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

IN RE

**WALTER C. SMISCON,
Debtor .**

NO. 97-06526-R33

MEMORANDUM OPINION

This case involves Gary McGlothlen's request for allowance of attorneys fees in the above-captioned case. This court has heretofore rendered Memorandum Opinions in twelve other cases involving the award of attorneys fees in Chapter 13 cases to Mr. McGlothlen. The principles set out in those Memorandum Opinions are equally applicable to this decision. Those decisions may be found in the case of In Re Charlene L. Huston, No. 96-04212-R33 (includes ten cases), In re Slagle, No. 98-00337-R33 and In re Kincannon, No. 98-03749-R33.

Walter C. Smiscon filed a petition for relief under Chapter 13 of the Bankruptcy Code on December 2, 1997. His schedules reflect assets of \$20,708.00 (all personal property) and liabilities of \$40,698.00 (\$14,000.00 secured; \$26,698.63 unsecured).

Smiscon's schedules reflect monthly income of \$1,489.59 and expenses of \$1,143.50.

Smiscon's initial plan was a \$15,525.00 base plan to be paid over 45 months with a payment of \$345.00 per month. The Plan funding analysis indicated payments to secured claims of \$13,212.70, and to unsecured claims of \$309.80 over the term of the Plan. The payments to secured creditors were all to be made to pay off debtor's 1994 Ford Probe.

The principal thrust of debtor's plan was dealing with the secured claim of Wells Fargo Bank which was secured by debtor's 1994 Ford Probe. During the course of the plan the debtor valued

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1 the vehicle and reduced the value of this secured claim from \$14,000 to \$11,000. The debtor also
2 objected to the secured claim of Hurley State Bank and responded to a motion to dismiss for non-
3 payment. During the course of the confirmation process, the debtor modified his plan three times
4 before it was ultimately confirmed.

5 The analysis of the time spent during this case has been made difficult by Mr. McGlothlen's
6 habit of lumping all charges in one time entry. It is impossible to accurately determine how much
7 time was spent on any specific task. In my analysis of the time expended, I have attempted to
8 allocate the time expended on any given day into tasks. Mr. McGlothlen's time keeping practices
9 made the allocation very difficult. The testimony at the hearing was not particularly helpful in this
10 regard. I have attempted to make the best of the situation. The practice of time lumping is an
11 unacceptable practice before this court.

12 The problem of lumping is compounded by Mr. McGlothlen's failure through much of the
13 time keeping to segregate secretarial and clerical time from attorney time. This is a serious problem
14 for Mr. McGlothlen in that he has no office help and does everything himself. He keeps his time
15 on his computer while he is doing the work. Since a substantial amount of the time spent on a
16 Chapter 13 in a law office is clerical or secretarial time, this practice leads to over billing. Although
17 Mr. McGlothlen testified the time spent is accurate, even if that were so, the mixture of billable
18 attorney time with non-billable overhead is the great danger in this practice. That it results in over
19 billing is evidenced by the now thirteen opinions this court has rendered on Mr. McGlothlen's fees.

20 Mr. McGlothlen filed an application for attorney fees in this case for \$3,034.80 of which
21 \$550.00 had been paid at the time of the application.

22 Between the initial interview with the clients and the first meeting of creditors, Mr.
23 McGlothlen spent 10.61 hours and seeks \$1,273.32 in fees.

24 As previously observed in Mr. McGlothlen's twelve previous disputed fee cases before this
25 court, the charge for preparing a Chapter 13 case through the first meeting of creditors is in the
26 neighborhood of \$600.00. The fees sought by Mr. McGlothlen here are twice that much.

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1 During this time period, there was some time expended on the valuation and cram down of
2 the claim of Wells Fargo Bank secured by the debtor's 1994 Ford Probe. The court, in its analysis
3 has attempted to back out the time expended on dealing with Wells Fargo's secured claim in the
4 time period and treat it separately. In this regard the court has allocated .5 of an hour on September
5 4, 1997; .33 of an hour on November 6, 1997; .54 of an hour on November 14, 1997 and all of the
6 time on November 26, 1997 to dealing with the Wells Fargo secured claim. This totals 1.67 hours
7 or \$200.40 of time, and this has been subtracted from the 10.61 hours of total time spent in the
8 period from initial court contact to first meeting. This leaves 9.94 hours or \$1,072.92 of fees for
9 the period from first client contact through first meeting.

10 The Court's review of the schedules and pleadings revealed 14 creditors. It does not appear
11 there were any unusual or unique problems in preparing the schedules or Statement of Affairs. The
12 attorney fees for this period should not exceed \$600.00, excluding time spent on the Wells Fargo
13 claim.

14 In the period between the first meeting and plan confirmation, Mr. McGlothlen seeks an
15 additional \$1,609.20 for 13.41 hours of work. Of this sum 8.99 hours or \$1,078.80, the court has
16 attributed to the Wells Fargo claim. This 8.99 hours includes 3.5 hours on January 20, 1999; .67
17 hours on February 11, 1998; .9 hours on March 10, 1998; .48 hours on April 22, 1998; .41 hours on
18 March 16, 1999; .96 hours on March 30, 1999, and 2.07 hours on April 5, 1999. This time taken
19 with the 1.67 hours in the period first contact through first meeting total 10.66 hours or \$1,279.20
20 in fees.

21 It is interesting to note that this valuation/cram down procedure was not opposed by Wells
22 Fargo. In short, it went by default. Valuation and reduction of secured claims in Chapter 13 cases
23 is a common and usually inexpensive procedure. Here the debtor's counsel had substantial difficulty
24 in accomplishing this simple task. The initial order which he submitted was rejected by the court
25 for procedural deficiencies. Much of the additional time flowed as a result of that failure and
26 attempts to satisfactorily meet statutory requirements. These difficulties are quite surprising for one
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1 who specializes in handling bankruptcy matters. Neither the creditors nor the debtor should be
2 required to pay for the inordinate time expended to accomplish this simple task. The court allows
3 two additional hours of time for valuation and cram down of the Wells Fargo claim or \$240.00.

4 The debtor's attorney also objected to the secured claim of Future Shop, which had filed a
5 claim which it asserted was partially secured in the amount of \$500.00. Debtor's attorney objected
6 to the secured portion of the claim on the grounds the collateral was not identified and that the claim
7 was not properly documented. This objection was unopposed and a default order consistent with
8 the objection was entered. Debtor's attorney seeks compensation for 1.38 hours of time or \$165.60
9 of fees for this service. This was a very simple task requiring minimum attorney time, the
10 remainder being secretarial. The court allows .5 hour or \$60.00 for this task.

11 The trustee filed a motion to dismiss this case for non payment. The debtor's attorney
12 objected to dismissal and prepared and filed an affidavit explaining the debtor's failure in light of
13 a serious accident which had befallen him. This affidavit evidently satisfied the trustee and the
14 motion was not pursued. The court allows 1.5 hours or \$180.00 for these services.

15 The debtors' attorney seeks \$152.40 for 1.27 hours of work in preparing the fee application.
16 The court allows \$152.40 for this fee application preparation.

17 The court allows as a reasonable fee in this matter \$600.00 for the period from initial contact
18 to first meeting , excluding time spent on the Wells Fargo matter, \$240.00 for the time spent on the
19 Wells Fargo matter, \$60.00 for the Future Shop claim objection, \$180.00 for the motion to dismiss
20 for non-payment and \$152.40 for the fee application for a total fee of \$1,232.40.

21 This memorandum opinion will constitute the court's Findings of Fact and Conclusions of
22 Law.

23 Done this 9 day of November, 1999.

24 
25 JOHN A. ROSSMEISSL
26 BANKRUPTCY JUDGE

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CERTIFICATE OF MAILING

The undersigned Clerk of the U.S. Bankruptcy Court for the Eastern District of Washington hereby certifies that a copy of the document on which this stamp appears was mailed this date to the following parties as required by the Bankruptcy code and rules of Bankruptcy.

McGlothlin
Baudin

T.S. McGregor, Clerk

By: Ben Rogers
Deputy Clerk

11/10/99
Date