. Utah 1985). In light of Palmer's non-compliance with the most basic of reporting requirements, the court will not attempt to analyze the Application applying the criteria of the Guidelines for Applications for Compensation and Reimbursement of Expenses promulgated by the United States Trustee.

impossible for the court to determine if the time spent was reasonable, necessary or beneficial to the estate. *Rubner & Kutner, P.C. v. U. S. Trustee (In re Lederman Enterprises, Inc.)*, 997 F.2d 1321, 1323 (10th Cir. 1993).

Palmer excuses her conduct by indicating that she believed that this case would fall under the allowance of Standing Order Number 3 that provides that, in a case confirmed by consent where fees sought are \$900 or less, a fee application need not be filed. Nothing in Standing Order Number 3 indicates that accurate contemporaneous records need not be maintained in all chapter 13 cases. Standing Order Number 3 is merely an attempt to alleviate the burden placed upon debtors of incurring additional fees as a result of the preparation of fee applications in relatively routine cases. Obviously, the exception created is being abused and must now be reconsidered.

The evidence indicates Palmer's time-keeping methods are not isolated to this Application. Palmer has represented<sup>5</sup> and currently represents numerous Debtors before this court. Since, at present, Palmer continues to practice in this court, a methodology must be developed to ensure that future applications truthfully comply with the requirements of the statute. This is essential because Palmer's signature on this Application does not honestly represent that the contents are well grounded in fact.

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<sup>5</sup> This court has granted a multitude of fee applications submitted by Palmer. Until Trease's disassociation with Sherri Palmer & Associates, many of the applications were presented by Trease in his capacity as attorney for various debtors and as Palmer's employee. It appears that the timekeeping methodology spans a time period that pre-dates the entries in this single Application. The court reserves a determination of the remedy that should be applied to the allowance of prior applications, or further action against either Palmer or Trease.

A fee application is, after all, only a summary submitted pursuant to Fed. R. Evid. 1006 of the detailed, contemporaneously maintained time records that are required to be kept by any attorney seeking fees before this court. Considering the disarray of the Debtor's file, Palmer's egregious failure to comply with the statute and the standards of this court, Palmer's apparent lack of a cohesive billing system and the potential adverse impact of these circumstances upon Palmer's clients and their creditors, it is hereby

**ORDERED**, that fees requested in the amount of \$450.00 are hereby denied, and it is further

**ORDERED**, that Palmer shall not file any application for fees in any case that is currently pending before this Court for which she does not have meticulous contemporaneously maintained and accurate time records, and it is further

**ORDERED**, that any future fee application submitted in any case filed by Palmer after this date and extending until March 9, 1996, that is assigned to this Judge, shall attach as an exhibit to the application, exact photocopies of the contemporaneously maintained time records for Palmer and each of her employees upon which the application is based, and it is further

**ORDERED**, that any future fee application submitted in any case filed by Palmer that is currently pending before this Judge, that requests fees for time spent after the date of this order, shall attach as an exhibit to the application, exact photocopies of the contemporaneously maintained time records for Palmer and each of her employees upon which the application is based, and it is further

**ORDERED**, that no fees shall be charged to any client for complying with this order, and it is further

**ORDERED**, that the reporting provisions of this order also applies to cases in which fees sought are \$900 or less, and it is further

**ORDERED**, that this order shall be extended or modified as necessary to prevent Palmer's further abuse of the fee application procedure.

**DATED** this 10 day of August, 1995.



JUDITH A. BOULDEN  
United States Bankruptcy Judge