

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE

**CHARLENE L. HOUSTON,
Debtor.**

NO. 96-04212-R33 ✓

IN RE

**ROBERT EUGENE GIMLIN JR. AND
TAWNEE MARIE GIMLIN,
Debtor.**

NO. 97-00403-R33

IN RE

**CHERI LYNN TOPPING,
Debtor.**

NO. 97-00513-R33

IN RE

**JAMES EDWARD LORTON,
Debtor.**

NO. 97-00783-R33

IN RE

**STEEN, CLYDE E. & TINA M.
Debtor.**

NO. 97-02374-R33

tu 37

FILED

MAY 27 1999

ENTERED **MAY 28 1999** *fl*

U.S. MARSHAL'S CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

**MEMORANDUM OPINION
May 26, 1999**

98

6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN RE
QUIROZ, RENATO & JOELLEN

Debtor.

NO. 97-03148-R33

IN RE
JEANETTE A. ADAMS

Debtor.

NO. 97-03152-533

IN RE
GUADALUPE & FRANCISCA
MONTELONGO

Debtor.

NO. 97-03430-R33

IN RE
ROBERT WAYNE FRANK &
CATINA MARIE FRANK,

Debtor.

NO. 97-03965-R3C

IN RE
ANDIE S GETCHELL

Debtor.

NO. 97-05799-R23

MEMORANDUM OPINION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. Procedural Posture and Jurisdictional Statement 4

II. Issue 4

III. Discussion 4

A. Statutes and Rules Applicable to an Award of Compensation. 4

B. Factors Affecting Compensation. 7

 1. Time spent. 7

 2. The rates charged 8

 3. Necessity and Benefit. 10

 4. Time Expended Commensurate with Problem. 12

C. Discussion of Specific Cases. 14

 1. Methodology 14

 2. Charlene L. Houston 15

 3. Robert Eugene Gimlin and Tawnee Marie Gimlin 20

 4. Cheri Lynn Topping 24

 5. James Edward Lorton 27

 6. Clyde E. Steen and Tina M. Steen 31

 7. Renato Quiroz and Joellen Quiroz 33

 8. Jeanette A. Adams 36

 9. Guadalupe Montelongo and Francisca Montelongo 38

 10. Robert Wayne Frank & Catina Marie Frank 40

 11. Andie S. Getchell. 43

 12. Costs 45

IV. Summary and Conclusion 46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

Procedural Posture and Jurisdictional Statement

The debtors in the above captioned Chapter 13 cases are all represented by Gary McGlothlen. In each of these cases Mr. McGlothlen sought an award of attorneys fees from the court, allowable as a cost of administration in this case. The court, after receiving Mr. McGlothlen's fee application, ordered that a hearing be conducted on these fee requests. The hearing on these ten fee requests were consolidated for purpose of convenience. At the consolidated hearings, evidence was introduced including the testimony of expert witnesses. Mr. McGlothlen represented himself in these hearings, as did the Chapter 13 trustee, Daniel Brunner. The United States Trustee's office was represented by Robert M. Miller.

The issues in these cases involve the administration of these respective Chapter 13 cases filed under Title 11 of the United States Code. The issues before this court in these cases are core proceedings. 28 U.S.C. §157(b)(2)(A) & (B).

II.

Issue

Whether the attorneys fees requested by Mr. McGlothlen in each of these cases should be allowed as a cost of administration in the respective cases?

III.

Discussion

A. Statutes and Rules Applicable to an Award of Compensation.

The debtors' attorney seeks compensation for attorneys fees

1 §330(a)(4)(A) which provides:

- 2
- 3 (4) (A) Except as provided in subparagraph (B), the
court shall not allow compensation for -
- 4 (i) unnecessary duplication of services; or
 - 5 (ii) services that were not -
 - 6 (I) reasonably likely to benefit the
debtor's estate; or
 - 7 (II) necessary to the administration of the
case.

8 Thus the attorney for the debtor in a Chapter 13 may be
9 reasonably compensated for services representing the interest of
10 the debtor, which are of benefit to the debtor's estate, or
11 necessary to the administration of the case.

12 In addition to these statutory limitations on compensation,
13 the compensation of a debtor's attorney is also regulated by the
14 provisions of the Rules of Professional Conduct of the Washington
15 State Bar. Mr. McGlothlen is a member of the Washington State Bar
16 Association, a member of the bar of the United States District
17 Court for the Eastern District of Washington, and as a member of
18 these bars governed by the Rules of Professional Conduct of the
19 Washington State Bar. LR 83.3(a)(2); LR 83.2(a).

20 The Washington State Rules of Professional Conduct also deals
21 with attorneys fees. RPC 1.5(a) states:

22 (A) A lawyer's fee shall be reasonable. The
23 factors to be considered in determining the
reasonableness of a fee include the following:

24 (1) The time and labor required, the novelty and
25 difficulty of the questions involved, the skill requisite
to perform the legal service properly and the terms of
the fee agreement between the lawyer and client;

26 (2) The likelihood, if apparent to the client, that
27 the acceptance of the particular employment will preclude
other employment by the lawyer;

1 (3) The fee customarily charged in the locality for
2 similar legal services;

3 (4) The amount involved in the matter on which legal
4 services are rendered and the results obtained;

5 (5) The time limitations imposed by the client or by
6 the circumstances;

7 (6) The nature and length of the professional
8 relationship with the client;

9 (7) The experience, reputation, and ability of the
10 lawyer or lawyers performing the services; and

11 (8) Whether the fee agreement or confirming writing
12 demonstrates that the client had received a reasonable
13 and fair disclosure of material elements of the fee
14 agreement and of the lawyer's billing practices.

15 These two sources of authority overlap considerably. The
16 provisions of §330 are specifically applicable to the issues before
17 this court in these cases and will be primary source of authority
18 on the issue of reasonable compensation, supplemented however by
19 R.P.C. 1.5(a).

20 **B. Factors Affecting Compensation.**

21 **1. Time spent.**

22 Mr. McGlothlen has provided the court with time records
23 which reflect time spent on these matters to the tenth of an hour.
24 This time was kept on Mr. McGlothlen's computer while he did the
25 work in question. These time records were not reconstructed after
26 the fact, with the inherent untrustworthiness of that practice.
27 Ramos v. Lamm, 713 F.2d 546, 553 n.2 (10th Cir. 1983); In re Dann,
28 136 Wn 2d 67, at 78; 960 P.2d 416 at 420 (1998). The court
accepts the debtors attorney's account of the actual time expended
on each of these cases.

1 2. The rates charged.

2 Mr. McGlothlen charged his services at the rate of \$120
3 per hour in these cases. This hourly rate, when compared with
4 that of other attorneys in the district, is somewhat lower than the
5 average. The attorney witnesses that testified in this matter
6 charged in the range of \$150.00 per hour for their time, and all
7 considered the McGlothlen hourly rate reasonable.

8 This review of hourly billing rates is not however the end of
9 the inquiry. In this area of Chapter 13 practice the vast
10 majority of work is done on a flat fee basis, or in limited number
11 of cases a flat fee plus hourly for additional work. Mr.
12 McGlothlen is one of the practitioners which charges a flat fee
13 plus an hourly charge. This flat fee is \$1,000.00 in each of
14 these cases currently before the court. It is not clear what
15 services are included in the \$1000.00 minimum fee.

16 Although Mr. McGlothlen enters into a written fee agreement
17 with his client these agreements with clients were never introduced
18 into evidence. It is unclear what benefit, if any, flows to the
19 clients if Mr. McGlothlen spends less than the \$1,000.00 (8.33 @
20 \$120.00/hr) on any given case. In the cases before the court, Mr.
21 McGlothlen seeks in excess of the \$1,000.00 minimum fee.

22 This \$1,000.00 minimum fee, happens to coincide with the rules
23 adopted in this district effective May 1, 1996, which allow a
24 Chapter 13 debtor's counsel to apply for an award of \$1,000.00 or
25 less, without providing an itemization of time expended. LBR 2016-
26 1(d). This rule was adopted to minimize the administrative work
27 for Chapter 13 debtor's counsel in getting paid up to \$1,000.00
28

1 without a more burdensome detailed and itemized fee application.
2 However if counsel seeks an award cumulatively in excess of
3 \$1,000.00, then all time, including that in the initial \$1,000.00
4 must be itemized.

5 The court in adopting this rule did not set a minimum fee for
6 handling a Chapter 13 case. In fact, at the time of the rules
7 adoption, most practitioners handling Chapter 13 cases, charged
8 less than \$1,000.00 for handling a Chapter 13 case. The adoption
9 of the rule did not abrogate or limit the court's authority to
10 review fees in bankruptcy cases. 11 U.S.C. §329. In appropriate
11 circumstances the court may require a review of fees charged less
12 than \$1,000.00, and in such review require detailed,
13 contemporaneously recorded time records supporting the fee.

14 The fees charged in the ten cases before this court, are among
15 the highest fees charged by debtor's counsel in Chapter 13 cases in
16 this district during the time frame of these cases. Accordingly,
17 the court has undertaken this review of the fees sought.

18 Although \$120.00/hr is admittedly a reasonable rate for
19 attorneys time, it would not be an appropriate charge for time
20 spent on secretarial, clerical or administrative matters. Mr.
21 McGlothlen is a sole practitioner in the literal sense of the
22 words. He has no employees and performs all work himself. Mr.
23 McGlothlen explains that he does not charge for time spent on
24 secretarial, clerical and administrative matters which should be
25 part of his overhead and included in his hourly rate. The court
26 however doubts this assertion despite its obvious sincerity. An
27 examination of the time expended from first client interview to
28

1 first meeting of creditors reflects expenditures from 8.48 hours in
2 the Adams case to 22.33 hours in the Frank case. The fees
3 requested range from \$1,017.60 to \$2,679.60 over the ten cases, all
4 substantially in excess of the average fee in this district charged
5 by practitioners doing similar work. This suggested that despite
6 Mr. McGlothlen's protestations, he is in fact charging for
7 secretarial, clerical, and administrative work at the rate
8 appropriate for attorney services. As a result his services are
9 more expensive than other Chapter 13 practitioners for the same
10 work, despite the fact they bill at higher hourly rates for
11 attorney services.

12 **3. Necessity and Benefit.**

13 A Chapter 13 debtor's counsel may be allowed fees as costs of
14 administration if they are of benefit and necessity to the
15 interests of the debtor or of the estate. 11 U.S.C. §330(a)(3) &
16 (4). Although the interests of the debtor and of the estate may
17 not necessarily coincide, the debtor's attorney's services may be
18 compensated if they serve either interest. Services for the
19 interests of either the debtor or the estate however must be
20 reasonable if they are to be allowed.

21 These statutory provisions may set up a certain tension in
22 practice since it is difficult to serve two masters. For example,
23 one of the attorney expert witnesses called on behalf of Mr.
24 McGlothlen observed that some debtors would occupy as much time as
25 their attorney would be willing to allow them, although this time
26 was more than that required to perform the service. This arguably
27 would be beneficial to the debtor's interests. Yet payment of the
28

1 services off the top out of debtor's limited disposable income
2 depletes the funds available for distribution to the debtor's other
3 creditors. In addition it may well require the debtor to extend
4 the term of the his/her plan beyond the statutory minimum term so
5 that these additional charges may be paid and the debtor's plan
6 meet the statutory payment requirements. Thus a psychological
7 benefit to the debtor may also have an economic cost to the debtor
8 as well as his/her creditors. Given the shifting nature of the
9 economic landscape¹ in Chapter 13 cases it is often difficult to
10 determine who will ultimately bear the cost of the debtor's
11 attorneys fees, the debtor or the creditors. This uncertainty as
12 to ultimate benefit makes the concept of necessity all the more
13 important in these cases at the time the decision is to be made
14 whether to incur the particular services.

15 For example, debtors often are uncertain about the exact
16 amount they owe to a particular creditor. It might take
17 considerable time and effort to arrive at the precise number to be
18 included in the debtor's schedules. Insisting on exactness in
19 this regard might well be unnecessary in most cases. The amount
20 that is paid out in a Chapter 13 depends on the claim that is filed
21 and not the amount in the schedules. If they dispute the
22 creditor's claim that may be resolved in claims litigation. An
23 insistence on scientific exactness in preparation of the schedules

24
25 ¹ The economics of a Chapter 13 plan can vary widely during the course of the case depending
26 on factors including who files claims, valuation of collateral, determination of priorities to name but
27 a few.

1 might not pass a cost benefit analysis in most cases since the
2 amount paid by the trustee will generally depend on the claims
3 filed by the creditor to which the debtor and the trustee have an
4 opportunity to object.

5 Likewise, the filing of objections to claims should meet some
6 sort of cost benefit analysis. If there is ample disposable
7 income to pay a \$400.00 secured claim why should the debtor's
8 counsel incur \$300.00 worth of fees to have this claim disallowed.
9 The benefit to the debtor and the estate may not be worth the
10 diversion of the debtor's disposable income from payment of this
11 creditor's claim to payment of the debtor's attorney for these
12 services. The Chapter 13 trustee has an obligation to monitor the
13 claims filed in the case and if an improper claim significantly
14 impacts distribution to the other creditors the trustee may well
15 choose to object. In a Chapter 13 context, it is the trustee who
16 has fiduciary duties to the creditors rather than the debtor's
17 counsel in this regard.

18 **4. Time Expended Commensurate with Problem.**

19 The court must determine whether the time expended for
20 the services in question are commensurate with the complexity,
21 importance, and nature of the problem faced.

22 The ten cases currently before the court were filed over a
23 period of about one year. Although the cases may vary in
24 complexity, the court sees a trend over this period in which the
25 time spent for similar work is decreasing. One expects that this
26 may be the result of counsel's greater familiarity with the process
27 as time progresses.

1 Effective May 1, 1996, the court adopted revised local court
2 rules. One of the major areas of revision lay in the Chapter 13
3 practice. The court abandoned a procedure utilizing a one page
4 (somewhat cryptic) plan summary, in favor of a detailed seven page
5 mandatory form Chapter 13 plan. This plan must be accompanied by
6 a plan payment declaration, plan funding analysis and a liquidation
7 analysis on the proscribed local forms.

8 This change was instituted as a result of dissatisfaction and
9 confusion arising from use of the minimalistic plan summary.
10 Accordingly, a more specific and detailed plan was adopted to make
11 the process more accessible to practitioners and the public and to
12 provide a more detailed road map and checklist for navigation
13 through the often complicated provisions of Chapter 13. This
14 change of procedure has been generally well received and is
15 operating successfully. However, as with all changes in procedure,
16 they require some adjustments while adapting to the changes. The
17 fees in the ten cases before this court fall generally in that
18 period of transition. These cases were among the first ones
19 handled by Mr. McGlothlen under this new procedure.

20 As previously mentioned the vast majority of Chapter 13 cases
21 filed in this district during the time period in question were
22 charged on a flat fee basis for \$1,000.00 per case or lower. The
23 practitioners in this area also had to familiarize themselves with
24 the new form and procedures. This required additional attorneys
25 time which the court witnessed in the course of processing these
26 cases. In these flat fee cases the time expended in education,
27 familiarizing one self with the new process, and devising
28

1 administrative practices to accommodate the new procedures were
2 absorbed into the overhead as a result of the flat fee process.
3 The expenditures of this time made the attorneys more efficient and
4 economical in the handling of these matters. In other words this
5 expenditure of time educated counsel and made them more efficient
6 to compete in the marketplace. Should the cost of that time be
7 passed on to the specific client on whose case it was actually
8 spent, or should it be passed on more generally as part of
9 overhead?

10 In answering these questions, it is important to keep in mind
11 that these cases are not unique. They do not deal with esoteric
12 issues which will be met but once in a lifetime of practice.
13 These are problems that will be faced day in and day out in a
14 practice which emphasizes bankruptcy work as does Mr. McGlothlen.

15 **C. Discussion of Specific Cases.**

16 **1. Methodology**

17 The court has discussed the issues relating to these various
18 fee applications in fairly general terms. The court now will
19 engage in a more specific analysis on a case by case basis. The
20 method of analysis the court used in analyzing these cases focuses
21 on using the chronological time records. The court looked at the
22 time expended in three distinct time periods. The first period is
23 from initial contact with the client through the first meeting of
24 creditors. The second period is from conclusion of the first
25 meeting of creditors to confirmation of the debtor's plan. The
26 third period is post confirmation. The court used these time
27 periods rather than the task segregated time records which the
28

1 debtor's counsel had also provided because it made comparison
2 easier and eliminated the variations attributable to an individuals
3 characterization of the tasks involved. Attention was directed to
4 the various tasks in analyzing the time spent in the three time
5 periods. For example, the greater time spent in one case in the
6 time between initial client contact and first meeting than another
7 case might be explained by the fact that in the first case the
8 debtor's counsel had to deal with stay relief matters which were
9 absent in the second case. The following is a list of non
10 exclusive factors which the court considered in its analysis: the
11 nature and number of objections to confirmation; the nature and
12 number of modifications to the plan; the nature and number of
13 hearings actually conducted; priority problems to be dealt with;
14 claims matters including separate classification requirements;
15 objections to claims; valuation problems; request for stay relief;
16 whether business or consumer case and whether the case is combined
17 with a dissolution.

18 Having outlined methodology, we will now proceed to a
19 discussion of the specific fee applications in the ten cases before
20 the court.

21 **2. Charlene L. Houston**

22 Charlene Houston filed a petition for relief under Chapter 13
23 of the Bankruptcy Code on September 26, 1996. Her schedules
24 reflect assets of \$101,615.16 (\$67,410 - real property; \$34,205.16
25 personal property) and liabilities of \$89,034.67 (\$70,902.87
26 secured; \$18,131.80 unsecured). Houston's schedules reflect
27 income of \$2,352.28 and expenses of \$2,109.18.

1 Houston's initial plan was a \$8,748 base plan to be paid over
2 36 months with a payment of \$243.00 per month. This plan provided
3 for payment of two secured claims in the plan - Fred Meyer \$500.00
4 at \$16.61 month and Sears Charge Plus \$500.00 at \$16.61 month.
5 The plan provided for a reduction of these two secured claims from
6 \$4,517.49 for Fred Meyer and \$2,848.06 for Sears Charge Plus down
7 to each creditor's collateral value \$500.00. The debtor also
8 proposed to pay the secured claims on her home, car and central air
9 conditioning unit directly. The Plan funding analysis indicated
10 payments to secured claims of \$1,195.92 and unsecured claims
11 \$6,277.28 over the term of the Plan.

12 The trustee objected to Houston's proposed plan on the grounds
13 that debtor was improperly paying an impaired secured claim on a
14 vehicle directly and budgeting excessively for discretionary
15 expenses including paying insurance on two of the debtor's son's
16 vehicles. When the matter came on for hearing on the trustee's
17 objection, confirmation was denied and the debtor given fifteen
18 days to file an amended plan.

19 Houston's First Amended Plan provided for a base of \$9,224.00
20 to be paid over 36 months, \$243.00 for 8 months and \$260.00 for 28
21 months. This Plan provided no payments to Sears on either of its
22 secured claims. Objections were filed to Sears two secured
23 claims. The objections state that the attachments to Sears claims
24 were not readable, there was no evidence of perfection and that
25 Sears had failed to respond to numerous inquiries as to the secured
26 status of these claims. Sears did not respond to these objections
27 and orders were entered disallowing both of Sears secured claims
28

1 but allowing them as unsecured.

2 The Chapter 13 Trustee withdrew his objection to confirmation
3 and the First Amended Plan was confirmed on November 13, 1997.

4 Mr. McGlothlen filed an application for attorney fees in this
5 case of \$3,852.00, of which \$1,000 has been paid, leaving a balance
6 of \$2,852.00.

7 Mr. McGlothlen seeks award as an administrative expense for
8 32.1 hours expended on this matter. Of that total 15.14 hours
9 were spent during the period between initial client contact and the
10 first meeting of creditors. Of this time, 12.84 hours were spent
11 on preparation of schedules and plan and attendance at the first
12 meeting in this matter. This time charged at Mr. McGlothlen's
13 billing rate is \$1,540.80. This total is half again as much as
14 the average flat fee charged in this district for processing an
15 entire case.

16 The court's review of the schedules and pleadings revealed
17 nothing unusual in either the amount and nature of debt or the
18 number of creditors (approximately 20). Mr. McGlothlen explained
19 that this debtor had previously been working with a credit
20 counseling organization. It is not clear why that would increase
21 the cost of preparing bankruptcy pleadings as opposed to reducing
22 it. Although there may have been some confusion about the exact
23 amount owed to specific creditors, those problems appear more
24 easily resolved when and if the creditor chooses to file a claim
25 which the debtor wished to contest. The charges for attorney fees
26 in this period between initial contact with the client and the
27 first meeting of creditors are excessive in light of problems
28

MEMORANDUM OPINION

May 26, 1999

1 faced. The charges allowed for this period between initial
2 interview and first meeting are \$600.00.

3 Turning now to the period between conclusion of the first
4 meeting and confirmation, Mr. McGlothlen seeks compensation for
5 13.54 hours expended or \$1,624.80, once again over one and one half
6 times the average flat fee in this district.

7 A portion of this time was expended preparing for a hearing on
8 the Chapter 13 trustee's objection to confirmation. This hearing
9 was not in reality a contested hearing. It took approximately
10 five minutes of court time. During the course of the hearing Mr.
11 McGlothlen conceded that a modification needed to be filed, a draft
12 of which was available at the hearing. In essence this was a
13 status conference relating to a proposed modification of debtor's
14 plan.

15 Considering the time spent in this period the court attributes
16 8.29 hours to the modification process, including the trustee's
17 objection to confirmation. This was not a fully contested case
18 but rather a negotiated one. The time expended in this
19 modification process was excessive in regard to the problems faced.
20 The court allows 2.5 hours as a reasonable fee for this plan
21 modification work, or \$300.00.

22 Also, included in the period between conclusion of the first
23 meeting and confirmation is a substantial amount of time in dealing
24 with claims. The total time expended on claims matters in this
25 case is 8.22, including 2.3 hours pre first meeting and .93 hours
26 post confirmation. The vast majority of this time related to the
27 Sears claims. The debtor ultimately objected to the secured
28

1 nature of Sears two claims, which resulted in denial of secured
2 status to Sears of approximately \$1,400.00 in claims. The debtor
3 objected because Sears had failed to appropriately document its
4 claim of secured status. The time expended on this matter is
5 inordinate. The problem could have been dealt with by simple
6 filing of objection to the claims. The end result did not impact
7 the amount the debtor needed to pay to fund her plan. The
8 increased dividend to general unsecured creditors appears
9 negligible in light of the costs claimed for the procedure. The
10 amount allowed for these claim matters is 1.5 hours or \$180.00.

11 Aside from the .92 hours which the court has just considered
12 concerning claims, the post confirmation period time expended is
13 2.5 hours, all of which is devoted to an application for fees. The
14 court having reviewed the fee request as well as the fee requests
15 in the nine other consolidated cases, concludes that 1.5 hours is
16 a reasonable time for preparation of the average fee request in a
17 Chapter 13 case. In absence of any showing of unusual
18 circumstances relating to the fee request, the court will allow 1.5
19 hours or \$180.00 for the fee request in this case.

20 The court is aware, substantial additional time was expended
21 in seeking additional fees in excess of those awarded herein.
22 Counsel has not prevailed and the additional time expended is
23 attributed to that failed request.

24 In summary, Mr. McGlothlen has not met his burden in showing
25 that the additional fees requested in this matter were reasonable
26 and necessary. The court allows as reasonable fees in this matter
27 \$600.00 for the first time period, \$300.00 for the objection to
28

1 confirmation/modification process and \$180.00 for the claims
2 matters, and \$180.00 for the fee application, for a total award for
3 fees as costs of administration in this matter of \$1,260.00, as
4 opposed to the \$3,852.00 requested.

5 **3. Robert Eugene Gimlin and Tawnee Marie Gimlin.**

6 Robert E. Gimlin and Tawnee Gimlin filed a petition for
7 relief under Chapter 13 of the Bankruptcy Code on January 24, 1997.
8 Their schedules reflect assets of \$108,933.00 (\$26,000.00 - real
9 property; \$82,933.00 personal property) and liabilities of
10 \$81,193.00 (\$31,818.00 secured; \$49,375.00 unsecured).

11 Gimlins' schedules reflect income of \$4,320.82 and expenses of
12 \$3,033.69.

13 Gimlins' initial plan was a 100% plan to be paid over 47 1/3
14 months with a graduated payment beginning at \$1240.00 per month.
15 The Plan funding analysis indicated payments to unsecured claims of
16 \$49,375.00 over the term of the Plan.

17 The trustee did not object to Gimlins plan. The plan was
18 amended twice before confirmation. Each amendment altered the
19 schedule of graduated payments somewhat but otherwise was
20 essentially the same 100% plan. The plan as amended was
21 confirmed.

22 Post confirmation the plan was modified three times. This
23 series of modifications was caused by Mr. Gimlin's loss of
24 employment and the debtors move to Vancouver, Washington. The
25 first two post confirmation modifications provided a 100% plan, the
26 third modification was a \$23,548.95 base plan with a term of 47
27 months. In addition the third modification provided for a secured
28

1 claim for Sears.

2 Mr. McGlothlen filed an application for attorneys fees in this
3 case for \$4,079.20 of which \$1,000.00 has been paid, leaving a
4 balance requested of \$3,079.20.

5 Between the initial interview with the client and the first
6 meeting of creditors, Mr. McGlothlen spent 14.67 hours and seeks
7 \$1,758.00. This is twice what other practitioners charge to reach
8 the first meeting and more than the average fee charged for
9 handling the entire case. The Court examined the specifics of the
10 attorney fee charges to determine what unusual factors contributed
11 to these charges.

12 The court's review of the schedules and pleadings reveal that
13 this is a consumer case with approximately ten creditors. The case
14 does not appear to be a complicated one and there are few special
15 provisions in the original plan. The plan was amended twice
16 before confirmation, but these amendments merely changed the
17 graduated payment plan, although they did necessitate the
18 preparation of an amended income and expense schedules and plan
19 payment declaration. In addition, the first meeting of creditors
20 was postponed because of a death, and this caused additional
21 expenses of time. These circumstances would generate some
22 additional costs but hardly the amount requested.

23 The court finds that 9 hours (7 hours for preparation of
24 pleadings, 2 hours for delay of the first meeting) is a reasonable
25 time for the accomplishment of these tasks and thus allows
26 \$1,080.00 for fees in the period between initial contact with the
27 client through the first meeting of creditors.

28

MEMORANDUM OPINION

May 26, 1999

1 In the period from the conclusion of the first meeting to
2 confirmation of the plan Mr. McGlothlen spent 5.85 hours and
3 requested an award of \$702.00. The activity in this time period
4 dealt mainly with two amendments of the debtors' budget and plan to
5 reflect changes in debtors' circumstances. The second of these
6 amendments is a minor change to the payment schedule. Three
7 hours is a reasonable expenditure for these tasks for an award of
8 \$360.00.

9 In the period post confirmation, Mr. McGlothlen spent 13.5
10 hours and seeks \$1,619.20 in fees. During this period the debtors
11 modified their plan three times reflecting changes in their
12 circumstances, objected to the Sears claim, engaged in
13 miscellaneous activities and communications with the debtors and
14 the trustee's office and prepared a fee application.

15 Mr. McGlothlen seeks \$530.00 of fees for 4.42 hours devoted to
16 plan modification. These are form documents and the legal work
17 involves doing the appropriate math based on the client's
18 information and completing the form and communicating with the
19 trustee's office. It appears that some of the time claimed here
20 is devoted to what should be secretarial duties. The court allows
21 2 hours or \$240.00 for the plan modification.

22 Also during this period Mr. McGlothlen devoted 3.33 hours of
23 time for claims objections, for which he seeks an award of \$400.00.
24 The majority of this time appears to be devoted to objection to a
25 secured claim of Sears for \$937.86. The ground for this objection
26 is that the collateral is not identified. The objection was
27 sustained and an order was entered disallowing the secured nature
28

1 of this claim. However in the final modification, this secured
2 claim is once again provided for in the debtors' plan. The reason
3 for this change of treatment after disallowance of the claim is
4 unclear although the modification now identifies the item of
5 collateral. The question arises, why did Mr. McGlothlen bother to
6 object to the Sears secured claim? The funds available to pay the
7 secured claim in all the various plans, amendments and
8 modifications are more than adequate to pay the Sears claim in
9 full. The final modification provides for a base of \$23,548.95,
10 all to unsecured claims with the exception of the Sears claim and
11 Mr. McGlothlen's fees. Why expend \$400.00 on such a task? In
12 addition, the time expended is excessive. The court allows 1.5
13 hours for tasks related to claims in this case for a fee of
14 \$180.00.

15 The balance of time in this period post confirmation is spent
16 on miscellaneous matters relating to sale and purchase of property
17 by the debtor and communication with the debtors and trustee's
18 office for which the court allows the amount requested \$454.43 for
19 3.79 hours expended.

20 The court also allows the \$180.00 for the time expended on the
21 fee application.

22 The court allows as a reasonable fee in this matter \$1,080.00
23 for the period between initial client contact through first
24 meeting, \$360.00 for the period after first meeting to
25 confirmation, and \$454.43 for the miscellaneous post confirmation
26 services and \$180.00 for the fee application, for a total allowed
27 for attorneys fees in the sum of \$2,074.43 as opposed to \$4,079.20
28

1 requested.

2 **4. Cheri Lynn Topping**

3 Cheri Lynn Topping filed a petition for relief under
4 Chapter 13 of the Bankruptcy Code on January 30, 1997. Her
5 schedules reflect assets of \$33,255.00 (all personal property) and
6 liabilities of \$18,672.05 (\$4,140.71 secured; \$10,763.76 priority;
7 \$3,767.58 unsecured).

8 Topping's schedules reflect income of \$1,383.44 and expenses
9 of \$1,107.00.

10 Topping's initial plan was a \$4,686.20 base plan to be paid
11 over 36 months with a payment of \$276.44 per month. The plan
12 listed four creditors that asserted priority claims but the debtor
13 disputed these claims and proposed to pay them nothing. The debtor
14 also proposed to pay the secured claims on her car directly. The
15 Plan funding analysis indicated payments to unsecured claims of
16 \$3,767.58 over the term of the Plan.

17 The trustee objected to Topping's proposed plan on the grounds
18 that it improperly required the trustee to refund plan payments to
19 the debtor if she needed them to pay her taxes. The trustee
20 contended this provision was unworkable. The trustee also
21 objected on the grounds that the debtor's disposable income should
22 be increased by the amount of child support she was receiving.

23 Mr. McGlothlen responded to this objection by modifying the
24 plan to eliminate the objectionable provision relating to a refund
25 of payments by the trustee to pay the debtor's current taxes.

26 Mr. McGlothlen also filed a number of objections to claims in
27 this case: including the claims of the IRS; State Department of
28

1 Revenue; Labor & Industries and Developers Insurance Co. The
2 basis for the debtor's objection was that these claims related to
3 the debtor's former boyfriend's construction business which he was
4 able to coerce or trick her into putting into her name although she
5 had no ownership interest nor control.

6 The state responded to these motions by asserting that the
7 debtor had obtained a license for the business identifying herself
8 as the owner and had signed an agreement acknowledging the debt and
9 agreeing to repay it. The IRS also contested the objection to its
10 claim. An order was entered disallowing the claim of the bonding
11 company.

12 The State of Washington also objected to confirmation of
13 debtor's plan on the grounds she was not paying it's secured and
14 priority claims.

15 The debtor's plan as modified was confirmed on March 25, 1998.
16 The order confirming the plan increased the base to be paid to
17 \$9,951.84, to provide sufficient funds to pay the administrative
18 expenses, priority claims and secured tax claims. It appeared
19 that no funds would be paid to unsecured claimants.

20 Mr. McGlothlen filed an application for attorney fees in this
21 case of \$3,606.00 of which \$1,000.00 has been paid to date.

22 Between the initial interview with the client and the first
23 meeting of creditors, Mr. McGlothlen spent 14.5 hours and seeks
24 \$1,740.00 in fees. The court examined the specifics of the
25 attorney fee charges to determine what factors contributed to these
26 charges.

27 The court's review of the Schedules and pleadings revealed
28

1 nothing unusual in the number of creditors (approximately 17). It
2 does not appear that there were any unusual or unique problems in
3 preparing the schedules or Statement of Affairs. The plan's
4 special provisions included the following: listing the amounts
5 claimed as priority but contested; a consumer car loan to be paid
6 directly; and the provision for refund by the trustee to pay
7 current taxes. One of Mr. McGlothlen's expert witnesses, Mr.
8 Royal, testified in most cases he handles, the charges from initial
9 interview to first meeting do not usually exceed \$600.00. Mr.
10 McGlothlen's requested fees for this same period are nearly three
11 times that much. The evidence before the court does not justify
12 or explain why this case was so expensive to handle in this initial
13 contact to first meeting time frame.

14 In the period between the first meeting and plan confirmation,
15 Mr. McGlothlen seeks an additional \$1,671.60 for 13.93 hours of
16 work. The vast majority of this time was spent on claims or
17 research on claims and objections issues. Some 12.47 hours was
18 devoted to these activities. The results of this claim litigation
19 was mixed. The claim of the bonding company was disallowed as
20 duplicative of the claim of the Department of Revenue. The claims
21 of the State of Washington were allowed as secured and priority
22 claims although somewhat reduced in amount. The resolution of the
23 dispute on the IRS claim is unclear from the record. The plan
24 ultimately confirmed required the debtor to increase the base of
25 her plan from \$4,686.20 to \$9,951.84, and extend the term of the
26 plan from 36 months to 47 months. Allowance of the McGlothlen fee
27 request in full would require plan payments over an additional 11

28

1 months.

2 Mr. McGlothlen seeks an additional \$194.40 for fees incurred
3 post confirmation including preparing a fee request.

4 The court finds that Mr. McGlothlen fee request for the period
5 between his initial meeting with the client through the first
6 meeting of creditors is excessive. The problems of this debtor
7 were not unusually complicated and comparable charges by other
8 counsel for similar tasks are in the area of \$600. The problems
9 with the various taxing agencies would increase this somewhat.
10 The court allows an additional two hours or \$240.00 for this.
11 Leaving a total allowable fee for the period initial contact
12 through first meeting of \$840.00.

13 For the period after the first meeting through confirmation,
14 the court allows the \$1,671.60 requested as reasonable fees for
15 dealing with the claims and confirmation contest. It appears that
16 the matters disputed were of some substance and needed to be
17 resolved.

18 As to the period post confirmation, which primarily involved
19 preparation and prosecution of fee requests, the court allows the
20 \$174.00 requested.

21 The court allows as a reasonable fee in this matter \$840.00
22 for the period from initial contact to first meeting, \$1,671.60 for
23 the period after the first meeting to confirmation, and \$174.00 for
24 post confirmation services, for a total allowed claim for attorney
25 fees in the sum of \$2,685.00 as opposed to the \$3,606.00 requested.

26 **5. James Edward Lorton**

27 James Edward Lorton filed a petition for relief under
28

1 Chapter 13 of the Bankruptcy Code on February 13, 1997. His
2 schedules reflect assets of \$19,425.00; all personal property and
3 liabilities of \$51,024.30 (\$6,311.64 secured; \$13,820.19 priority;
4 \$30,892.47 unsecured).

5 Lorton's schedules reflect income of \$6,680.00 and expenses of
6 \$6,396.00.

7 Lorton's initial plan was a \$14,462.54 base plan to be paid
8 over 41 months with a payment of \$284.00 for 23 months and \$439.00
9 for the remaining 18 months. This plan provided for payment of 2
10 secured claims in the plan - Sears \$100.00 at \$2.63/month and
11 Future Shop \$425.00 at \$11.19 month. The plan provided for a
12 reduction of the secured claims of Sears from \$512.67 to \$100.00;
13 and for the Future Shop claim from \$998.97 to \$425.00. The debtor
14 also proposed to pay the secured claims on his 1991 Dodge directly.
15 The Plan funding analysis indicated payments to secured claims of
16 \$663.66, to priority claims \$12,152.63 and \$0.00 to the general
17 unsecured claims over the term of the Plan.

18 The trustee objected to Lorton's proposed plan on a number of
19 grounds: excessive discretionary expenses; proposed payments to a
20 creditor of less than \$15.00 per month; the proposed refund by the
21 Chapter 13 trustee if debtor needed funds to pay current taxes; and
22 failure to serve the monthly financial statement required for a
23 business debtor.

24 In response to these objections, the debtor filed a modified
25 plan. The modified plan deletes the provision requiring the
26 Chapter 13 trustee to refund plan payments to pay current taxes,
27 provides in full for payment of the Sears secured claim on
28

1 confirmation, and extended the plan payments of \$439.00 per month,
2 an additional two months to a 43 month term.

3 The trustee did not contest this modification and the plan as
4 modified was confirmed with a new base of \$15,312.00.

5 Mr. McGlothlen filed an objection to the secured claim of
6 Hurly State Bank dba Future Shops credit plan stating as grounds
7 the claim failed to identify the creditor's collateral and was not
8 supported by the requisite documentation. The Hurly State Bank
9 did not contest these allegations and an order was entered
10 disallowing the secured claim.

11 Mr. McGlothlen filed an application for attorneys fees in this
12 case for \$2,217.60 of which \$550.00 had been paid, leaving a
13 balance requested of \$1,667.60.

14 Between the initial interview with the client and the first
15 meeting of creditors, Mr. McGlothlen spent 10.87 hours and seeks
16 \$1,304.40. The Court examined the specifics of the attorney fee
17 charges to determine what unusual factors contributed to these
18 charges.

19 The court's review of the schedules and pleadings reveal that
20 this is a business case with approximately ten creditors. The
21 major problem in the case appears to be a \$13,820.00 of priority
22 debt to the IRS, which is the only major creditor the debtor
23 proposed to pay. A review of the pleadings does not reflect there
24 was a substantial dispute about the amount of this claim.
25 Although this is a business case it does not appear that fact
26 significantly increased the tasks in this case. It does appear
27 that there was a delay of some six months between first client
28

1 contact and filing which may have added some expense.

2 The court finds Mr. McGlothlen's fee request for the period
3 between his initial meeting with the client through the first
4 meeting of creditors is excessive. The problems of this debtor
5 were not unusually complicated and comparable charges by other
6 counsel for similar tasks are in the area of \$600.00. The delay
7 between first client contact and filing may have caused additional
8 time to be spent and the fact that this was a business filing may
9 have caused some additional costs for which the court allows an
10 additional hour or \$120.00 for this, leaving a total allowable fee
11 for this period between initial contact through first meeting of
12 \$720.00.

13 Between the conclusion of the first meeting and the entry of
14 the order confirming the modified plan, Mr. McGlothlen spent 6.39
15 hours and seeks \$766.80. Nearly half of this time appears devoted
16 to gathering the debtor's business financial reports and analyzing
17 this information for use in modifying the plan. Also included in
18 this period is some time on objection to a late claim of Hurly
19 State Bank.

20 For the period after the first meeting through confirmation,
21 the court allows the \$766.80 requested, with the majority of this
22 sum justified by the additional work required for a business case,
23 such as dealing with monthly reports and analysis, preparing the
24 modification and objecting to the claim of Hurly State Bank.

25 The court allows the sum of \$146.40 requested for preparation
26 of the fee request.

27 The court allows as a reasonable fee in this matter \$720.00
28

1 for the period between initial client contact through first
2 meeting, \$766.80 for the period after first meeting to
3 confirmation, and \$146.40 for post confirmation service, for a
4 total allowed for attorneys fees in the sum of \$1,633.20 as opposed
5 to \$2,217.60 requested.

6 **6. Clyde E. Steen and Tina M. Steen**

7 Clyde Ernest Steen and Tina Marie Steen filed a petition
8 for relief under Chapter 13 of the Bankruptcy Code on May 1, 1997.
9 Their schedules reflect assets of \$19,879.00 (all personal
10 property) and liabilities of \$51,887.51 (\$0 secured; \$564.24
11 priority; and \$51,323.27 unsecured).

12 Steens' schedules reflect monthly income of \$2,685.70 and
13 expenses of \$2,383.00.

14 Steens' initial plan was a \$7,650.00 base plan to be paid over
15 36 months with a payment of \$300.00 per month, but which fluctuated
16 to \$0.00 in the summer. This plan provided for payment of
17 \$564.24 to priority claims and \$5,870.56 to general unsecured
18 claims over the term of the plan.

19 The trustee objected to Steens' proposed plan on the grounds
20 that it improperly required the trustee to refund plan payments to
21 the debtors if they needed them to pay their current taxes. The
22 trustee contended this was unworkable. The trustee also contended
23 the debtors were budgeting excessively for discretionary expenses
24 and proposing unfair discrimination among creditors of the same
25 class.

26 Mr. McGlothlen filed an affidavit contesting the trustee's
27 position as to the debtors' budget. When the matter came on for
28

1 hearing before the court, it was set over for an evidentiary
2 hearing. However, the matter was settled before this hearing.

3 Mr. McGlothlen filed amended I & J Schedules (debtors' budget)
4 and a modification. The provision regarding refund of plan
5 payments for taxes was deleted. The provision for varying plan
6 fluctuating payments was eliminated with a provision which provided
7 for plan payments of \$127.00 per month for the remaining 27 months
8 of the plan. The base was modified to \$5,979.00, a reduction from
9 the original plan's base of \$7,650.00. This plan as modified was
10 confirmed.

11 Mr. McGlothlen filed an application for attorneys fees in this
12 case for \$3,109.20 of which \$550.00 was paid prior to filing.

13 Between the initial interview with the client and the first
14 meeting of creditors, Mr. McGlothlen spent 12.07 hours and seeks
15 \$1,448.40 in fees. The court examined the specifics of the
16 attorney fee charges to determine what factors contributed to these
17 charges.

18 The Court's review of the Schedules and pleadings revealed
19 nothing unusual in the number of creditors (approximately 15). It
20 does not appear that there were any unusual or unique problems in
21 preparing the schedules or statement of affairs. A reasonable
22 charge for these services through the first meeting of creditors is
23 \$600.00.

24 In the period between the conclusion of the first meeting and
25 plan confirmation, Mr. McGlothlen seeks an additional \$1,502.40 for
26 12.52 hours of work. This time was spent dealing with the
27 trustee's objections to confirmation. The objection to provision
28

1 for refund of payments to pay current taxes was easily disposed of
2 by the deletion of this unacceptable provision. The contest over
3 the nature and extent of the debtors' disposable income was much
4 more serious and demanding of effort. The Debtors' counsel
5 prepared an extensive affidavit focusing on the specifics of
6 debtors' budget and prepared for an evidentiary hearing on this
7 issue. The disputes were however settled before trial and a
8 modified plan submitted and confirmed. The expenditures in this
9 regard appear reasonable and the court allows the full \$1,502.40.

10 The Debtors' counsel seeks \$158.40 for post confirmation
11 services which are primarily the costs of preparing his fee
12 request. This sum is also reasonable and is approved.

13 The court allows a reasonable fee in this matter of \$600.00
14 for the period from initial client contact to first meeting,
15 \$1,502.40 for the period from conclusion of first meeting to
16 confirmation and \$158.40 for post confirmation services, for a
17 total allowed for attorney fees in the sum of \$2,260.80 as opposed
18 to the \$3,109.20 requested.

19 **7. Renato Quiroz and Joellen Quiroz**

20 Renato and Joellen Quiroz filed a petition for relief
21 under Chapter 13 of the Bankruptcy Code on June 9, 1997. Their
22 schedules reflect assets of \$62,117.00 (\$57,000.00 - real property;
23 \$5,117.00 personal property) and liabilities of \$54,080.69
24 (\$30,198.29 secured; \$23,882.40 unsecured).

25 Quiroz' schedules reflect income of \$1,786.00 and expenses of
26 \$1,592.65.

27 Quiroz' initial plan was a \$19,760.00 base plan to be paid
28

1 over 36 months with a payment of \$190.00 per month for two months
2 and \$570.00 month for the remaining 34 months. This plan provided
3 for payment of two secured claims in the plan - Yakima County
4 Treasurer, \$484.46 when funds available and McMahan's Furniture -
5 \$300.00 at \$15.00 month. The plan provided for a reduction of the
6 McMahan secured claims from \$1,323.00 down to the creditor's
7 collateral value \$300.00. The Plan funding analysis indicated
8 payments to secured claims of \$784.00 and unsecured claims
9 \$16,550.00 over the term of the Plan.

10 The trustee objected to Quiroz' proposed plan on the grounds
11 that it improperly required the trustee to refund plan payments to
12 the debtors if they needed them to pay their current taxes. The
13 trustee contended that this allowed debtors to modify their plan
14 without adequate notice to the creditors. Mr. McGlothlen
15 immediately responded to this objection by striking the objected to
16 provision from the plan. The trustee then withdrew his objection
17 to confirmation.

18 However shortly thereafter the trustee filed another objection
19 to plan confirmation, this time stating that the plan failed to
20 provide for the secured claim of Sears in the amount of \$1,044.12.

21 The debtors, through their counsel, Mr. McGlothlen filed a
22 motion objecting to the Sears secured claim of \$1,044.12,
23 contending that it should be allowed only for the value of the
24 collateral \$290.00. This objection to claim was not contested and
25 an order was entered granting debtors the requested relief.

26 Likewise, Mr. McGlothlen objected to the secured claim of
27 Helig-Meyers in the sum of \$1,470.77, contending that it should be
28

1 allowed only for the value of the collateral \$200.00. This
2 objection was not contested and an order was entered granting
3 debtors the requested relief.

4 The debtors' plan was confirmed with provision for payment of
5 the secured claims upon resolution of the claims disputes.

6 Mr. McGlothlen filed an application for attorney fees in this
7 case for \$2,073.60 of which \$1,000.00 has been paid to date.

8 Between the initial interview with the clients and first
9 meeting of creditors, Mr. McGlothlen spent 9.03 hours and seeks
10 \$1,740.00 in fees. The court examined the specifics of the
11 attorney fee charges to determine what factors contributed to these
12 charges.

13 The Court's review of the schedules and pleadings revealed
14 nothing unusual in the number of creditors (approximately 23
15 creditors). The plan had few special provisions, dealing only
16 with the secured claims of the Yakima County Treasurer and Sears.
17 The court finds no reason for these charges to exceed \$600.00.

18 In the period between first meeting and plan confirmation, Mr.
19 McGlothlen seeks an additional \$394.80 for 3.29 hours of work.
20 This time includes 1.78 or \$213.60 directed to claims disputes.
21 The court allows \$181.20 for this period and will deal with the
22 total allowed for claims litigation in the next period.

23 In the period post confirmation, Mr. McGlothlen seeks \$391.20
24 for 3.26 hours of work. This time is devoted entirely to claims
25 litigation and when added to the claim litigation time expended
26 between first meeting and confirmation totals 5.04 hours and
27 \$604.80 in fees. This sum is excessive for the simple nature of
28

1 this uncontested claim litigation. The Court finds 2.5 hours
2 reasonable for this task and allows \$300.00 of fees for claims
3 litigation.

4 The Court also allows 1.5 hours for the fee application in
5 this case for an award of \$180.00.

6 The Court allows as a reasonable fee in this matter \$600.00
7 for the period from initial contact to first meeting, \$181.20 for
8 the period from first meeting to confirmation, \$300.00 for claims
9 litigation and \$180.00 for the fee application, for a total allowed
10 claim for attorneys fees in the sum of \$1,261.20 as opposed to the
11 \$2,073.60 requested.

12 **8. Jeanette A. Adams**

13 Jeanette A. Adams filed a petition for relief under Chapter
14 13 of the Bankruptcy Code on June 9, 1997. Her schedules reflect
15 assets of \$29,694.00 (\$5,500.00 - real property; \$24,194.00
16 personal property) and liabilities of \$88,990.76 (\$4,554.36
17 secured; \$84,436.40 unsecured).

18 Adams' schedules reflect income of \$2,708.12 and expenses of
19 \$2,033.58.

20 Adams' initial plan was a \$24,120.00 base plan to be paid over
21 36 months with a payment of \$670.00 per month. The Plan funding
22 analysis indicated payments to unsecured claims \$21,258.00 over the
23 term of the Plan.

24 The trustee objected to Adams' proposed Plan on the grounds
25 that it improperly required the trustee to refund plan payments to
26 the debtor if she needed them to pay taxes. The trustee contended
27 this provision allowed modification of the plan without adequate
28

1 notice to the creditors. The trustee also objected that the debtor
2 was not paying all her disposable income into the plan, contending
3 that she could pay an additional \$335/month for a total monthly
4 payment of \$1005.00.

5 The objection as to the refund of payments for taxes was
6 eliminated. The objection regarding disposable income was
7 compromised with the debtor agreeing to increase her payments to
8 \$720.00/month and thus increasing the base to \$25,920.00 and the
9 Plan was confirmed.

10 Mr. McGlothlen filed an application for attorney fees in this
11 case for \$1,636.80 of which \$1,000.00 has been paid to date.

12 Between the initial interview with the client and the first
13 meeting of creditors, Mr. McGlothlen spent 8.48 hours and seeks
14 \$1,017.60 in fees.

15 The Court's review of the schedules and pleadings revealed
16 nothing unusual in the number of creditors (approximately 20). It
17 does not appear there were any unusual or unique problems in
18 preparing the schedules or Statements of Affairs. The only non-
19 standard provision related to direct payments by debtor of her car
20 loan. The charges for these services should not have exceeded
21 \$600.00.

22 In the period between the first meeting and plan confirmation,
23 Mr. McGlothlen seeks an additional \$355.20 for 2.96 hours of work.
24 This is reasonable given the fact there was an objection relating
25 to disposable income.

26 The debtor's attorney seeks \$264.00 for 2.2 hours of work in
27 preparing the fee application. A portion of this appears to be
28

1 work on the attorney's computer and should be part of overhead.
2 The court allows \$180.00 for this fee application preparation.

3 The court allows as a reasonable fee in this matter \$600.00
4 for the period from initial contact to first meeting, \$355.20 for
5 the period between first meeting and confirmation, and \$180.00 for
6 post confirmation services, for a total allowed claim for attorneys
7 fees in the sum of \$1,135.20 as opposed to the \$1,636.80 requested.

8 **9. Guadalupe Montelongo and Francisca Montelongo**

9 Guadalupe and Francisca Montelongo filed a petition for relief
10 under Chapter 13 of the Bankruptcy Code on June 24, 1997. Their
11 schedules reflect assets of \$68,541.00 (\$65,000 - real property;
12 \$3,541.00 personal property) and liabilities of \$42,153.64
13 (\$40,423.00 secured; \$1,739.64 unsecured).

14 Montelongo's schedules reflect income of \$1,419.88 and
15 expenses of \$568.85.

16 Montelongo's initial plan was a \$51,061.33 base plan to be
17 paid over 60 months with a payment of \$851.03 per month. This plan
18 provided for payment of the secured claims on the debtors' home in
19 the sum of \$31,500.00 plus the arrearage on the same obligation of
20 \$14,005.20. The Plan funding analysis indicated payments to
21 secured claims of \$45,505.20 and unsecured claims of \$0.00 over the
22 term of the Plan.

23 Between the initial interview with the client and the first
24 meeting of creditors, Mr. McGlothlen spent 11.52 hours and seeks
25 \$1,384.40 in fees. The court examined the specifics of the
26 attorney fee charges to determine what factors contributed to these
27 charges.

1 The court's review of the schedules and pleadings revealed
2 nothing unusual in the number of creditors (approximately 5). It
3 does not appear that there were any unusual or unique problems in
4 preparing the schedules or Statements of Affairs. The plan's few
5 special provisions involve paying the secured claim on their
6 residence within the plan and paying the arrearage on this claim
7 during the plan term. The reasonable charges for this period
8 should not exceed \$600.00.

9 There were no objections filed to debtors' plan and the plan
10 was confirmed.

11 Post confirmation, Mr. McGlothlen filed an objection to the
12 claims of Yakima County Credit service for \$2,757.49 and \$983.97,
13 alleging it should hold an allowed claim in the sum of \$2,000.00 as
14 a general unsecured claim. There was no objection and the relief
15 requested by debtors was granted.

16 Mr. McGlothlen filed an application for attorneys fees in this
17 case of \$2,282.40 of which \$1,000.00 has been paid to date.

18 In the period between first meeting and plan confirmation, Mr.
19 McGlothlen seeks an additional \$330.00 for 2.75 hours of time. Of
20 these 2.75 hours 1.72 hours were spent on claims issues, leaving a
21 balance of 1.03 on other matters. The Court allows these 1.03
22 hours or \$123.60 for this period.

23 As to claims matters in addition to the 1.72 hours spent pre-
24 confirmation, an additional 3.44 hours were spent on claims matters
25 post confirmation or a total of 5.16 on claims issues or \$730.80 of
26 time. It should be kept in mind the plan proposed and confirmed
27 pays little to the unsecured claims. Although there may be some
28

1 utility in clarifying the claim of Yakima County Credit Service, it
2 doesn't justify or require the expenditure of \$730.80 worth of
3 time. A reasonable allowance for this claim activity would be
4 \$240.00.

5 Mr. McGlothlen claims and should be allowed 1.41 hours of time
6 or \$169.70 for his fee application.

7 The Court allows as a reasonable fee in this matter \$600.00
8 for the period from initial contact to first meeting, \$123.60 for
9 the non claim activities after the first meeting to confirmation,
10 \$240.00 for the claim litigation, and \$169.20 for the fee
11 application, for a total allowed claim for attorney fees in the sum
12 of \$1,132.80 as opposed to the \$2,282.40 requested.

13 **10. Robert Wayne Frank & Catina Marie Frank**

14 Robert & Catina Frank filed a petition for relief under
15 Chapter 13 of the Bankruptcy Code on July 18, 1997. Their schedules
16 reflect assets of \$17,983.00 (\$17,983.00 personal property) and
17 liabilities of \$37,306.72 (\$13,304.08 secured; \$2,668.05 priority;
18 \$21,334.59 unsecured).

19 Franks' schedules reflect income of \$3,046.34 and expenses of
20 \$2,662.00.

21 Franks' initial plan was a \$15,167.18 base plan to be paid
22 over 36 months with a payment of \$384.34 initially and payments
23 fluctuating thereafter. The Plan funding analysis indicated
24 payments to secured claims of \$1,068.81, \$2,668.00 to priority
25 claims, \$3,004.36 to separately classified claims and \$6,459.29 to
26 unsecured claims.

27 The debtors original plan was a complicated one. It featured
28

1 fluctuating payments, payments to secured creditors, payments to
2 priority creditors, separate classification of criminal fines, and
3 direct payments to secured creditors on the debtors' cars. The
4 schedules listed 36 creditors.

5 The trustee objected to the original plan alleging that the
6 plan payment should be \$644.00/month as opposed to the \$384.34
7 proposed; that debtors were improperly proposing to pay an impaired
8 claim directly; that the debtors had not met the requirements for
9 separate classification of claims; and that they were not paying a
10 60 month plan in light of the proposed separate classification.
11 There was substantial litigation during the course of this case.
12 Three different contested confirmation hearings were held. The
13 case was never confirmed and the debtors ultimately converted the
14 case to one under Chapter 7.

15 Post conversion Mr. McGlothlen filed an application seeking
16 \$4,750.00 of which \$650.00 has been paid. The amount paid to the
17 trustee during the life of the Chapter 13 and currently on hand is
18 \$1,687.42.

19 The debtors' attorney seeks \$2,190.00 of compensation for the
20 expenditure of 18.25 hours in preparation of the initial schedules,
21 plan and required accompanying documents. This is in excess of
22 three times what one might expect in the typical case.

23 As already noted the plan was a complicated one with a number
24 of different issues to deal with. However this does not justify
25 the expenditure of the amount of time claimed. The number of
26 creditors (36) and the number of special provisions would justify
27 an enhanced charge and the court allows 7.5 hours or \$900.00 for
28

1 preparation of the petition, schedules, plan and other required
2 documents.

3 A portion of the time in the period prior to the first meeting
4 was devoted to research related to the separate treatment of the
5 debtor's criminal fines. Additional time was devoted to this
6 issue after the first meeting. With the total time devoted to the
7 separate classification of criminal fines totaled some 6.5 hours.
8 At the time of this expenditure the appropriate manner of treatment
9 of criminal fines in Chapter 13 was unresolved in this court. The
10 expenditure of time in research was appropriate. In addition,
11 time was expended as a result of the debtor's arrest for criminal
12 violations. The time of 6.5 hours or \$780.00 expended on these
13 criminal related matters are appropriate and should be allowed.

14 The debtors objected to the claim of Hurly State Bank/Future
15 Shop, \$1,183.70 claimed as secured in undisclosed collateral and
16 \$509.48 as unsecured. Hurly State Bank amended its claim to
17 \$1,693.18 unsecured and the debtor withdrew its objection to the
18 amended claim. Mr. McGlothlen expended 3.1 hours on this matter.
19 An expenditure of that much time on this matter is unjustified.
20 The court allows 1 hour or \$120.00 on this claim matter.

21 In the course of this case there were two trustee objections
22 to confirmation, two modification, three hearings, and finally a
23 conversion of the case to one under Chapter 7, as a result of a
24 separation of the debtors and additional criminal problems. All
25 of these problems, justified expenditure of attorney time. At the
26 time of the conversion of this case, the Chapter 13 Trustee had on
27 hand the sum of \$1,687.42. Pursuant to §1326(a)(2), Mr.

28

1 McGlothlen has sought payment to him of that sum as allowed costs
2 of administration. Mr. McGlothlen has previously received \$650.00
3 from his client for fees in this matter, thus the total fees paid
4 or available for payment amounts to \$2,337.42.

5 The court has determined that \$900.00 was a reasonable fee for
6 preparation of the pleadings in this case, \$780.00 was an
7 appropriate fee related to criminal problems and separate
8 classification of these claims, and that \$120.00 was allowed for
9 claims litigation, or a total of \$1,800.00. The court believes
10 that the balance of the time expended by Mr. McGlothlen on this
11 case justifies charges in excess of the \$537.42 remaining available
12 for distribution. Therefore, the court allows attorney fees in
13 this case of \$2,337.42 of which \$650.00 has already been paid,
14 leaving a balance of \$1,687.42 in the hands of the Chapter 13
15 Trustee to be distributed to Mr. McGlothlen as costs of
16 administration in this case.

17 **11. Andie S. Getchell.**

18 Andie S. Getchell filed a petition for relief under
19 Chapter 13 of the Bankruptcy Code on October 22, 1997. Her
20 schedules reflect assets of \$20,380.00 (all personal property) and
21 liabilities of \$46,538.51 (\$11,545.00 secured; \$34,993.51
22 unsecured).

23 Getchell's schedules reflect income of \$2,447.78 and expenses
24 of \$2,369.00.

25 Getchell's initial plan was a \$12,565.68 base plan to be paid
26 over 36 months with a payment of \$78.78 per month for two months
27 and fluctuating plan payments thereafter. The debtor proposed to
28

1 pay the secured claims directly. The Plan funding analysis
2 indicated payments to unsecured claims of \$10,584.11 over the term
3 of the Plan.

4 The trustee objected to the debtor's proposed plan on the
5 basis that she was not devoting all her disposable income to the
6 plan, suggesting that an additional \$200.00 per month was
7 available. The debtor contested this objection and the matter was
8 set for an evidentiary hearing. This objection was ultimately
9 withdrawn by the trustee and the plan confirmed as drafted.

10 Mr. McGlothlen filed an application for attorneys fees in this
11 case of \$2,721.60, of which \$1,000.00 has been paid to date.

12 Between the initial interview with the client and the first
13 meeting of creditors, Mr. McGlothlen spent 16.74 hours and seeks
14 \$2,008.80 in fees. The court examined the specifics of the
15 attorney fee charges to determine what factors contributed to these
16 charges.

17 The court's review of the schedules and pleadings revealed
18 nothing unusual in the number of creditors (approximately 9). It
19 does not appear that there were any unusual or unique problems in
20 preparing the schedules or statement of affairs. The plan's few
21 special provisions; a graduated payment schedule with supplemental
22 payments, and direct payment to three secured creditors. These
23 special provisions do not justify charges much out of the ordinary.
24 The Court would allow a base amount of \$600.00 for these services.

25 The filing was evidently an emergency one to deal with levying
26 creditors and this would increase the cost somewhat as would the
27 fact that notices must be specially sent to the levying creditors.

28

1 These factors would justify an additional 2 hours of time or
2 \$240.00. Likewise the first meeting of creditors was in Richland
3 requiring Mr. McGlothlen to travel, justifying an additional three
4 hours of travel time or \$360.00. The court finds a fee of
5 \$1,200.00 reasonable for the services rendered between initial
6 contact with the debtor through the first meeting.

7 In the period between the first meeting and plan confirmation,
8 Mr. McGlothlen seeks an additional \$567.60 for 4.73 hours of work.
9 This time was expended on dealing with the contested confirmation
10 issues concerning the debtor's disposable income and some claims
11 matters. It appears this time is appropriate and should be
12 awarded as requested.

13 The debtor's attorney requests an allowance of 1.21 hours for
14 preparing his fee application. This is reasonable and is allowed
15 in the amount to \$145.20.

16 The Court allows as a reasonable fee in this matter \$1,200.00
17 for the period from initial contact to first meeting, \$567.60 for
18 the period after the first meeting to confirmation, and \$145.20 for
19 preparation of the fee application, for a total allowed claim for
20 attorney fees in the sum of \$1,912.80 as opposed to the \$2,721.60
21 requested.

22 **12. Costs**

23 Mr. McGlothlen has sought an additional allowance for
24 costs expended in each of the consolidated cases. The costs
25 requested in each of the respective cases are allowed as costs of
26 administration in said cases.

27

28

1 IV.

2 Summary and Conclusion

3 Mr. McGlothlen is awarded attorneys fees and costs as follows:

4 In the case of Charlene L. Huston, attorneys fees of \$1,260.00 and
5 costs of \$220.95, a total of \$1,480.95, of which \$1,000.00 had been
6 paid as of the time of the hearing;

7 In the case of Robert Eugene Gimlin and Tawnee Marie Gimlin,
8 attorneys fees of \$2,074.43 and costs of \$135.56, a total of
9 \$2,209.99 of which \$1,000.00 had been paid as of the time of the
10 hearing;

11 In the case of Cheri Lynn Topping, attorneys fees of \$2,685.60
12 and costs of \$136.35; a total of \$2,821.95 of which \$1,000.00 had
13 been paid as of the time of the hearing;

14 In the case of James Edward Lorton, attorneys fees of
15 \$1,633.20 and costs of \$95.35, a total of \$1,728.55 of which
16 \$550.00 had been paid as of the time of the hearing;

17 In the case of Clyde E. Steen and Tina M. Steen, attorneys
18 fees of \$2,260.80 and costs of \$118.31, a total of \$2,379.11 of
19 which \$550.00 had been paid as of the time of the hearing;

20 In the case of Renato Quiroz and Joellen Quiroz, attorneys
21 fees of \$1,261.20 and costs of \$102.23, for a total of \$1,363.43 of
22 which \$1,000.00 had been paid as of the time of the hearing;

23 In the case of Jeanette A. Adams, attorneys fees of \$1,135.20
24 and costs of \$108.65, a total of \$1,243.85 of which \$1,000.00 had
25 been paid as of the time of the hearing;

26 In the case of Guadalupe Montelongo and Francisca Montelongo
27 attorneys fees of \$1,132.80 and costs of \$72.23, a total of
28

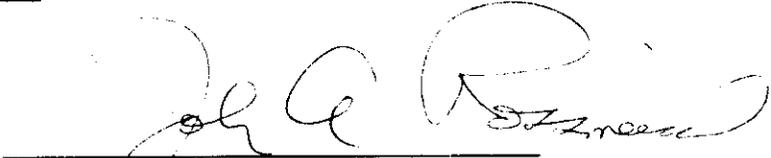
1 \$1,205.03 of which \$1,000.00 had been paid as of the time of the
2 hearing;

3 In the case of Robert Wayne Frank and Catina Marie Frank
4 attorneys fees of \$2,337.42 and costs of \$267.55, a total of
5 \$2,604.97 of which \$650.00 had been paid as of the time of the
6 hearing; and

7 In the case of Andie S. Getchell attorneys fees of \$1,912.80
8 and costs of \$125.22, a total of \$2,038.02 of which \$1,000.00 had
9 been paid as of the time of the hearing.

10 This memorandum opinion shall constitute the Court's findings
11 of facts and conclusions of law pursuant to F.Bk.R.P. 9014 and
12 7052.

13 DONE this 27 day of May, 1999.

14 
15 _____
16 JOHN A. ROSSMEISSL
17 BANKRUPTCY JUDGE
18
19
20
21
22
23
24
25
26
27
28