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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9 WALTER WINWARD,) Case No. 03-27616-B-13J
10 Debtor(s).) Docket Control No. WW-3
11 _____) Date: March 27, 2007
12) Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
format, as required by the Act. However, this posting does not
18 constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This motion has been filed pursuant to LBR 9014-1(f)(1). The
21 failure of the debtor, the trustee, and all other parties in interest
22 to file timely written opposition as required by this local rule may
23 be considered consent to the granting of the motion. See Ghazali v.
24 Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). In this
25 instance, the court issues a tentative ruling.

26 The motion is denied.

27 On July 8, 2003, the debtor filed a chapter 13 petition. As
28 part of confirmation of debtors' chapter 13 plan, applicant consented

1 to compensation in accordance with the Guidelines for Payment of
2 Attorney's Fees in Chapter 13 Cases. This court authorized payment of
3 fees and costs totaling \$3,000 through the plan. The debtor's
4 attorney now seeks additional compensation through February 5, 2007,
5 consisting of \$1,082.00 in fees and \$65.19 in costs.

6 As an initial matter, the court notes that applicant's
7 billing records contain errors. The motion states that applicant's
8 hourly rate was \$200 through December 31, 2004; \$225 from January 1,
9 2005 to December 31, 2006; and \$250 from January 1, 2007 to the
10 present. The billing records begin in 2003 at \$200 per hour, and they
11 contain entries at a rate of \$225 and \$250 during periods when the
12 stated hourly rate was lower than that rate. Adjusting the billing
13 records for the rates disclosed in the motion results in a reduction
14 of \$95.00 for work "included in the initial fee" and \$7.50 for work
15 "not included in the initial fee."

16 Secondly, applicant's approach - bifurcating fees into work
17 included in the initial fee and work not included in the initial fee,
18 and requesting fees for work in the latter category before the initial
19 fee has been consumed - is flawed. Counsel who opt into the fee
20 guidelines are allowed to apply for additional fees when the "no look"
21 fee is inadequate to compensate counsel fairly "for the legal services
22 rendered in the case" because of the amount or complexity of the work
23 involved in the case. Applicant's methodology would work well had he
24 already fully consumed the initial fee of \$3,000.00. However, the
25 billing records show an adjusted amount of \$1,847.50 attributable to
26 such work. The flat fee is not designed to provide applicant with a
27 \$1,152.50 windfall. Subtracting \$1,152.50 from the adjusted amount of
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1 "extra" work and costs set forth in the billing records (\$1,139.69)
2 results in no additional fee. Accordingly, the application is denied.
3 However, having now almost "consumed" the heretofore unused portion of
4 the "no look" fee, applicant may apply in the future for compensation
5 for additional work in the "included in the initial fee" category,
6 provided that total compensation for that category may not exceed
7 \$3,000 for the case.

8 The debtor's request that the initial fee approved through
9 the plan be reduced by \$500.00 is denied. The fee was approved
10 through confirmation of the plan, the terms of which bind the debtor.
11 11 U.S.C. § 1327(a).

12 The court will issue a minute order.
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