

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

MERCY HOSPITAL OF WATERTOWN,
d/b/a Mercy Center For
Health Services

CASE NO. 90-02501

Chapter 11

Debtor

APPEARANCES:

DONNA M. QUINN, ESQ.
Attorney for Debtor
P.O. Box 599
218 Stone Street
Watertown, New York 13601

RICHARD CROAK, ESQ.
Office of U.S. Trustee
10 Broad Street
Utica, New York 13501

STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court has reviewed and heard oral argument on the motion of Donna M. Quinn, Esq. ("Quinn") for authorization to enter into a contract with Mercy Hospital of Watertown, d/b/a Mercy Center For Health Services ("Debtor") to perform legal services during the period March 1, 1992 through September 30, 1992.

The motion was argued at a motion term of this Court held at Utica, New York on March 10, 1992, at which the United States Trustee ("UST") appeared and filed a statement in opposition to the motion.

The contract which Quinn seeks approval of essentially provides her with compensation of \$328.00 per day for a minimum of seven hours per day, five days per week with a weekly cap of \$1640.00. In addition Quinn will be compensated on a percentage of monies recovered by the Debtor as "preference and recoupment claims".

It is noted that Quinn was previously appointed by this Court to represent the Debtor with her compensation to be fixed at \$5,000 per month, subject to review by the Court at intervals of not more than 120 days. (See Order of Appointment dated October 28, 1991).

Quinn asserts that §328(a) of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code"), together with the interpretation given that section by the Ninth Circuit Bankruptcy Appellate Panel in In re Knudsen, 84 B.R. 668 (9th Cir. BAP 1988) provide ample basis for this Court to grant the instant motion.

The UST contends that the proposed contract with the Debtor will pay Quinn "significantly greater" compensation than the current Order of the Court, which caps the compensation at \$5,000 per month, and in addition, will provide counsel with a contingent fee arrangement concerning the collection of preference payments. The UST argues that Quinn offers no explanation for the enhanced fee arrangement.

While the Chapter 11 case is not necessarily unique, the employment of Quinn as Debtor's counsel has been somewhat unique. Uniqueness, however, does not run afoul of the Code so long as the interest of creditors does not get lost in the proverbial "shuffle" and there are sufficient controls to permit review of fee requests by parties in interest.

There is an inherent danger in fee arrangements that permit professionals to pay themselves first and seek Court approval thereafter. Such arrangements, however, where warranted, are not prohibited by the Code.

A surface analysis of the contract for which Quinn seeks approval, does indicate an increase in basic monthly compensation of approximately \$2,000, but the hourly rate is less than \$50.00. That too is somewhat deceiving because the contract provides Quinn with an office, telephonic, secretarial and administrative services, as well as temporary living accommodations in Watertown, New York free of charge. One must also consider the percentage of preference recoveries as an additional fee.

While Quinn does not offer any explanation for the enhanced fee arrangement, the Court assumes that Quinn found the \$5,000 per month "cap" on her compensation inadequate.

The proposed contract requires Quinn to devote her time exclusively to this Debtor through June 30, 1992. Quinn offers to post a bond in the event of disgorgement and agrees to provide the UST and the Clerk of the Court with contemporaneous time records on a monthly basis during the term of the proposed contract. Additionally, Quinn agrees to make periodic fee applications as

directed by the Court.

The Court concludes, after reviewing Quinn's motion, the proposed contract, Code §328(a) and the Knudsen rationale, that it will approve Quinn's continued retention as Debtor's counsel in accordance with the terms of the proposed contract.

The Court will, however, require the submission of applications for approval of fees already paid at intervals of not more than 120 days. While the Court will not require the posting of a bond, it will prohibit payment of the percentage compensation as set forth in Section II, Paragraph 2 of the proposed contract in advance of Quinn's application therefor and approval by this Court.

IT IS SO ORDERED.

Dated at Utica, New York

this day of April, 1992

STEPHEN D. GERLING
U.S. Bankruptcy Judge