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5 **UNITED STATES BANKRUPTCY COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 In re ) Case No. 04-22609-D-13L  
9 KELLY BEALS, ) Docket Control No. MWB-4  
10 Debtor. )  
11 ) DATE: November 6, 2007  
12 ) TIME: 1:00 p.m.  
13 ) DEPT: D (Courtroom 34)

14 **MEMORANDUM DECISION ON THIRD MOTION FOR APPROVAL OF**  
15 **ATTORNEYS FEES AND COSTS PAYABLE**

16 **This memorandum decision is not approved for publication and may not**  
17 **be cited except when relevant under the doctrine of law of the case**  
18 **or the rules of claim preclusion or issue preclusion.**

19 Kelly Beals (the "debtor") filed a voluntary petition for relief  
20 under Chapter 13 of the United States Bankruptcy Code ("Code") on  
21 March 16, 2004. Mark W. Briden, Attorney at Law ("Counsel")  
22 substituted in as counsel for the debtor on May 5, 2004 and this is  
23 Counsel's third fee motion. Through this third fee motion (the  
24 "Motion"), Counsel seeks additional compensation in the amount of  
25 \$1,053.00 in fees and \$41.20 in costs. Although no party has filed  
26 opposition to the Motion, the court has an independent duty to review  
27 all requests for compensation and to determine their reasonableness.

28 Section 330 of the Code sets out the standard for which courts  
should determine the reasonableness of attorney's fees. This section  
provides that in determining the amount of reasonable compensation  
the court should consider the nature, extent, and value of the

1 services rendered, taking account of all relevant factors, including  
2 the time spent on the services, the rates charged for the services,  
3 and the customary compensation of comparably skilled attorneys in  
4 other cases. Reasonableness is determined by looking at the nature,  
5 extent and value of the services rendered. See In re Eliapo 298 B.R.  
6 392, 401 (9th Cir. BAP 2003).

7 "The burden is upon the applicant to demonstrate that the fees  
8 are reasonable." In re Basham, 208 B.R. 926, 931-932 (9th Cir. BAP  
9 1997) [citing Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct.  
10 1933, 1941 (1983)].

11 At the outset the court notes that Counsel represents Chapter 13  
12 debtors on a regular basis and that there is nothing out of the  
13 ordinary about this Chapter 13 case. Rather, the debtor's case is a  
14 routine, non-business Chapter 13 proceeding. Further, the court  
15 notes that when considering the original fee that the debtor paid,  
16 along with the fees already approved under Counsel's prior fee  
17 motions, Counsel has already been paid a total of \$3,159 in this  
18 case.<sup>1</sup>

19 In determining reasonableness under § 330(a)(3)(D) of the Code  
20 the court is to consider whether services were performed within a  
21 reasonable amount of time commensurate with the complexity,  
22 importance, and nature of the problem, issue, or task addressed. One  
23 component of this analysis requires the court to look at what other  
24 competent Chapter 13 practitioners would charge for a Chapter 13 case  
25 similar in complexity.

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27 <sup>1</sup> The debtor's First Amended Chapter 13 Plan filed on May  
28 12, 2004 and confirmed by order of the court on August 9, 2004,  
estimates Counsel's total fees in the case to be \$2,250.

1           The court notes that under the Guidelines for Payment of  
2 Attorneys Fees in Chapter 13 Cases Applicable in the Eastern District  
3 of California (the "Fee Guidelines") in effect when this case was  
4 filed, the allowed "opt-in" fee for a Chapter 13 case was \$2,500 and  
5 \$4,000 for a business case. Attorneys can "opt-out" of the Fee  
6 Guidelines and Counsel has done so here. Although Counsel has  
7 "opted-out", there is a general presumption that the attorneys fees  
8 set in the Fee Guidelines for those who "opt-in" is sufficient to  
9 cover the basic attorney services necessary in a routine Chapter 13  
10 case. See Eliapo, supra at 599. In fact, many competent Chapter 13  
11 attorneys use the "opt-in" procedure provided for in the Fee  
12 Guidelines and provide full representation for the fixed fee.

13           Turning now to Counsel's fee request, the court finds that  
14 Counsel's hourly rate (\$195 per hour) is reasonable and the court  
15 does not have an issue with the quality of Counsel's services. With  
16 that said, the court does have a real concern whether Counsel's fee  
17 request is reasonable.

18           There are multiple specific time entries that appear to be  
19 excessive. By way of example only, on May 5, 2004 Counsel charged  
20 one hour for "Prepare First Amended Chapter 13 plan." Counsel used  
21 the Eastern District's form Chapter 13 plan. Thus, preparing the  
22 plan entailed filling in four blanks and adding two sentences. Then  
23 on May 11, 2004 Counsel charged 1.9 hours to prepare a motion to  
24 confirm this plan. The motion is a two page, boilerplate pleading.  
25 A review of these charges leads the court to one of two conclusions.  
26 One, that Counsel is extremely inefficient, or alternatively the time  
27 charged per task is grossly inflated. In either event these charges  
28 are clearly excessive and unreasonable. However, rather than dissect

1 Counsel's fee request line-by-line, or task-by-task, the court  
2 chooses to review the fee request on a global basis to determine  
3 their reasonableness.

4 The court finds the total fees requested in this case exceed the  
5 reasonable value of services rendered when compared to what other  
6 competent practitioners would charge for a similar case. This is a  
7 routine Chapter 13 case and Counsel has already been paid \$3,159  
8 which is more than 125% of the fixed fee allowed if an attorney  
9 "opts-in" under the Guidelines. Although Counsel has opted out of  
10 the Fee Guidelines, the fixed fee charged by many competent Chapter  
11 13 practitioners is used as a guide as to what is reasonable  
12 compensation for handling a routine chapter 13 case.

13 The burden is on Counsel to demonstrate that the fees requested  
14 are reasonable. The Motion is void of any analysis or discussion as  
15 to the reasonableness of the fees requested. Accordingly, Counsel  
16 has not met his burden demonstrating the fees requested are  
17 reasonable. On the contrary, and for the reasons state, the court  
18 finds the aggregate fee requested in this case is excessive and  
19 unreasonable.

20 The Court finds that Counsel has already been paid reasonable  
21 compensation for the work performed. Accordingly, the Motion will be  
22 denied as the fees requested in the Motion exceed the reasonable  
23 value of the services rendered.

24 A separate order will be entered consistent with this memorandum  
25 decision.

26 Dated: November 29, 2007

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/s/  
Robert S. Bardwil  
United States Bankruptcy Judge