

2001 BNH 027 Note: This is an unreported opinion. Refer to AO 1050-1 regarding citation.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Michael J. Brewer,

Debtor

Bk. No. 01-11237-MWV
Chapter 7

Ian B. Chamberlain,

Debtor

Bk. No. 01-10651-MWV
Chapter 7

Nicholas Gaudette and
Carlene Gaudette,

Debtors

Bk. No. 01-10565-MWV
Chapter 7

Mr. Michael M. Mills
PETITION PREPARER

Geraldine Karonis, Esq.
ASSISTANT UNITED STATES TRUSTEE

MEMORANDUM OPINION

The Court has before it the requests of petition preparer, Michael Mills (“Mills”), for compensation in each of the three above-captioned cases. In each case, Mills seeks total compensation of \$295. The United States Trustee has filed an objection to each request citing this Court’s ruling in the consolidated cases of In re Moran, 256 B.R. 842 (Bankr. D.N.H. 2000). In that opinion, this Court ruled that in general, a reasonable fee for a petition preparer is \$150, but allowed the petition preparer to file a request for compensation for amounts over \$150. Mills filed these three such requests.

JURISDICTION

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

DISCUSSION

A hearing was held on the three requests on May 8, 2001. At that hearing, Mills, relying on language in Moran that the allowance for overhead may be subject to change upon more complete evidence, attempted to justify his overhead charges and what he calls personal compensation. In order to make this calculation, Mills reduced his overhead component to hourly rates using an average month of 173 hours and, in some cases such as advertising, provided copies of actual bills or other evidence of his expenses. By way of an example, Mills took his monthly costs for advertising of \$351.40 and divided it by 173 hours, giving an hourly rate for advertising of \$2.03. He utilized the same method for other expenses. Utilizing this method, he arrived at a cost per hour of \$33.38, which he adjusted upward to \$39.27 on the grounds that only eighty-five percent of total hours are billable. He then indicated that to prepare a petition, it took him 5.6 hours at \$39.27 for a total hourly cost of \$219.91. To this he added costs for “document preparation” including copying costs of \$19.16, charges for one additional hour of time to obtain the copies at \$39.27, travel charges for ten miles at \$3.25, and charges for typing services of \$30, for a total preparation cost of \$91.68, and a total cost of bankruptcy petition preparation of \$311.59.

This methodology was not specifically included in his requests for compensation in each of these cases. In fact, very little if any reference was made to his requests at the hearing. There is no question that Mills spent considerable time preparing for this hearing and arriving at what he considered a reasonable compensation. However, as outlined below, this Court disagrees with the methodology and the conclusion.

This Court, in Moran, found that reasonable compensation for a petition preparer was twenty dollars per hour, and reasonable overhead an additional ten dollars per hour. It also found that a reasonable time for preparing a petition should be no greater than five hours, for a total of \$150. There was no evidence presented at the hearing that the three Chapter 7 cases involved in these requests were anything but ordinary. It should be emphasized that the findings below are based on the evidence presented at trial and are applicable only to these three cases and do not change the presumptions included in Moran.

The hourly rate established by Moran of twenty dollars per hour is not in question. It is the basis for what Mills calls personal compensation. To this, Mills adds \$6.16 for benefits and employer's costs, which he includes as personal compensation and which this Court would classify as overhead. In the absence of evidence to the contrary, the Court allows this cost as reasonable overhead.

First, the Court disallows the \$4.33 per hour charge for rent. Mills' testimony was that he does not pay rent in terms of money, but rent is actually "in kind," or in trade, for the use of the premises owned by his wife. This description is insufficient, and the rent is disallowed. Further, the Court disallows the adjustment to the hourly rate on the grounds that only eighty-five percent of the hours are billable. There was no evidence of such an adjustment as a standard practice in the business of being a petition preparer. Finally, the Court disallows the document preparation costs of the time for acquiring copies, one hour at \$39.27, the typing charge of \$30, and the travel charge of \$3.25. Mills elects to obtain his copies in this manner, apparently waiting for the copies, and also utilizing his wife at \$1 per page to type the petitions. These charges are included in the reasonable fee of \$150 determined in Moran and are not entitled to be compensated as separate items.

With these modifications, using the five hour standard in Moran and using Mills' other figures, his reasonable compensation is as follows:

Advertising	\$ 2.03 ¹
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¹The Court includes advertising on the grounds that some advertising is reasonable and necessary. The Court makes no finding as to the substance of the specific advertisements.

Office Costs	.86
Personal Compensation	<u>26.16</u>
	\$ 29.05
	<u> </u> x 5 hrs.
Paper Costs	\$145.25
	<u>19.16</u>
Total	<u>\$164.41</u>

The Court approves the request for compensation in each case in the amount of \$164.41, the balance to be disgorged to the Chapter 7 trustee.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 25th day of May, 2001, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge