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U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)	Case No. 02-03960
	)	Chapter 13
WILLIAM AMBLER MOORE, JR.,	)	
	)	
Debtor.	)	
	)	

ENTERED ON DOCKET
MAY 28 2003

MEMORANDUM DECISION GRANTING "MOTION TO COMPEL THE STANDING TRUSTEE TO PAY ALLOWED ADMINISTRATIVE CLAIMS WITHOUT $250.00 MONTHLY LIMITATION"

This court has adopted "Guidelines For Chapter 13 Procedures" that are intended to increase the certainty and decrease the cost of chapter 13 cases. These guidelines include the "Chapter 13 Attorney Fee Guidelines". The fee guidelines permit counsel to "opt in" or "opt out." In summary, attorneys who opt in may have their fees allowed without a formal fee application, but the attorney fees must not exceed a fixed maximum amount. An attorney who opts out can seek reasonable compensation that is not constrained by a fixed limit, but must file and obtain court approval of a compensation application.[1]

The fee guidelines provide that attorneys may apply any pre-petition retainers to the allowed compensation and that any unpaid balance may be paid

[1] The approval of the compensation application is subject to the "Guidelines For Compensation And Expense Reimbursement Of Professional And Trustees".

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through the plan. The fee guidelines also provide that Chapter 13 Trustee shall pay the attorney the lesser of 50 percent of the monthly plan payment or $250 of each plan payment.

Two questions are presented for decision. First, does the limitation on the plan payments to attorneys, provided in the fee guidelines, apply to attorneys who "opt out"? Second, if the limitation does apply, is it valid? I conclude that the limitation does not apply to attorneys who "opt out", and therefore I need not decide the second question.

On February 21, 2003, the attorney for the debtor in this case filed his Motion to Compel the Standing Trustee to Pay Allowed Administrative Claims Without $250.00 Monthly Limitation. The standing chapter 13 trustee filed an opposition to the motion on April 16, 2003. When the motion first came on for hearing on April 17, 2003, I continued the hearing and requested further briefing. The standing chapter 13 trustee filed a supplemental opposition on April 13, 2003, and the Office of the U.S. Trustee filed an opposition on April 16, 2003.[2] The debtor's attorney filed a reply on May 19, 2003. All three parties argued the matter at a hearing on May 22, 2003, and I took the matter under advisement.

The reasonable interpretation of the fee guidelines is that the monthly

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[2] Both of these memoranda were tardy.

limitation applies only to "opt in" attorneys. The guidelines begin with a prominent statement that "**An attorney may decline to seek allowance of compensation pursuant to these guidelines** [emphasis in original]." After a brief description of the obligations of an attorney who "opts out," the guidelines say that "[a]lternatively, attorneys may have their fees allowed as part of the Chapter 13 plan confirmation process if they comply with the following guidelines . . . . [emphasis added]." The "following guidelines" consist of seven numbered paragraphs. Paragraph 5 contains the limitation on the monthly payment of attorneys' fees. The structure, punctuation, and logic of the guidelines all indicate that the numbered paragraphs, including paragraph 5, apply only to attorneys who "opt in."

The standing chapter 13 trustee points out that he has applied the monthly limitation to all attorneys' fees, both opt in and opt out, since the guidelines became effective on January 1, 2001. Because the fee guidelines are somewhat ambiguous, the standing trustee is not to be faulted for taking this approach, but it is nevertheless appropriate to interpret the guidelines based on what they say, and not necessarily based upon how the standing trustee has applied them to date.

All of the parties have presented strong arguments for and against the

validity of the monthly limitation as applied to opt-out attorneys. Compare In re Shorb, 101 B.R. 185 (B.A.P. 9th Cir. 1989), In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999), and 8 Collier on Bankruptcy ¶ 1326.03[2], at 1326-9 (15th ed. rev. 2003), with In re Randolph, 2001 WL 1223139 (Bankr. N.D. Ind. 2001). The parties have also debated vigorously the wisdom and practical consequences of applying the monthly limitation to attorneys who opt out. For example, if the monthly limitation does not apply to attorneys who opt out, it is more likely that the allowance of fees to the debtor's attorney could make the plan infeasible or not confirmable.[3] Based on this interpretation of the guidelines, however, I find it unnecessary to reach this question at this time.

Therefore, I will enter an order granting the motion.

Dated: Honolulu, Hawaii, MAY 27 2003.

Robert J. Faris
United States Bankruptcy Judge

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[3] To assist the court in its review of fee applications, counsel who opt out should include in their fee applications an analysis of the effects, if any, that the allowance of the requested fees would have on the plan, such as whether the allowance and payment of the requested fees will render the plan infeasible or deprive secured or priority creditors of required payments.

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Office of the U.S. Trustee

CERTIFICATION OF SERVICE
I HEREBY CERTIFY THAT THE ATTACHED ORDER/JUDGMENT WAS MAILED ON 5/27/03, TO THE ABOVE NAMED PARTIES IN INTEREST.

DEPUTY CLERK