

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Christopher Nathan Ralph,

Debtor.

Case No. 21-31428

Chapter 7

ORDER

At St. Paul, Minnesota.

This case came before the Court on September 28, 2021 for a hearing on the Disclosure of Compensation of Attorney for Debtor (“Disclosure”). Dkt. No. 7, at 48–51; see also Local Form 1007-1. Michael Sheridan appeared as counsel for the Debtor. The signed Disclosure described a bifurcated fee arrangement whereby the Debtor and Mr. Sheridan entered into separate agreements for pre-petition and post-petition work. Dkt. No. 7, at 49–50, ¶¶ 9–10. Pursuant to that bifurcated fee arrangement, the Debtor would pay Mr. Sheridan no pre-petition fees and \$2,497.00 post-petition (which includes the \$338.00 filing fee) over 12 months. Dkt. No. 7, at 48–49, ¶¶ 1, 8. If the Debtor instead chose to pre-pay the fees in full pre-petition (no bifurcation), that amount would have been less than \$2,497.00. Dkt. No. 7, at 49, ¶ 9. After the hearing, the Court issued an Order to Show Cause as to whether the fees paid over time, as described in the Disclosure, are reasonable, considering the fees are higher if paid over time than if paid in full pre-petition. Dkt. No. 12. In response to the Court’s order, Mr. Sheridan filed a supplemental brief. Dkt. No. 13. The Court held a hearing on October 12, 2021. Dkt. No. 12. The hearing was then continued to October 26, 2021. Dkt. No. 15. The Court stated it would take time to consider further action.

Recently, the Eighth Circuit Bankruptcy Appellate Panel (“BAP”) analyzed bifurcated fee arrangements in two separate cases and found that the U.S. Bankruptcy Court for the Eastern

District of Missouri did not abuse its discretion by reducing the attorney’s fees by \$500.00 in each case. In re Allen, 628 B.R. 641, 645–46 (B.A.P. 8th Cir. 2021). The debtors had the option of paying \$1,500.00 pre-petition or \$2,000.00 post-petition over 12 months. Id. at 643. Both debtors chose the latter option. Id. The Bankruptcy Court found that because the attorney provided the same services he would have provided to the debtors, regardless of when the fees were paid, the additional \$500.00 under the post-petition arrangements exceeded the value of services provided. Id. at 645. The BAP found it was within the Bankruptcy Court’s discretion to reduce the attorney’s fees accordingly. Id. at 646. In making its finding, the BAP “decline[d] to express an opinion on the validity of bifurcation agreements generally…” Id. at 644 n.4. Although this Court is not bound by the BAP decision, it finds the decision persuasive and will follow it. Generally, fees paid over time post-petition which are greater than what would be charged as a lump sum pre-petition are unreasonable. Of course, there may be exceptions under the circumstances of an individual case.

However, it is not fair for the Court to reduce Mr. Sheridan’s fees in this case because he did not have adequate notice of the broader issue of bifurcated fee arrangements and because he is not the only attorney employing such arrangements. Therefore, the Court will take no action to disrupt the bifurcated fee arrangement in the Disclosure, nor require any type of disgorgement. As of December 15, 2021, attorneys in this district must comply with the *en banc* order issued on November 8, 2021, as amended on December 13, 2021. Post-Pet. Attorney’s Fee Arrangements in Chapter 7 Cases, In re Administrative Orders and Amendments to Local Rules and Forms, No. 21-00401 (Bankr. D. Minn. Nov. 8, 2021) (en banc), Dkt. No. 3; Post-Pet. Attorney’s Fee Arrangements in Chapter 7 Cases, In re Administrative Orders and Amendments to Local Rules and Forms, No. 21-00401 (Bankr. D. Minn. Dec. 13, 2021) (amended en banc), Dkt. No. 6 [hereinafter “Amended En Banc Order”]. As amended, that order states that if the Disclosure

“identifies in part 1 that not all attorney’s fees were paid before the petition was filed,” the attorney is required to file an application to allow the Court to review the fee arrangement. Amended En Banc Order, at 2. This new requirement will allow the Court to analyze bifurcated fee arrangements using the decision in Allen.

Like the BAP in Allen, this Court is not taking a position on bifurcated fee arrangements generally (such as whether they would be permissible if the pre-petition fee and the post-petition fee were equal) or third-party financing of fees paid over time. Within the last few years, various courts have analyzed bifurcated fee arrangements. Some courts have found such arrangements permissible. See, e.g., In re Brown, 631 B.R. 77, 105 (Bankr. S.D. Fla. 2021) (finding bifurcated fee arrangements permissible so long as: (1) the attorneys offering such arrangements comply with the court’s order regarding proper disclosures; and (2) such arrangements do not violate applicable law or rules); In re Carr, 613 B.R. 427, 436–42 (Bankr. E.D. Ky. 2020) (analyzing the Kentucky Rules of Professional Conduct, along with the Bankruptcy Code and bankruptcy rules, in finding the bifurcated fee arrangement permissible); In re Hazlett, No. 16-30360, 2019 WL 1567751, at *8–11, *14 (Bankr. D. Utah Apr. 10, 2019) (analyzing the Utah Rules of Professional Conduct, along with the Bankruptcy Code and bankruptcy rules, in finding the bifurcated fee arrangement permissible).

Other courts, however, have found such arrangements impermissible. See, e.g., In re Baldwin, No. 20-10009(1)(7), 2021 WL 4592265, at *7, *11, *16 (Bankr. W.D. Ky. October 5, 2021) (finding the bifurcated fee arrangement impermissible based on distinguishable facts from Carr); In re Milner, 612 B.R. 415, 433–34 (Bankr. W.D. Okla. 2019) (finding the bifurcated fee agreements do not satisfy the standards set forth in Hazlett). In In re Prophet, 628 B.R. 788 (Bankr. D.S.C. 2021), the attorney offered a “File Now Pay Later” option whereby the debtor could pay

\$500.00 pre-petition (for the filing fee and out-of-pocket costs) or put \$0.00 down. Id. at 792–93. The court stated, “Once counsel is engaged to provide bankruptcy assistance to a debtor and a petition is filed, the scope and extent of representation under our District’s Local Rule is of one unbundled package of services. Separate representations and bifurcation are not permitted.” Id. at 803–04. The requirements of Minnesota’s local rule and form resemble the requirements of the District of South Carolina. See Local Rule 9010-3(g)(4); Local Form 1007-3-1(7); Bankr. D.S.C. R. 9011-1(b). While the Court is not ruling one way or the other today on the permissibility of bifurcated fee arrangements, it may address the issue in a future case. This order does serve as fair notice that this Court will follow Allen.

IT IS ORDERED: The fees in this case are **ALLOWED**.

BY THE COURT:

/e/ William J. Fisher

Date: *December 13, 2021*

William J. Fisher
United States Bankruptcy Judge