

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

In re:

EDWARD DONAHUE

Debtor.

Case No. 00-12239-RGM
(Chapter 7)

MEMORANDUM OPINION

This case was before the court on December 19, 2001, on the motion of the United States Trustee to examine the debtor's transactions with his former counsel, Joel Steinberg. The parties stipulated that Mr. Steinberg filed an unsigned Rule 2016 statement at the commencement of the case. The statement reflected that no fees were to be charged for the bankruptcy case. It did not specifically address adversary proceedings in which the debtor might become involved during the course of the case. Counsel in a bankruptcy case is not automatically counsel in an adversary proceeding filed in the bankruptcy proceeding. The debtor need not retain him to represent him in an adversary proceeding if one is filed nor is the attorney required to represent a debtor in an adversary proceeding. It is customary in this jurisdiction for fees in an adversary proceeding not to be included in the fee for representation in the bankruptcy case. The fee in the bankruptcy case is usually a fixed fee. The fee in an adversary proceeding is usually on an hourly basis.

An adversary proceeding was brought in this bankruptcy case by the trustee. It concerned the ownership of a certificate of deposit in the name of the debtor and a third party. Mr. Steinberg undertook representation of the debtor in that matter. He did not file a supplemental statement as required by Rule 2016 with respect to his representation in the adversary proceeding. The original

Rule 2016 statement did not encompass this representation, and it was necessary for a supplemental statement to be filed. Mr. Steinberg has been on notice of the requirement of a supplemental statement for several months but has failed to file the statement.

In order for counsel to be compensated, it is necessary that he disclose his fee arrangement in a Rule 2016 statement filed with the court. It is not sufficient that there be a separate written fee agreement. If a statement is not filed, counsel may not be compensated for services even if compensation would otherwise be appropriate.

Solely because Mr. Steinberg has not filed a supplemental Rule 2016 statement after having had ample opportunity to do so, he is not entitled to any compensation for the work he performed with respect to the adversary proceeding even if there is an otherwise valid agreement between the debtor and him. He will be required to disgorge all funds received by him from the chapter 7 trustee together with interest from the date the funds were received.

Alexandria, Virginia
December 20, 2001

Robert G. Mayer
United States Bankruptcy Judge

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