UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **ROBERT EUGENE AGNEW**, Debtor.	Case No. **04-62073-7**

MEMORANDUM OF DECISION

At Butte in said District this 31st day of January, 2005.

Still pending in this Chapter 7 case, which was converted from Chapter 13 upon Debtor's motion by Order entered January 5, 2005, is the "First Application for Professional Fees & Costs" (hereinafter "Application") filed on September 29, 2004, by Debtor's attorney James H. Cossitt ("Cossitt"), if Kalispell, Montana, requesting professional fees for Cossitt and his paralegals, including Donald R. Franchi ("Franchi"), in the total amount of $8,677.00 and costs of $362.12, and objections thereto filed by creditor Susan L. Smith ("Smith")[1], through her attorney, Quentin M. Rhoades ("Rhoades"), of Missoula, Montana. Hearing on Cossitt's Application was held after due notice at Missoula on December 9, 2004, after which the Court closed the record and granted the parties time to file briefs, after which the matter would be taken under advisement. Subsequently, the case was converted upon Debtor's motion to a case under Chapter 7. In addition, Cossitt has filed a motion to withdraw as Debtor's counsel, for which the notice period has not yet run. After review of the record, the parties' briefs, and applicable law,

[1]Smith filed Proof of Claim No. 5 on October 22, 2004, asserting a claim in the amount of $466,911.24 secured by a judgment entered against the Debtor Robert Agnew in Cause No. DV-02-14 in Montana Twentieth Judicial District Court, on April 8, 2004.

the pending Application is ready for decision. For the reasons set forth below, Smith's objections are overruled and Cossitt's Application is approved, but only as a second-tier administrative expense. *See In re Bean*, 15 Mont. B.R. 397, 398 (Bankr. D. Mont. 1996).

At the hearing Cossitt appeared and testified, as did Franchi. Exhibits ("Ex.") 1 and 2 were admitted. Ex. 2 shows that Cossitt's employment by the trustee, in a separate and unrelated case, was approved in Case No. 03-61901-7 at the hourly rate for Cossitt of $180, and the hourly rate for Franchi of $120. Smith was represented by attorney Rhoades, but called no witnesses and offered no exhibits in Smith's case-in-chief. At the conclusion of the hearing the Court closed the record, granted Smith and the Debtor time to file post-hearing briefs which have been filed and reviewed by the Court. This matter is ready for decision.

This Court has exclusive jurisdiction over this case under 28 U.S.C. § 1334(a). Cossitt's Application is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision includes the Court's findings of fact and conclusions of law.

Some of Smith's objections to Cossitt's Application, including lumping and prepetition services, were resolved or decided at trial[2]. The issues still to be decided are: (1) whether Franchi's $120 per hour billing rate as a paralegal is reasonable based on the practice in the

[2]Smith objected to Cossitt's Application for lumping and for including prepetition services. Cossitt supplemented his Application with additional detail on December 6, 2004, attaching thereto a billing statement which provided additional detail. Rhoades objected to the supplement at the hearing on the grounds it was not contemporaneous as required by Mont LBR 2016-1. The Court denied Smith's objection at the hearing, noting the Court's long-time practice of allowing applicants to provide additional detail to cure lumping. In addition, Smith's objection to Cossitt's prepetition services was shown to be moot by Cossitt's testimony that the prepetition services were paid prior to the commencement of the case, and Cossitt included such services in the Application in the interests of disclosure. The billing records filed December 6, 2004, corroborate Cossitt's testimony by showing payments on June 3, 2004, and July 2, 2004, and Smith offered no evidence to the contrary.

relevant market and whether he is engaged in the unauthorized practice of law; (2) whether Cossitt's hourly rate of $180.00 is reasonable based on the practice in the relevant market; and (3) whether professional time for filing pleadings utilizing this Court's "Case Management / Electronic Case Filing" system ("CM/ECF") should be treated as overhead and not compensated.

FACTS

Cossitt filed the Chapter 13 petition in this case on July 2, 2004, and filed the Schedules, Statement of Financial Affairs on July 12, 2004, listing assets of $441,295.00 and liabilities of $530,604. Smith filed a motion to modify stay early in the case on July 23, 2004, and the parties have litigated several contested matters in this case. The Debtor filed a complaint against Smith on September 23, 2004, initiating an adversary proceeding.

Cossitt filed his Application on September 29, 2004, seeking an award of fees for himself and his paralegals in the amount of $4,677.00 and costs of $362.12 for postpetition services. Cossitt's Application lists an hourly fee for himself of $180, and $120 for his paralegal Franchi.

Franchi is a 65 year old attorney who is licensed to practice law in California, but not in Montana. Franchi practiced law since 1982, and practiced bankruptcy law full time beginning in 1988. Rhoades admitted at the hearing that Franchi is an expert witness in bankruptcy law. His fees earned as a lawyer ranged from $150 per hour to $200 per hour when he practiced in California. Franchi joined Cossitt's law firm in July 2004 as a paralegal. He testified that he primarily works in preference actions and summary judgment motions, and typically prepares documents and pleadings for Cossitt's signature. Another paralegal is employed in Cossitt's office, Nancy Williams, together with a receptionist. Franchi testified that Williams could probably not handle the projects Cossitt assigned to Franchi.

Under cross examination by Rhoades, Franchi testified that he performed relatively complex legal tasks in this case, consulted with the Debtor on at least seven (7) occasions, and applied his professional judgment albeit not independently of Cossitt. He admitted receiving copies of emails Cossitt sent to Rhoades. Within Cossitt's office, Franchi admitted that his status is similar to an associate attorney, but he testified that he is not held out to the public as an associate attorney in the firm and that Cossitt independently went through all the pleadings Franchi prepared. Franchi denied that he is engaged in the unauthorized practice of law in Montana, or that he gives Cossitt's clients legal advice.

Franchi testified that he looked through his portions of Cossitt's billing statement, but not others, and that all of his entries were for paralegal services. Cossitt's Application, docket no. 54, page 2, plainly states "paralegal" after Franchi's name. Franchi admitted signing routine correspondence confirming appointments or receipt of documents, responding to creditor enquiries and telling the client to bring in information. He admitted answering clients' questions over the phone. When Franchi wrote letters, he testified that he did so only at Cossitt's direction and mostly turned them over to Cossitt for review before sending them out. Cossitt testified that Franchi drafted a complaint for Cossitt's review.

Cossitt and Franchi each testified that they discussed Franchi's status and went over the American Bar Association ("ABA") Guidelines to make sure Franchi did not cross over the line to the practice of law in Montana. Cossitt obtained the ABA paralegal guidelines from the ABA and the Montana State Bar. Franchi testified that they discussed the distinction between factual questions and legal advice. Franchi distinguished between expressing a legal opinion in meetings with Cossitt, but not holding himself out to clients as an attorney. When Franchi met

with clients, he testified that he held himself out as a paralegal.

Cossitt has practiced law since 1986. He is admitted to practice in Montana, Iowa, Michigan and Colorado. His practice involving bankruptcy law began with work for the FDIC in 1987. He testified he has been board certified in bankruptcy law for 8 years, and has taken the test for ABI certification in business bankruptcy.

Cossitt testified that the important things to avoid crossing the line to the practice of law are (1) signing court papers; (2) appearing in court; (3) giving legal advice to clients; and (4) maintaining a public stance that Franchi is not an attorney. Cossitt did not agree that Franchi gave him legal advice. He testified that he had "discussions", "banter", and "a collegial give and take" about legal matters, and that Franchi's billing rate of $120 "absolutely" was appropriate for acting as a sounding board.

When questioned by Rhoades about specific billing entries, Cossitt responded in detail that he takes pride in his legal work and recognizes the additional burdens placed upon practitioners by United States Trustee oversight. Cossitt admitted spending a total of 3.9 hours reviewing and preparing the Debtor's Schedules on 6/24/04, 7/2/04, and 7/9/04. He testified that total is a little high but not an uncommon amount of time given U.S. Trustee scrutiny and oversight, and also taking into account the nature of this particular client. Cossitt testified that he purposely had Franchi and/or his other paralegal sit in on meetings with the Debtor, and had the Debtor confirm orally and in writing the importance of being truthful in this Schedules and Statements.

On the hourly billing rates for himself and Franchi, Cossitt testified that he surveyed hourly rates in the Kalispell area for prevailing market rates, and that he also surveyed other

market rates at meetings of the American Bankruptcy Institute ("ABI"), of which he is a member. Cossitt testified that attorneys Joel Guthals and R. Clifton Caughron bill fees in Montana for $200 per hour or more for debtor work. Ex. 2 shows Cossitt has been employed at his requested rate of $180 per hour. Cossitt testified that Franchi's rate of $120 per hour is the same hourly rate for a paralegal as allowed in this Court in *In re Jore*, Case No. 01-31609-7, for the debtor's law firm Perkins Coie. Smith offered no evidence to the contrary showing that either Cossitt's attorney billing rate of $180 or Franchi's paralegal rate of $120 per hour are not commensurate with the market rate in either bankruptcy or nonbankruptcy law. In other words, Cossitt's testimony on billing rates is uncontroverted, and the Court finds that he is credible.

The Court notes that, effective January 3, 2005, electronic case filing became mandatory for all trustees, attorneys and creditors appearing before this Court.[3] General Order 2004-03. Mont. LBR 5005-1 provides that a document filed by electronic means constitutes a written paper for the purposes of the Local Rules and the Federal Rules of Bankruptcy Procedure ("F.R.B.P."), and in particular F.R.B.P. 9011. Cossitt testified that he does not believe that a secretary or clerical worker can perform ECF docketing. As a result, Cossitt testified, attorneys are now creating and maintaining the court docket in the ECF, subject to quality control by the Clerk of Court's office. The Court agrees. Attorneys and their staffs are required to undergo training and demonstrate proficiency before being assigned passwords to the Court's ECF system.

Cossitt testified that he tries to assign work at the least compensable level, that at times he files on ECF when appropriate, although he tries to avoid it. Cossitt's billing statements attached

[3] Pro se filers are exempt from the mandatory electronic filing requirement.

to his amended Application filed December 6, 2004, corroborate Cossitt's testimony and show paralegal Williams time billed for conversion to .pdf and docketing pleadings on 7/2/04, 7/12/04, 8/2/04, 8/4/04, 8/26/04, 9/1/04 . Cossitt billed for downloading some documents, but not for conversion to .pdf and docketing pleadings. On 9/3/04 Cossitt lists logging on to the ECF system and calling the Clerk to clarify and try to remedy a corrective entry, spending .5 hours at no charge.

With respect to a discovery dispute involving Smith's subpoena of Ed Slover and the Debtor's motion to quash the same, which generated a considerable amount of litigation, Cossitt testified that Slover was not his client, but he filed an objection and motion to quash based upon Smith's improper discovery under the Local Rules, and because Smith failed to serve Cossitt. Rhoades did not cross examine Cossitt.

DISCUSSION

A. Contentions of the Parties.

Smith objects to Cossitt's and Franchi's hourly billing rates as excessive, and requests disallowance of the entire Application. Smith contends that Franchi was engaged in the practice of law, although she admits that his services would warrant the requested billing rate if submitted by an associate. Smith objects to fees for ECF filing as overhead, akin to clerical or secretarial tasks.

Cossitt contends that Franchi was held out to the public as a paralegal, that all his work was appropriate as a paralegal and done under Cossitt's supervision. Cossitt argues that his and Franchi's fees are within the prevailing market rate for attorneys and paralegals with their experience and qualifications, and within billing rates that this Court has approved.

B. Compensation of Professionals – Adequate Detail.

The U.S. Trustee or Chapter 13 Trustee did not file responses to Cossitt's Application pursuant to 28 U.S.C. § 586(a)(3)(A). Notwithstanding, this Court has an independent obligation to review each application to evaluate the propriety of the compensation requested. *In re Busy Beaver Bldg. Centers, Inc.*, 19 F.3d 833, 841 (3rd Cir. 1994); *In re Wildman*, 72 B.R. 700, 701 (Bankr. N.D. Ill. 1987). In *Busy Beaver*, the court explained:

> [T]he integrity of the bankruptcy system ... is at stake in the issue of a bankruptcy judge's performance of the duty to review fee applications *sua sponte*. The public expects, and has a right to expect, that an order of a court is a judge's certification that the result is proper and justified under the law.... Nothing better serves to allay [public perceptions that high professional fees unduly drive up bankruptcy costs] than the recognition that a bankruptcy judge, before a fee application is approved, is obliged to [review it carefully] and find it personally acceptable, irrespective of the (always welcomed) observation of the [United States trustee] or other interested parties.

Busy Beaver, 19 F.3d at 841 (*quoting In re Evans*, 153 B.R. 960, 968 (Bankr. E.D.Pa 1993)).

Thus, this Court has an independent obligation to review each application to ensure that applicants provide an adequate summary of work performed and costs incurred. Extensive case law has developed regarding the amount and type of information that applicants must include in their fee applications. The case of *In re WRB-West Associates*, 9 Mont. B.R. 17, 18-20 (Bankr. D. Mont. 1990) summarizes thus:

> Pursuant to 11 U.S.C. §§ 327-330 and Bankruptcy Rules 2016 and 2017, this Court has an independent judicial responsibility to evaluate fees requested from the estate. *In re S.T.N. Enterprises, Inc.*, 70 B.R. 823, 831 (Bankr. Vt. 1987); *In re Seneca Oil Co.*, 65 B.R. 902 (Bankr. W.D. Okla. 1986); *In re Frontier Airlines, Inc.*, 74 B.R. 973 (Bankr. Colo. 1987). The burden of proof to show entitlement to all fees requested from the estate is on the applicant. *In re Lindberg Products, Inc.*, 50 B.R. 220, 221 (Bankr. N.D. Ill. 1985). This burden is not to be taken lightly, especially given the fact that every dollar expended on fees results in a dollar less for distribution to creditors of the estate. *In re Yankton College*, 101

B.R. 151, 158 (Bankr. S.D. 1989); *In re Pettibone Corp.*, 74 B.R. 293, 305 (Bankr. N.D. Ill. 1987). All expenses and fees must be shown as both actual and necessary under § [330(a)(3)] of the Code. *S.T.N.*, 70 B.R. at 834; *Yankton College*, 101 B.R. at 158; *Seneca Oil*, 65 B.R. at 912. Moreover, *In re Convent Guardian Corp.*, 103 B.R. 937, 939-940 (Bankr. N.D. Ill. 1989) holds:

> Bankruptcy Rule 2016 provides that "[a]n entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested." (emphasis added) The Application should contain a detailed list of expenses including the date, the type and the amount. Expenses must be actual not estimates. *In re Wildman*, 72 B.R. 700, 731 (Bankr. N.D. Ill. 1987); *In re Marsh*, 14 B.R. 615, 617 (Bankr. E.D. Va. 1981). An expense is necessary if it is incurred because it was reasonably needed to accomplish the proper representation of the client. *Wildman*, 72 B.R. at 731.

The above excerpt demonstrates that this Court is obligated to review each request for fees and costs to determine whether the applicant provided:

1. a description of the services provided, setting forth, at a minimum, the parties involved and the nature and purpose of each task;
2. the date each service was provided;
3. the amount of time spent performing each task; and
4. the amount of fees requested for performing each task.

Attached to Cossitt's Application and supplement filed December 6, 2004, are billing statements which set forth a description of the services provided, the dates such services were provided, most often the initials of the person providing the services, the amount of time spent, and the total fees requested for such services which began prepetition on 6/2/2004 through 9/3/04, and none afterwards. After review of the billing statement, the Court finds that Cossitt provided adequate detail to enable this Court to undertake its independent investigation.

With respect to prepetition services, the billing statement shows that Cossitt applied

$2,000 deposits to unpaid fees on 6/3/04 and again on 7/2/04 prior to filing the petition. In light of that payment, Smith's objection to the prepetition services is without merit because those services were already paid, according to the record, and Smith offered no evidence to the contrary.

Next, Smith argues that Cossitt's legal services were not reasonable in light of the Debtor's history of "taking advantage of the fruits of malice". With respect to Cossitt's services, the Court notes what the Ninth Circuit Bankruptcy Appellate Panel has held: "[T]he applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug* Company, (*In re Mednet*), 251 B.R. 103, 108 (9th Cir. BAP 2000). Cossitt's services were provided in preparing for and filing a Chapter 13 bankruptcy. The Application does not go beyond 9/3/04, while the case was still pending in Chapter 13. The Court notes that the "super discharge" of Chapter 13 may encompass debts arising from fraud under 11 U.S.C. § 523(a)(2). 11 U.S.C. § 1328(a)(2). Thus, even a fraud may seek Chapter 13 relief, and the Court sees nothing which shows that Cossitt's services were not "'reasonably likely' to benefit the estate at the time the services were rendered."

C. Paralegal & Attorney Fees – Market Rate.

Agnew objects to Franchi's billing rate as a paralegal and argues that Franchi was practicing law. The evidence that Franchi performed all his work at Cossitt's direction, under Cossitt's supervision, and submitted most if not all of his work to Cossitt for review, supported by the testimony of both Franchi and Cossitt, is uncontroverted. Smith did not offer any expert witness testimony or other evidence which shows that what Franchi did for Cossitt as a paralegal,

after extensive review and consultation with professional organizations, is in some way an unauthorized practice of law. In *In re Townsend*, 17 Mont. B.R. 141, 149 (Bankr. D. Mont. 1998), *aff'd.* (D. Mont. 1999), this Court quoted from *Missouri v. Jenkins*, 491 U.S. 274, 287-88, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989): "By encouraging the use of lower cost paralegals rather than attorneys wherever possible, permitting market-rate billing of paralegal hours 'encourages cost-effective delivery of legal services and, by reducing the spiraling cost of civil rights litigation, furthers the policy underlying civil rights statutes.'". The same policies of reducing the spiraling cost of litigation furthers the policy underlying bankruptcy statutes. Franchi provided services plainly identified as a paralegal to the public, and Smith simply offered no credible evidence that Franchi, acting at all times under Cossitt's supervision and subject to his review, crossed the line.

Rhoades acknowledged Franchi's expertise in bankruptcy law, but objects to his $120 hour billing rate. The appropriate billing rate for paralegal services ordinarily parallels the paralegal's credentials and the degree of experience, knowledge and skill the task at hand calls for. *In re Townsend*, 17 Mont. B.R. at 149-50, *quoting Busy Beaver*, 19 F.3d at 852; *see also In re Grosswiler Dairy*, 257 B.R. 523, 529, 18 Mont. B.R. 482, 488-89 (Bankr. Mont. 2000). Applying that standard to Franchi, his credentials, degree of experience, knowledge and skill were conceded by Smith at the hearing, and Smith argued that the tasks Franchi provided were complicated to the point beyond that a paralegal should perform. The evidence shows, however, that Franchi provided services at a lower rate than Cossitt, who ultimately reviewed Franchi's work. Thus, under *Townsend* and *Busy Beaver* Franchi is entitled to the high end of a paralegal fees.

Townsend and *Busy Beaver* apply the market-driven approach to determine a paralegal billing rate. *Townsend*, 17 Mont. B.R. at 150, *quoting Busy Beaver*, 19 F.3d at 854. Once again, all of the evidence on this issue is from Cossitt's testimony that the $120 per hour he requests for Franchi is based on his local and state surveys of billing rates for paralegals and rates allowed by this Court, and Smith offered no evidence to the contrary. Based upon the uncontroverted evidence, the Court finds and concludes that Cossitt satisfied his burden of proof to support the requested $120 per hour rate for Franchi.

The same reasoning and conclusion result for Cossitt's $180 per hour rate. All the evidence supports Cossitt, and Smith offered no evidence that his $180 rate is unreasonable or not based on the market rate at which legal services are provided.

D. ECF – Overhead?

Lastly, Smith objects to the fees requested by Cossitt fees for filing documents on the Court's ECF system. From the Court's review of Cossitt's billing statement and Cossitt's testimony, which is uncontroverted, most if not all of the fees requested for ECF filing is by the paralegal Williams, at the rate of $70 per hour. Smith argues that such services are mere overhead, akin to secretarial services such as typing and mailing.

This Court addressed clerical and secretarial services in *In re Grosswiler Dairy*, 257 B.R. at 529, 18 Mont. B.R. at 488-89:

> Under the market billing approach and without evidence of long-standing practices of billing for clerical services or of a general nonbankruptcy business practice of billing for such services, *Busy Beaver* does not require the allowance of hourly rates or expense charges for typing, copying, assembling, and mailing. This Court's practice is to disallow expenses for clerical services such as typing or copying absent an adequate showing under § 330(a). *Vulk*, 18 Mont.B.R. at 141-42. The U.S. Supreme Court held that "[p]urely clerical or secretarial tasks

> should not be billed at a paralegal rate, regardless of who performs them." *Missouri v. Jenkins*, 491 U.S. 274, 288, n. 10, 109 S.Ct. 2463, 2471, 105 L.Ed.2d 229, (1989); *Busy Beaver*, 19 F.3d at 852; *Vulk*, 18 Mont. B.R. at 141-42, n. 1;

Notwithstanding the above, this Court finds and concludes based upon the instant record and this Court's Local Rules that filing documents electronically in this District is not simply a clerical or secretarial task at this time, especially given the sanctions that may arise under F.R.B.P. 9011.

First, as a matter of court policy ECF is now mandatory. Second, it has proven beneficial to the Court as well as the parties. Smith argues that the time spent complying with this Court's recent General Order making ECF mandatory is merely secretarial, or clerical and therefore overhead and not compensable. For the present at least, the Court disagrees. The Court has made the determination that filing documents electronically is mandatory, and required attorneys to attend training to prepare themselves and their staffs to comply. Cossitt testified that he tries to assign work to the lowest billing rate, and his billing statement shows that he did.

The parties have not provided citation to any authority on whether compensation may be awarded under § 330 for filing documents electronically. This Court's mandating the use of electronic filing of documents is part of a nationwide trend. One court described the trend as follows:

> The revolution in communicating that has occurred and is still occurring may sometimes be distracting, but it can strengthen the ability of courts to seek truth. Technology in litigation has changed enormously since the adoption of the Federal Rules of Evidence in 1975. *See, e.g., In re Electronic Case Filing*, Administrative Order 2004-08 (E.D.N.Y. June 22, 2004) ("Beginning on August 2, 2004, electronic case filing will be mandatory for all civil cases other than pro se cases and for all criminal cases."). In any complex case, computer-generated presentations are the norm rather than the exception. As one commentator put it, "[d]esktop portable computers now bedeck courtrooms like dandelions in May and, like dandelions, their number, use and application continue to grow." Edward A. Hannan, *Computer-Generated Evidence: Testing The Envelope*, 63 Def.

Counsel J. 353, 362 (1996).

Verizon Directories Corp. v. Yellow Book USA, Inc., 331 F.Supp.2d 136, 142 (E.D. N.Y. 2004).

While at some point in the future electronic filing may become a clerical data entry task and overhead, for now based upon the Court's General Order 2004-03, required training involved, the sanctions that may arise under F.R.B.P. 9011, and the benefits resulting to the Court from the use of ECF, the Court finds that paralegal time or attorney time incurred in the course of filing pleadings electronically in compliance with the Court's mandate may be reasonable and necessary under § 330(a).

In the instant case all the evidence in the record shows that Cossitt applied the task of ECF filing to his lowest billing paralegal, in compliance with this Court's Order. Accordingly, the Court concludes that awarding professional compensation for filing documents electronically is reasonable and necessary in this case under § 330(a). In summary, the Court finds and concludes that Cossitt satisfied his burden of proof with respect to the fees and costs requested in his Application, as supplemented, and that the services provided and costs incurred were reasonable and necessary to the estate.

CONCLUSIONS OF LAW

1. This Court has exclusive jurisdiction over this case under 28 U.S.C. § 1334(a).

2. Cossitt's Application is a core proceeding under 28 U.S.C. § 157(b)(2).

3. Cossitt satisfied his burden of proof to show market rate for his own services and Franchi's services as paralegal, *In re Grosswiler Dairy*, 257 B.R. at 529, 18 Mont. B.R. at 488-89, and Franchi was not practicing law while under Cossitt's supervision as a paralegal.

4. Cossitt satisfied his burden of proof to show that professional time for filing pleadings

utilizing this Court's ECF system is compensable under 11 U.S.C. § 330(a), and not treated as secretarial or clerical overhead.

5. Cossitt's Application will be approved and the fees and costs requested allowed, but only as a second-tier administrative expense. *See In re Bean*, 15 Mont. B.R. 397, 398 (Bankr. D. Mont. 1996).

IT IS ORDERED a separate Order shall be entered overruling Susan Smith's objections, approving Cossitt's Application as supplemented and awarding Cossitt professional fees in the total amount of $4,677.00 and costs in the amount of $362.12 for a total award of $5,039.12, to be treated as a second-tier administrative expense in this Chapter 7 case.

BY THE COURT

Ralph B. Kirscher

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana