

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE:

BKY 03-40363

*Russell McCullough, and
Rose M. McCullough,*

**TRUSTEE'S RESPONSE TO FEE
APPLICATION BY ATTORNEY
FOR DEBTOR**

Debtor(s).

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Jasmine Z. Keller, the standing Chapter 13 Trustee (the "Trustee"), by her undersigned attorney, submits this response to the Notice of Hearing and Application for Compensation by Attorney for Debtor (the "Application").

2. The Court will hold a hearing on the Application on February 18, 2004, at 11:00 a.m., or as soon thereafter as counsel can be heard, in Courtroom 7 West, U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. As of February 3, 2004, the Trustee has received \$4,125 from the above-named debtor(s). The debtors are delinquent in their payments to the Trustee in the sum of \$375, through the month of January 2004 only.

4. The Trustee has \$933.07 on hand, including \$558.06 being pending approval of the Application.

5. The confirmed modified plan estimated the amount of the Applicant's attorney fees to be paid by the Trustee as \$2,105.88 in ¶ 3, inclusive of the sum of \$1,605.88 previously awarded to the Applicant, therefore, the plan estimated the Applicant's attorney fees for the present Application to be \$500, whereas the Applicant is, in fact, seeking a total of \$1,019.25 to be paid by the Trustee.

6. If allowed in full, the actual amount to be paid by the Trustee will reduce the amount of funds available for distribution to the debtors' nonpriority unsecured creditors by \$519.25. The actual amount of funds available for distribution to the debtors' nonpriority unsecured creditors is only \$994.54, based on the Trustee's current 6% fee. In short, over half of the estimated funds available for payment of unsecured nonpriority claims will instead be paid to the Applicant, if the Application is allowed in full.

7. Because the debtors' nonpriority unsecured claims totaled approximately \$52,953, the confirmed modified plan in this case would have paid this class of creditors less than 2% of their allowed claims. If the Application is allowed in full, this percentage distribution will drop to less than 1%. Given the negligible distribution to this class of

creditors to begin with, the Trustee does not object to allowance of the Application.

8. The Applicant is advised that the Trustee will make payment of the allowed compensation in accordance with the payment schedule set forth in ¶ 3 of the confirmed modified plan, in order to preserve the integrity of the distribution scheme as it relates to the debtors' other priority and secured creditors.

9. The compensation requested is reasonable in amount for the services rendered, all of which appear to have been necessary for the proper representation of the debtors in this case. Applicant's hourly rate is reasonable for an attorney with his level of experience.

10. The Trustee's Counsel has reviewed the Application and the request for allowance of fees and expenses. The Trustee **does not oppose the Court's granting the relief requested.**

Dated : February 3, 2004

Jasmine Z. Keller, Trustee:

By: /e/ Thomas E. Johnson
Thomas E. Johnson, #52000
Counsel to Chapter 13 Trustee
12 South Sixth Street, Suite 310
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: February 3, 2004

/e/ Thomas E. Johnson
Thomas E. Johnson

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on February 3, 2004, I served Trustee's Response to Fee Application by Attorney for Debtor(s) on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail:

Timothy C. Theisen
Attorney at Law
229 Jackson Street, Suite 105
Anoka, MN 55303

Russell McCullough
Rose M. McCullough
2646 Girard Ave. N.
Minneapolis, MN 55411

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: February 3, 2004

/e/ Thomas E. Johnson