

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

Nancy Michels,
Plaintiff

v.

Adv. No. 00-1140-JMD

William Sheridan,
Defendant

Nancy Michels, Esq.
MICHELS & MICHELS
Attorney for Plaintiff

William Sheridan, Esq.
LAW OFFICES OF WILLIAM C. SHERIDAN, P.A.
Attorney for Defendant

MEMORANDUM OPINION

I. INTRODUCTION

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, Nancy Michels (“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 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. On December 27, 2001, the Court issued a Memorandum Opinion approving Michels' fees in the amount of \$30,377.50. See Doc. No. 73.

On January 7, 2002, Sheridan filed a Motion to Reconsider the Court's Memorandum Opinion. See Doc. No. 75. The Court denied the Motion Reconsider on January 8, 2002. See Doc. No. 76. Sheridan subsequently filed an appeal of the Court's decision regarding the underlying merits of the complaint (Doc. No. 51) and the order approving fees to the Bankruptcy Appellate Panel for the First Circuit (the "BAP") (Doc. No. 79). On August 19, 2002, the BAP upheld the Court's decision on the underlying merits of the case and on the award of attorney fees. See Doc. Nos. 96 and 97.

On November 12, 2002, Michels filed a Request For Additional Reimbursement of Fees and Expenses (the "Additional Fee Request") seeking \$16,209.50 in fees and \$23.94 in expenses stemming from her defense of Sheridan's Motion to Reconsider and the BAP appeals. See Doc. No. 99. On December 9, 2002, the day before the hearing on the Additional Fee Request, Sheridan filed an objection to the Additional Fee Request. The deadline for objecting to the Additional Fee Request was November 22, 2002. See Local Bankruptcy Rule 7102(c). Once again, Sheridan's objection was not timely filed. Notwithstanding this fact, the Court at the December 10, 2002 hearing indicated that it would consider Sheridan's objection, and allowed him until December 13, 2002 to submit a supplemental objection that specifically detailed what time entries he objected to in Michels' Additional Fee Request, and granted Michels additional time to review and respond in writing to Sheridan's objections. See Doc. No. 102.

On December 13, 2002, Sheridan faxed a copy of his Supplemental Objection to the Court. The Court did not receive the original, signed Supplemental Objection until December 16, 2003. See Doc. No. 103.

III. DISCUSSION

Sheridan's continual disregard for Court procedure and Court ordered deadlines is disturbing. Time and again Sheridan has missed deadlines and violated court rules to the detriment of Michels and this Court. The Court can no longer tolerate such behavior from Sheridan. Accordingly, the Court will disregard Sheridan's Supplemental Objection because it was not timely filed in accordance with LBR 9004-1(h)¹ and the Court's Order dated December 10, 2002 (Doc. No. 102).

Instead the Court shall address those objections that were raised in Sheridan's original objection. See Doc. No. 101.

A. Jurisdiction

Sheridan contends that this Court has lost jurisdiction of this case by virtue of his appeal to BAP of the underlying merits of the complaint. See Doc. No. 101. The Court has previously dealt with this argument in its Memorandum Opinion dated December 27, 2001. See Doc. No. 73. 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.

¹LBR 9004-1(h) specifically states that facsimiles "shall not be construed to be signed original pleading documents."

B. Fees Requested Are Unreasonable

Sheridan next argues that the fees charged are unreasonably high, and not within the parameters of the lodestar standard.

“It is well established in this circuit that a reasonable [attorneys’] fee will first be computed in accordance with the ‘lodestar’ method, i.e. a reasonable hourly rate applied to reasonable hours expended in rendering the necessary services.” In re Elmendorf Board Corp., 57 B.R. 580, 584 (Bankr. D. N.H. 1986) (citing Boston & Maine Corp. v. Moore, 776 F.2d 2 (1st Cir. 1985)); see also Lipsett v. Blanco, 975 F.2d 934 (1st Cir. 1992). The lodestar method consists of calculating the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Lipsett, 975 F.2d at 937. To determine a reasonable number of hours, the Court takes the party’s submitted time and then subtracts from that figure all hours which are duplicative, unproductive, excessive or otherwise unnecessary. Id. The Court then applies hourly rates to each billed task “taking into account the prevailing rates in the community for comparably qualified attorneys.” Id. (quoting United States v. Metro. Dist. Comm’n, 847 F.2d 12, 19 (1st Cir. 1988)). Once established, the lodestar test represents a presumptively reasonable fee. Id. That fee may then be modified, upward or downward, based upon consideration of some or all of the twelve factors first announced in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). Id. at 941-43; In re Public Service Co. of New Hampshire, 160 B.R. 404, 413 (Bankr. D. N.H. 1993).

After carefully reviewing the time entries contained in the Additional Fee Request, the Court finds that the time expended by Michels and her firm was reasonable given the litigious nature of this case. In his oral arguments on December 10, 2003, Sheridan asserted that time entries relating to his state court discipline proceedings should not be included in this fee request,

because it was not related to the bankruptcy proceeding. However, Michels has produced the subpoena issued by Sheridan for that state court discipline proceeding, which states:

“...bring with you and produce at the time aforesaid the following documents within your possession and control:

Bill for Professional Services tendered by Michels & Michels in the Matter of Nancy Michels vs. William Sheridan, New Hampshire Bankruptcy Court, Adv. No. 00-1140-JMD.

Any and all documents that report, record, refer to or relate to the notation “Mass Case” for the entry dated 10/16/01 contained in the Bill for Professional Services tendered by Michels & Michels in the Matter of Nancy Michels vs. William C. Sheridan, New Hampshire Bankruptcy Court, Adv. No. 00-1140-JMD.

Any and all documents that report, record, refer to or relate to the failed incorporation of New England Orbital Services, Inc., in Massachusetts which was attempted in 1999.”
Doc. No. 104.

It is clear that Michels was subpoenaed because of her involvement in the bankruptcy proceeding against Sheridan. According to Michels, she had no knowledge or involvement with New England Orbital Services and when she appeared at the state court discipline proceeding, Sheridan neither called her as a witness nor asked for the documents that he requested in his subpoena.

Accordingly, the Court finds it was both reasonable and necessary for Michels to attend the state court discipline proceeding. Finally, the Court does not find the time Michels spent reviewing and responding to Sheridan’s Motion to Reconsider and the BAP appeals was unreasonable.

The final component of the lodestar analysis involves the calculation of a reasonable hourly rate. Sheridan has not objected to the average hourly rate of \$143.12, contained in Michels’ Additional Fee Request and the Court finds that the rate is well within the reasonable range.

IV. CONCLUSION

For the above stated reasons the Court overrules Sheridan's objections to the Fee Request and approves Michels' fees in the amount of \$16,209.50 for 111.70 hours of legal work at an average rate of \$143.12 per hour and expenses of \$23.94. 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 order consistent with this opinion.

DATED this 8th day of July, 2003, at Manchester, New Hampshire.

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge