

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

Nancy H. Michels,  
Plaintiff

v.

Adv. No. 00-1140-JMD

William Sheridan,  
Defendant

*Nancy Michels, Esq.*  
*MICHELS & MICHELS*  
*Attorney for Plaintiff*

*William Sheridan, Esq.*  
*Pro Se*

**MEMORANDUM OPINION**

**I. INTRODUCTION**

On November 29, 2001, the Court held a hearing on a Final Application by Attorney Nancy H. Michels for Approval of Fees Pursuant to Court Order (Doc. No. 49) (the “Fee Application”) filed by Attorney Nancy Michels (“Michels”). After hearing from all parties, the Court established a post-hearing brief schedule and took the matter under submission.

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).

**II. FACTS**

On June 21, 2000, Michels was appointed Special Counsel by Chief Judge Vaughn to investigate possible violations of the New Hampshire Rules of Professional Conduct by Attorney William Sheridan (“Sheridan”). As a result of her investigation Michels was given permission by Chief Judge Vaughn to institute an adversary proceeding against Sheridan. On October 30, 2000, Michels filed a complaint in this adversary proceeding. On October 12, 2001, the Court issued a Memorandum Opinion and corresponding Order (collectively the “Opinion”) suspending Sheridan from practicing before the Court for a period of one year. See Doc. Nos. 38 and 39. As part of the Order Michels was granted permission to submit a fee application for time spent on this matter since her appointment by Chief Judge Vaughn on June 21, 2000. See Doc. No. 39. A further provision of the Order required Sheridan to reimburse the government, through the Clerk of the Court for the United States District Court for the District of New Hampshire (the “District Court”), for any fees awarded to Michels in this adversary proceeding. Id. The reimbursement to the Clerk of the District Court is a prerequisite for Sheridan to be reinstated to practice before the Court after the one year suspension. Id.

On October 30, 2001, Michels filed the Fee Application seeking \$30,377.50 in fees. The fees requested represented 193.3 hours of work done by Michels and other members of Michels’ firm. Attached to the Fee Application was a billing invoice detailing the work done in this case by Michels and her firm. On November 29, 2001, the day of the hearing on the Fee Application, Sheridan filed an objection to the Fee Application. See Doc. No. 59. The deadline for objecting to the Fee Application was November 9, 2001. See Local Bankruptcy Rule 7102(c); Doc. No. 50. Accordingly, Sheridan’s objection was not timely filed. Notwithstanding this fact, the Court indicated that it would consider Sheridan’s objection, permit him to address his arguments at the hearing, and grant Michels additional time to review and respond in writing to Sheridan’s objections.

### **III. DISCUSSION**

Sheridan objected to the Fee Application on four grounds. First, Sheridan claimed that the Court had no jurisdiction to pursue this case and thus had no jurisdiction to award fees. Second, Sheridan claimed that the fees were not reasonable because the work focused upon matters that were outside the “case and controversy” before the Court. Third, Sheridan claimed that Michels was not being directed by Chief Judge Vaughn’s order, but by the Assistant United States Trustee. Fourth, Sheridan claimed that the Assistant United States Trustee was directing Michels to conduct a “witch hunt” against him.

### **1. Jurisdiction**

Sheridan contends that the Court did not have jurisdiction to hear the complaint in this adversary proceeding and thus has no jurisdiction to award fees. Further, at the November 29, 2001, hearing Sheridan argued that the Court cannot force him to reimburse the United States through the Clerk of the District Court for any fees awarded and paid to Michels.

In his answer to the complaint in this adversary proceeding Sheridan did not deny or respond to Michels’ allegation that the Court had jurisdiction to hear the matter. No objection to jurisdiction was raised at trial. In its Opinion the Court made specific findings and rulings on the Court’s jurisdiction over this matter. On October 22, 2001, Sheridan for the first time raised questions regarding this Court’s jurisdiction in a motion to reconsider the Opinion. See Doc. No. 41. On October 23, 2001 this Court denied that motion. See Doc. No. 44. On November 2, 2001, Sheridan filed a Notice of Appeal from the Opinion. See Doc. No. 51. On November 13, 2001, Sheridan filed his statement of the issues on appeal which included the issue of this Court’s jurisdiction to suspend him from the practice of law before this Court. See Doc. No. 54.

Sheridan is seeking to raise the same jurisdictional issues in connection with this Fee Application as he has raised in his appeal of the Opinion. Sheridan’s jurisdictional arguments do not have merit in this proceeding because whether or not the Court has jurisdiction to hear this case and to require Sheridan to reimburse the United States for fees awarded to Michels is currently on appeal and this Court has no jurisdiction to deal with those issues. See *Needham St. Inv. Trust v. FBI Distribution, Corp.* (In re FBI

Distribution, Corp.), 267 B.R. 655, 656 (B.A.P. 1<sup>st</sup> Cir. 2001) (citing Aetna Cas. and Surety Co. v. Markarian (In re Markarian)), 228 B.R. 34, 37 (B.A.P. 1<sup>st</sup> Cir. 1998)). Further, whether or not this Court had jurisdiction over this case has no bearing on whether or not the Court may award fees to Michels or whether such fees are reasonable. Sheridan's obligation to pay any such fees is contained in this Court's Opinion which is the subject matter of his appeal.

## **2. Fees Requested are Unreasonable**

Sheridan next argues that the fees are not reasonable because the work done by Michels and her firm was outside the case and controversy before the Court. Sheridan again claims that the Court did not have jurisdiction to conduct an investigation and may only hear "controversies" that are brought before the Court. At the November 29, 2001, hearing Sheridan more fully explained this objection by claiming that Michels should not be compensated for two categories of work. The first category to which Sheridan objected will be referred to as "post-complaint work." After filing her complaint on October 30, 2000, Michels spent approximately forty hours attending hearings and reviewing pleadings filed by Sheridan after October 30, 2000.<sup>1</sup> Sheridan objected to all forty hours spent by Michels on this post-complaint work. Sheridan appears to be claiming that these forty hours represented work on matters that were not part of the adversary proceeding before the Court. The second category of work to which Sheridan objected was the time Michels spent conducting factual research. Sheridan claimed that the time spent was unreasonable because there were no factual disputes in this case because he had admitted substantially all of the factual allegations in the amended complaint.

Once again, Sheridan's argument that the Court does not have jurisdiction to discipline him is a question currently on appeal. As for the forty hours of post-complaint work to which Sheridan objected, the Court finds that the post-complaint work done by Michels was reasonable and necessary. One of Sheridan's defenses to the complaint was that his past problems had been addressed and that he was

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<sup>1</sup> The hearings and pleadings referred to all involve bankruptcy cases in which Sheridan represented a party in the case.

improving. See Doc. No. 9. Accordingly, it was both reasonable and necessary for Michels to attend post-complaint hearings and review post-complaint pleadings Sheridan filed in order to confirm or rebut Sheridan's claim that his past problems had been resolved. Finally, while the Court does agree that Sheridan admitted to most of the factual allegations in the complaint prior to trial, the Court does not find the time Michels spent conducting factual investigation to be unreasonable. Michels had to do research in order to know what counts to include in the complaint. Although Sheridan later agreed to the facts, and saved time at the trial, Michels had to conduct the factual investigation to determine what allegations, if any, could properly be raised in her complaint. The quality of that factual investigation is confirmed by Sheridan's subsequent admission to most of the factual allegations.

### **3. Control by the Assistant United States Trustee**

The last two objections raised by Sheridan both center around his claim that Michels' actions were at the direction of the Assistant United States Trustee and not Chief Judge Vaughn or that Michels' actions in this matter were controlled by the Assistant United States Trustee. At the November 29, 2001, hearing Sheridan admitted that he could not substantiate his claims with regards to the Assistant United States Trustee.

## **IV. CONCLUSION**

For the above stated reasons the Court overrules Sheridan's objections to the Fee Application and approves Michels' fees in the amount of \$30,377.50 for 193.3 hours of legal work at an average rate of \$157.15 per hour. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate payment order consistent with this opinion.

DATED this 27<sup>th</sup> day of December, 2001, at Manchester, New Hampshire.

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J. Michael Deasy  
Bankruptcy Judge