

Wade F. Waldrip ABN 11756
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Applicant

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:) Case No. 2: 05-14971-PHX-RJH
)
MICHAEL THOMAS HERZOG,) Chapter 13 Proceedings
)
Debtor.) RESPONSE TO TRUSTEE'S
) OBJECTION TO PAYMENT OF
) ATTORNEY'S FEES AND COSTS

Wade F. Waldrip, Applicant, hereby responds to the Trustee's Objection to Application for Payment of Attorney Fees and Costs. Applicant urges that Trustee's objection be overruled, and that Applicant's fees and costs be paid as requested in his pending Application.

The Trustee is correct with respect to the two typographical errors in Applicant's fee application. Specifically, Applicant's entries for January 5, 2006, and January 11, 2006, should read .5 and .2 hours, respectively. The Trustee is also correct that the majority of courts, including the Ninth Circuit, have adopted the so-called "lodestar" formula in determining attorney's fees. In all other respects, however, the Trustee's Objection is unwarranted.

The Trustee, on the strength of nothing more than an unarticulated "belief," asserts that "approximately" 30% of the total time spent on a case should be performed at a paralegal rate. Trustee's Objection at page 3, line 20. The Trustee does not deign to provide any legal authority for this fiat. Nor does the Trustee

suggest that the work delineated in Applicant's application was not satisfactorily performed.

According to the Trustee, the time Applicant's legal assistant devoted to the present case represented "approximately 4.5%" of the total time needed to secure confirmation of the Debtor's Chapter 13 Plan. Applicant has no reason to dispute this assertion, but concedes that he does not enjoy the leisure to compute the relative percentages of time spent on any particular debtor's case. More to the point, however, is that the work *was* done, as duly reflected in Applicant's fee application.

Notwithstanding the Trustee's suppositions, it is the lawyer, not the Trustee, who is in the best position to determine the allocation of labor relative to each case. Because of counsel's intimate, day-to-day knowledge of each case, counsel's judgment as to how labor should be allocated, consistent with the efficient prosecution of the case and the best interests of the debtor, should be accorded far greater weight than the Trustee's Olympian conjectures. In short, the Trustee's asserted basis for the arbitrary reduction of Applicant's fee constitutes nothing more nor less than Monday morning quarterbacking.

Aside from the reduction resulting from correction of the two typographical errors noted previously herein, Applicant's pending fee application should be granted.

Respectfully submitted this 1st day of May, 2006.

/s/ Wade F. Waldrip
Wade F. Waldrip
Applicant

Copy of the foregoing mailed this
1st day of May, 2006, to:

Russell A. Brown, Trustee
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Michael Herzog
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/s/ Chris J. Smith