

FOR PUBLICATION  
UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
MODESTO DIVISION

In re	)	Case No. 98-91648-A-7
JERRY B. JASTREM,	)	Motion Control No. None
Debtor.	)	Date: August 24, 1998
	)	Time: 2:00 p.m.
	)	

Edmund Gee, Esq., U.S. Department of Justice, Office of the United States Trustee, Fresno, California, appearing for the United States Trustee.

Matthew J. Gilbert, Esq., Sacramento, California, appearing for the respondent Michael O'Neal, doing business as American Law Center.

MEMORANDUM DECISION

The debtor filed a chapter 7 petition on April 9, 1998. Michael O'Neal, an attorney doing business as American Law Center ("respondent"), prepared and filed the petition for the debtor. The debtor has not yet received a discharge.

With the petition, the respondent filed a Statement Pursuant to Rule 2016(b).<sup>1</sup> Fed.R.Bankr.P. 2016(b). This statement disclosed that the debtor promised to pay \$1,000.00 for respondent's legal services in connection with the petition. Nothing was paid to respondent prior to the filing of the petition. The statement did not disclose that the respondent had received four, \$250.00 post-dated checks, which were to be cashed

<sup>1</sup> The Rule 2016(b) statement was amended on May 13, 1998, to make a minor correction. The original statement reported that respondent had received \$88.00, rather than \$87.00, for the filing fee.

1 after the filing of the petition in satisfaction of the \$1,000.00  
2 fee.

3 Through the respondent, the debtor paid \$87.00 of the  
4 petition filing fee on April 9, 1998. The debtor agreed to pay  
5 the remaining \$88.00 of the filing fee in four equal installments  
6 of \$22.00 each. Even though the last installment was due on  
7 August 7, 1998, the remainder of the filing fee was paid in full  
8 on April 21, 1998.

9 On April 23, 1998, an order issued from this court  
10 requiring counsel for the debtor to disclose, among other things,  
11 payments made to counsel by the debtor, payments agreed to be  
12 paid to counsel by the debtor, services that counsel agreed to  
13 perform for the debtor, whether counsel had requested or received  
14 any promissory note(s) or post-dated check(s), and whether  
15 counsel had advised the debtor that any fees earned pre-petition,  
16 but not paid pre-petition, would be discharged in bankruptcy.

17 Counsel responded to the order and disclosed that he  
18 had received from the debtor prior to the filing of the petition  
19 four post-dated checks, each in the amount of \$250.00. The  
20 checks were post-dated for April 30, 1998, May 14, 1998, May 28,  
21 1998, and June 11, 1998.<sup>2</sup>

22 Virtually all of the services performed by respondent  
23 and his staff for the debtor were performed before the petition  
24 was filed. A review of the court's file and the evidence reveals

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26 <sup>2</sup> This was a common business practice of the respondent. On July  
27 10, 1998, the respondent filed a declaration indicating that the he had  
received and negotiated post-dated checks from debtors in 38 bankruptcy cases  
between January 1, 1996 and May 25, 1998.

1 no services were rendered after the filing of the petition other  
2 than attending the first meeting of creditors and dealing with a  
3 pre-petition wage garnishment.<sup>3</sup> The amount of time spent on pre-  
4 petition and post-petition services must be estimated because the  
5 respondent kept no contemporaneous time records.

6 On May 26, 1998, the court issued a second order  
7 concerning this matter. It set this hearing to determine: (1)  
8 whether the respondent had been paid an amount in excess of the  
9 reasonable value of services rendered; (2) whether any fee  
10 agreement should be canceled; (3) whether the respondent had  
11 violated the automatic stay by negotiating the post-dated checks  
12 post-petition; and (4) whether any obligation of the debtor to  
13 the respondent was discharged by the debtor's discharge.

14 The respondent argues that it was proper to receive  
15 payment post-petition for the services he rendered before the  
16 filing of the petition. He makes three arguments: (1) the  
17 respondent is required by the Federal Rules of Bankruptcy  
18 Procedure to accept payment post-petition; (2) the claim to fees  
19 arose post-petition and is not discharged; and (3) the claim  
20 arose pre-petition, but it is non-dischargeable even though the  
21 claim is not specifically excepted from discharge by 11 U.S.C. §  
22 523(a).

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24 First, the respondent argues that he is required by  
25 "court order" to accept the payment post-petition. The "court

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26 <sup>3</sup> Matthew Gilbert's declaration filed August 19, 1998, details that  
27 he spent .75 hours dealing with a wage garnishment. During argument he stated  
28 that this time was expended after the filing of the petition.

1 order" is actually Fed.R.Bankr.P. 1006(b)(1), which provides that  
2 a debtor may pay the petition filing fee\* in installments if the  
3 debtor is unable to pay the filing fee otherwise, and the debtor  
4 has "neither paid any money nor transferred any property to an  
5 attorney for services in connection it the case."

6         The respondent believes that Rule 1006(b)(1) places the  
7 respondent "under a direct court order only [sic] to accept  
8 compensation only after the balance of the filing fee had been  
9 paid." The respondent argues that the debtor would be in  
10 contempt of court had he paid the respondent prior to paying the  
11 filing fees in full. The respondent concludes that it "would be  
12 incredulous to suggest that the legislative intent behind this  
13 rule would, in one breath, order no pre-petition payment of  
14 Chapter 7 attorney fees, while, in another breath, expect those  
15 fees to be subject to other discharge provisions of the  
16 bankruptcy law."

17         The requirement that filing fees be paid before a  
18 debtor pays his attorney cannot be warped into an exception to  
19 discharge that compels a debtor to pay his or her attorney post-  
20 petition for pre-petition services. Such payment would violate  
21 either the automatic stay or the discharge injunction.

22         The filing of the bankruptcy petition automatically  
23 stayed any act by the respondent to collect, assess, or recover a  
24 claim against the debtor that arose before the commencement of  
25 this bankruptcy case. 11 U.S.C. § 362(a)(6). The debt owed to  
26 the respondent by the debtor for services performed pre-petition  
27 arose pre-petition. Any act to collect it, such as by presenting  
28

1 the post-dated checks for payment, is stayed by section 362(a).

2 The respondent counters that 11 U.S.C. § 362(b)(11)  
3 excepted the presentment of the post-dated checks after the  
4 filing of the petition from the automatic stay because the checks  
5 were negotiable instruments.<sup>4</sup> The argument is without merit.

6 The purpose of this exception to the automatic stay is  
7 not to give the holder of an instrument made by the debtor, such  
8 as a check, the right to enforce it against the debtor or the  
9 debtor's bank account after the debtor has filed a bankruptcy  
10 petition. See Whitman v. State Farm Ins. Co. (In re Mills), 176  
11 B.R. 924, 928 (D. Kan. 1994). Rather, "presentment of an  
12 instrument is often a prerequisite to asserting remedies against  
13 secondary obligors, such as indorsers of the instrument. This  
14 exception to the stay permits the presentment of the instrument,  
15 which may enable the holder to enforce the instrument secondarily  
16 against secondary obligors." 3 Collier on Bankruptcy, ¶  
17 362.05[11], p. 362-69 (15<sup>th</sup> Rev. Ed. 1997).

18 This explanation of section 362(b)(11) is consistent  
19 with Hines v. Gordon (In re Hines), 198 B.R. 769, 772-773 (B.A.P.  
20 9<sup>th</sup> Cir. 1996) *overruled on other grounds* \_\_\_ F.3d \_\_\_, 1998 WL  
21 395030; Hessinger & Associates, 165 B.R. 657 (Bankr. N.D. Cal.  
22 1994) *appeal dismissed by In re Eleccion*, 178 B.R. 807 (B.A.P.  
23 9<sup>th</sup> Cir. 1995) *order aff'd by In re Hessinger & Associates*, 192  
24 B.R. 211 (N.D. Cal. 1996); and In re Symes, 174 B.R. 114, 118

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26 <sup>4</sup> 11 U.S.C. § 362(b)(11) provides: "The filing of a petition under  
27 section 301, 302, or 303 of this title . . . does not operate as a stay- . . .  
28 (11) under subsection (a) of this section, of the presentment of a negotiable  
instrument and the giving of notice of and protesting dishonor of such an  
instrument . . . ."

1 (Bankr. D. Ariz. 1994). All three of these courts rejected the  
2 use of post-dated checks to collect pre-petition fees when the  
3 checks were received pre-petition but presented post-petition.

4 Assuming for purposes of argument that the post-dated  
5 checks could be presented for payment despite the filing of the  
6 petition, then the debtor did not qualify for payment of the  
7 filing fee in installments pursuant to Rule 1006(b)(1). A debtor  
8 may not pay money or transfer any property to an attorney if he  
9 or she wishes to pay the filing fee in installments.  
10 Fed.R.Bankr.P. 1006(b)(1) & (3).

11 The respondent received the four post-dated checks from  
12 the debtor prior to payment in full of the filing fee. It is  
13 inconsistent to argue, on the one hand, that the post-dated  
14 checks are negotiable instruments that may be presented and paid  
15 after the filing of the petition and, on the other hand, that  
16 those same checks are not "property" for purposes of Rule  
17 1006(b).<sup>5</sup>

18 Once the debtor obtains his chapter 7 discharge, the  
19 automatic stay will expire, but the discharge injunction will  
20 replace it. 11 U.S.C. §§ 362(c) and 524(a)(2). The debtor will  
21 be discharged from all debts that arose before the date of the  
22 order for relief and the discharge will operate as an injunction  
23 against the commencement or continuation of an action, the

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25 <sup>5</sup> Were the court to conclude that presentment of the checks for  
26 payment from the debtor's account was permissible under section 362(b)(11), it  
27 would sanction counsel in an amount equal to all attorney's fees collected for  
his failure to disclose the receipt of the post-dated checks in his Rule  
2016(b) Statement and for causing the debtor to request an installment filing  
fee in violation of Rule 1006(b).

1 employment of process, or any act to collect the respondent's  
2 claim based upon his pre-petition services to the debtor. 11  
3 U.S.C. §§ 524(a)(2) and 727(a).

4 The foregoing is consistent with Hessinger v. U. S.  
5 Trustee (In re Biggar), 110 F.3d 685 (9<sup>th</sup> Cir. 1997), in which  
6 the Ninth Circuit held that a debt arising from a bankruptcy  
7 attorney's fee agreement is dischargeable in bankruptcy at least  
8 to the extent that it provides for post-petition payment for pre-  
9 petition services. Pending discharge, the automatic stay bars  
10 any such payment\*.

11 None of the foregoing is changed by Rule 1006(b)(1).  
12 First, the scope and effect of the automatic stay and the  
13 discharge are statutory and cannot be modified by the Federal  
14 Rules of Bankruptcy Procedure. Those rules are promulgated by  
15 the Supreme Court pursuant to the authority granted it by 28  
16 U.S.C. § 2075. Rules promulgated under this power may not  
17 abridge, enlarge, or modify any substantive right. In the event  
18 of inconsistency between a statute and a rule, the statute  
19 controls. See 9 Collier on Bankruptcy, ¶ 1001.01[1], p. 1001-2  
20 (15<sup>th</sup> Rev. Ed. 1997).

21 Second, the respondent's argument assumes that a debtor  
22 necessarily has the right to pay an attorney for advice, even if  
23 he or she cannot afford to pay the filing fee on the date of  
24 petition. A debtor has no such right.

25 The respondent next argues that the duty to pay counsel  
26 arose post-petition because there was a condition precedent, the  
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1 payment of the filing fees, to the payment of counsel's fees.<sup>6</sup>  
2 This condition, respondent believes, was not satisfied until  
3 after the filing of the petition, hence his claim arose post-  
4 petition. The respondent cites Avellino & Bienes v. M. Frenville  
5 Co., Inc., et al. (In re Frenville Co., Inc.), 744 F.2d. 332 (3<sup>rd</sup>  
6 Cir. 1984) *cert. denied by M. Frenville Co., Inc. v. Avellino &*  
7 *Bienes*, 469 U.S. 1160 (1985), as support for the proposition that  
8 a pre-petition act by itself is not sufficient for a claim to  
9 arise and that the threshold requirement of a claim "must first  
10 be met-there must be a right to payment."

11 If the court were to accept this argument, the court  
12 would be allowing the respondent, and every other creditor whose  
13 claim arose by contract in every other bankruptcy case, to  
14 unilaterally render the anti-waiver provision of 11 U.S.C. § 524  
15 a nullity. That section provides, in essence, that the effect of  
16 the discharge cannot be waived. By tying a debt to a condition  
17 precedent, and employing the respondent's logic, any creditor  
18 could circumvent the anti-waiver provision of section 524. For  
19 instance, a creditor could draft a contract that provides that  
20 certain penalty damages (in addition to other contract damages),  
21 be conditioned on the debtor obtaining a discharge in bankruptcy.  
22 The argument simply proves too much.

23 The Frenville court equated the accrual of a cause of  
24 \_\_\_\_\_

25 <sup>6</sup> A variant of this argument was made during one of the preliminary  
26 hearings on this matter. The respondent argued that the filing of the  
27 petition was a condition precedent to the debtor's obligation to pay his fees.  
28 The respondent argued that unless a petition was filed, he could not enforce  
his claim for fees against the debtor. This same argument was made by a  
debtor's attorney in In re Symes, 174 B.R. at 117-118. The court adopts the  
reasoning of the bankruptcy court in Symes and rejects this argument.



1 action under New York law with the existence of a claim in a  
2 bankruptcy case. The court concluded that because the claimant  
3 did not incur actual damage prior to the petition he did not have  
4 a bankruptcy claim capable of discharge even though the wrongful  
5 conduct eventually causing damage occurred prior to the filing of  
6 the petition.

7 This decision has been criticized on the ground that it  
8 confuses the accrual of a cause of action under state law with  
9 the existence of a claim for purposes of a bankruptcy case.

10 Jensen v. Calif. Dept. of Health Services (In re Jensen), 127  
11 B.R. 27, 30-31 (B.A.P. 9<sup>th</sup> Cir. 1991) *aff'd* 995 F.2d 925 (9<sup>th</sup> Cir.  
12 1993); In re Symes, 174 B.R. at 118.

13 Given the broad definition of "claim" at 11 U.S.C. §  
14 101(5), the court must conclude a fee for services rendered pre-  
15 petition is a claim subject to discharge even if the obligation  
16 to pay the fee is conditional. Pursuant to section 101(5)(A), a  
17 claim includes any right to payment whether unliquidated,  
18 contingent, or unmatured.

19 Nothing in Gordon v. Hines (In re Hines), \_\_\_ F.3d \_\_\_,  
20 1998 WL 395030 (9<sup>th</sup> Cir. 1998), changes this conclusion. In  
21 Hines the court held, among other things, that a pre-petition  
22 contract for post-petition legal services does not give the  
23 attorney a "claim" within the meaning of section 101(5)(A). It  
24 is the rendition of services that creates the claim, not the  
25 execution of a fee agreement. Therefore, if post-petition  
26 services are rendered, the attorney does not have a pre-petition  
27 (hence dischargeable) claim. The attorney may collect his or her

1 fee after the filing of the petition without running afoul of the  
2 automatic stay or the discharge injunction.

3 Here, the services were rendered almost entirely before  
4 the filing of the petition. These services included meeting with  
5 the debtor and preparing the petition, schedules, and statement  
6 financial of affairs. Because the debtor did not pay for these  
7 services prior to filing the petition, the respondent held a pre-  
8 petition claim that was dischargeable in bankruptcy.

9 The respondent nevertheless asserts that Congress  
10 intended this pre-petition claim "to be a non-dischargeable debt  
11 in that B.R. 1006 specifically on its face demands only post-  
12 petition receipt of attorney fees." The respondent argues that  
13 under the circumstances of this case, there is, in essence, an  
14 unwritten paragraph in section 523(a) that provides for the  
15 nondischargeability of this debt.

16 The court disagrees. If Congress intended that such an  
17 exception to discharge exist, it would have enacted an  
18 appropriate law. It would not have relied upon the Supreme  
19 Court's ability to divine Congress' collective mind and then  
20 draft a rule to implement the Congressional will.

21 The respondent believes the rule announced in In re  
22 Hines is to the contrary. As noted above, in Hines the Ninth  
23 Circuit held that the post-petition rendition of legal services  
24 promised in a fee agreement executed pre-petition entitles the  
25 attorney to recover the fees for the post-petition services from  
26 the debtor without violating the automatic stay or the discharge  
27 injunction.

1           The court in Hines reached this result, in part, by  
2     crafting a judicial exception to the provisions of sections  
3     362(a)(6) and 727. The court held:

4           "[A]ttorneys for Chapter 7 debtors must have a legally  
5     enforceable right for their postpetition services that  
6     were contracted for before the filing of the petition.  
7     If the absence of such a right were to become the law,  
8     . . . the entire system would suffer a massive  
9     breakdown. In our view the required recognition of  
10    such a right . . . is best implemented by holding that  
11    all claims for lawyers' compensation stemming from such  
12    postpetition services actually provided to the debtor  
13    really do not fall with the automatic stay provisions  
14    of Section 362(a)(6) or the discharge provisions of  
15    Section 727." (Emphasis added.)

16    In re Hines, \_\_\_ F.3d at \_\_\_. The respondent interprets Hines to  
17    mean that post-petition payment for services rendered pre-  
18    petition pursuant to a pre-petition contract are nondischargeable  
19    and collection of such fees does not violate the automatic stay  
20    or the discharge injunction. The respondent's interpretation of  
21    Hines is simply wrong. Hines holds only that the post-petition  
22    payment for services rendered post-petition is permissible even  
23    though the parties contract for those services prior to the  
24    filing of the petition. Nothing in Hines permits post-petition  
25    payment for services rendered pre-petition. This would be  
26    directly contrary to Hessinger v. U. S. Trustee (In re Biggar),  
27    110 F.3d 685 (9<sup>th</sup> Cir. 1997).

28    ///

29           Having concluded that all fees were paid after the  
30    filing of the petition and that all fees owed for pre-petition  
31    services are dischargeable in bankruptcy, it remains to order the  
32    disgorgement of all fees collected for pre-petition services.

1 Before this can be done, however, the court must determine the  
2 reasonable value of the services rendered post-petition. Fees  
3 for these services may be retained by counsel.

4 As noted above, the respondent has not submitted any  
5 contemporaneous time records or any other comparable evidence  
6 documenting the tasks undertaken or the time spent in connection  
7 with the debtor's chapter 7 bankruptcy.

8 It appears from a review of the court's file that this  
9 was a simple, straightforward consumer chapter 7 petition. The  
10 debtor did not own any real property or vehicles. His total  
11 assets were valued at \$3,790.00 and were all exempt. There were  
12 no secured creditors but there were 25 creditors with priority  
13 and general unsecured claims totaling \$20,990.32. The priority  
14 claims were for state and federal income taxes totaling  
15 \$4,775.00.

16 The sole complication presented by the debtor's case  
17 was a pre-petition wage garnishment. This problem was apparently  
18 solved by serving a copy of the petition on the levying officer  
19 and/or the creditor. An attorney spent .75 hours to resolve the  
20 matter.

21 The petition, schedules, and statement of financial  
22 affairs were the only documents prepared by the respondent for  
23 the benefit of the debtor. All other pleadings and documents  
24 relate to the respondent's attorney's fees. The court's file  
25 does not contain any reaffirmation agreements, motions to avoid  
26 liens pursuant to 11 U.S.C. § 522(f), motions for relief from the  
27 automatic stay, or any other motion or proceeding implicating the

1 rights of the debtor.

2           It is difficult to believe that the collection of  
3 information for, and the preparation of, the petition, schedules,  
4 and statement of financial affairs could have taken more than  
5 3.75 hours even with the time pressures created by a garnishment  
6 of the debtor's wages.<sup>7</sup> Because these documents were all filed  
7 on April 9, 1998, it is clear that services related to their  
8 preparation and filing occurred pre-petition.

9           The only services rendered post-petition were related  
10 to appearing at the first meeting of creditors and dealing with a  
11 wage garnishment. Calendars for meeting of creditors are set at  
12 30 minute intervals. Further, cases are "batched" so debtors'  
13 attorneys have several of their cases heard during the same  
14 calendar. On August 24, 1998, the respondent filed the  
15 declaration of Carl Mayhew. It contains Mr. Mayhew's estimate  
16 that it took him 1.50 hours to travel to Modesto, one-quarter of  
17 an hour to attend the debtor's first meeting on May 14, 1998, at  
18 9:30 a.m., and 1.50 hours to return to Sacramento. However, the  
19 court's records reveal that the respondent appeared for two first  
20 meetings at 9:30 a.m. (this case and Case No. 98-91651) and two  
21 at 10:00 a.m. (Case Nos. 98-91653 and 98-91677). If the travel  
22 time is prorated among these cases, .75 hours would be allocable  
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25           <sup>7</sup> This takes account of the estimated 1.50 hours spent by attorney  
26 Matthew Gilbert reviewing the petition and meeting with the debtor, as well as  
27 time spent by Michael O'Neal on substantive matters unrelated to his fees.  
The court has not considered another .50 hours of his time that was spent  
28 amending the Rule 2016(b) statement to correct a \$1.00 typographical error.  
See footnote 1, supra.

1 to this case.<sup>8</sup>

2 Fees charged by attorneys for representation of debtors  
3 in consumer chapter 7 cases, excluding representation in  
4 adversary proceedings, in the Modesto Division range from a low  
5 of \$400.00 to a high of \$1,500.00. Fees in consumer Chapter 7  
6 cases are generally quoted and paid on a "flat rate" basis.  
7 Given the minimal work required in this case (not considering any  
8 time related to the challenge to the respondent's fees) and its  
9 lack of any factual or legal complexity, the court finds that  
10 \$750.00 is reasonable compensation.

11 Viewed on an hourly basis, this works out to  
12 approximately \$135.00 per hour.<sup>9</sup> This "blended" rate, given the  
13 considerable use the respondent made of paralegals to gather  
14 information and prepare forms, is more than fair. Admittedly,  
15 use of an hourly rate is artificial given that fees for consumer  
16 chapter 7 cases in this locale are usually not charged on a  
17 hourly basis but on a flat fee basis. The court has calculated  
18 an hourly rate only to prorate the reasonable flat fee in this  
19 case, \$750.00, between pre-petition and post-petition work.

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21 <sup>8</sup> Because counsel accepted the debtor's representation for a flat  
22 fee and appeared on more than one first meeting during his trip to Modesto on  
23 May 14, 1998, for purposes of the computation of reasonable compensation, the  
24 court departed from its normal practice and permitted travel time to be  
compensated at the estimated full hourly rate rather than at half that rate.  
See Guidelines Pertaining to Requests for Compensation and Expense by  
Professional in Eastern District of California Cases.

25 <sup>9</sup> The respondent and his staff spent an estimated 5.50 hours on this  
26 case: 3.75 pre-petition hours to prepare the petition, schedules, and  
27 statement of financial affairs; .75 post-petition hours to deal with the  
garnishment; and 1.00 post-petition hour to attend the first meeting of  
creditors.  $\$750.00 \div 5.50$  estimated hours = \$136.36 per hour. Therefore,  
\$511.35 of the \$750.00 relates to pre-petition services and \$228.65 relates to  
post-petition services.

1           Of the \$750.00, the court finds that \$511.35 is  
2 attributable to services rendered pre-petition. The remainder,  
3 \$238.65, is attributable to service rendered post-petition.

4           The United States Trustee argues that all fees should  
5 be disallowed and the respondent assessed damages because: (1)  
6 the debtor received no advice from Mr. O'Neal, prior to the  
7 debtor's decision to seek relief under chapter 7; (2) the  
8 debtor's first and only meeting with Mr. O'Neal occurred three  
9 months after the debtor's first contact with American Law Center;  
10 (3) non-attorneys did most of the work and consulted with the  
11 debtor and gave the debtor advice; and (4) Mr. O'Neal met with  
12 the debtor only after the schedules were completed.

13           The court rejects these arguments. The respondent used  
14 paralegals to gather information and to prepare the petition.  
15 These paralegals are employed by the respondent who is a licensed  
16 California attorney. The respondent and another attorney  
17 reviewed the work of the paralegals. Before entering into a  
18 written contract to represent a debtor, the respondent or an  
19 attorney employed by him met with the debtor. Before the  
20 petition and other documents were filed, an attorney spoke with  
21 the debtor and reviewed the bankruptcy documents. This satisfied  
22 the respondent's obligations under Cal. Rule of Professional  
23 Conduct 3-110.<sup>10</sup> The court finds the assertion that the

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25           <sup>10</sup>

Cal. Rule of Prof. Conduct 3-110 provides:

- 26           (A) A member shall not intentionally, recklessly, or repeatedly  
27           fail to perform legal services with competence.  
28           (B) For purposes of this rule, "competence" in any legal service  
             shall mean to apply the 1) diligence, 2) learning and skill,  
             3) mental, emotional, and physical ability reasonably  
             necessary for the performance of such service.

1 respondent allowed his paralegal staff to practice law in  
2 connection with this case to be without merit.

3           Therefore, an order will issue with the following  
4 provisions:

5           1. Pursuant to 11 U.S.C. § 329(b), the court  
6 determines that \$750.00 is the reasonable value of all services  
7 rendered by the respondent to the debtor in contemplation of or  
8 in connection with the debtor's petition.

9           2. Of this amount, \$511.35 relates to services  
10 rendered pre-petition by respondent to the debtor in  
11 contemplation of or in connection with the debtor's petition.

12           3. The \$511.35 was not paid to the respondent prior  
13 to the filing of the petition. The respondent is, therefore,  
14 automatically stayed by 11 U.S.C. § 362(a) from collecting such  
15 sum during the pendency of the case.

16           4. If the debtor receives a chapter 7 discharge, the  
17 respondent's right to payment of the \$511.35 shall be discharged  
18 in bankruptcy.

19           5. To the extent the respondent was paid, whether by  
20 negotiating the post-dated checks or otherwise, he may retain  
21 \$238.65 on account of work performed post-petition. The balance  
22 of any money shall be refunded to the person paying the fees  
23 within 10 days of the date an order in this matter. Proof of the

24 \_\_\_\_\_  
25           (C) If a member does not have sufficient learning and skill when  
26 the legal service is undertaken, the member may nonetheless  
27 perform such services competently by 1) associating with or,  
28 where appropriate, professionally consulting another lawyer  
reasonably believed to be competent, or 2) by acquiring  
sufficient learning and skill before performance is  
required.



repayment shall be served upon the United States Trustee within 5 days of the repayment.

6. To the extent the respondent continues to hold post-dated checks received as compensation in connection with or in contemplation of the filing of the debtor's petition, the checks shall be returned to the drawer(s) within 10 days of the date of an order on this matter. Proof of the return shall be served upon the United States Trustee within 5 days of the return. Provided, however, if none of the checks have been negotiated, one (1) may be negotiated. When the check is honored, the respondent may retain \$238.65 but he must refund the balance to the drawer within 10 days of receipt of the funds. Proof of the repayment shall be served upon the United States Trustee within 5 days of the repayment.

An appropriate order will issue.

Dated:

By the Court

Michael S. McManus  
United States Bankruptcy Judge