

**United States Bankruptcy Court  
District of New Mexico**

**Document Verification**

**Case Title:** Susan B. Dessauer v. Venetia Dawn Davison  
**Case Number:** 01-01217  
**Nature of Suit:**  
**Judge Code:** S  
**Reference Number:** 01-01217 - S

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9b 45 92 3c 0a 54 7f 25 b9 cd d6 ea 75 fc ba 1b 8f 4d 08 3d 94 53 c9 96 87 71 28 1e 2a 4f 00 05 6a aa cb 50 2f 4a b0 55 82 65 e1 b2 48 fb 1f 9f 16 02 d6 a4 62 3a ef 1c 4f 7e 4a 59 8c 20 e6 97 57 08 94 5b 9a 27 1d 1f 0e 6c 41 fc 76 3b 43 24 46 25 03 2f 73 b3 b4 ac b8 1d cd 90 c3 7e ff c9 02 6a d2 27 d4 3a 94 8f 94 92 82 b8 a1 13 ee 04 4b f5 49 0d 02 3a 2c bf 5d b6 16 f1 2d 80 4c 96			
Filer Information			
<b>Submitted By:</b>	James E Burke		
<b>Comments:</b>	Preliminary Order Awarding Fees and Costs Pursuant to 11 U.S.C. Section 523(d)		

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

VENETIA DAWN DAVISON,  
Debtor.

No. 7-01-14868 SR

SUSAN B. DESSAUER,  
Plaintiff,

v.

Adv. No. 01-1217 S

VENETIA DAWN DAVISON,  
Defendant.

**PRELIMINARY ORDER AWARDING ATTORNEY FEES AND COSTS  
PURSUANT TO 11 U.S.C. § 523(d)**

Pursuant to this Court's order (doc 36), Defendant's counsel has filed an affidavit for attorney fees and costs pursuant to the claim for same under 11 U.S.C. § 523(d) (doc 37). Plaintiff responded timely, arguing that an award of fees would be inequitable (doc 39). The Court has determined to award fees, as set forth below.

Plaintiff argues that there was clearly wrongdoing by Defendant such that the award of fees would be inequitable. However, as Plaintiff acknowledges, some of the conduct cited by Plaintiff is not even cognizable under the Code as nondischargeable, Plaintiff's Response to Defendant's Motion for Attorney's Fees, at 4 (doc 39), and in any event, Plaintiff lost on summary judgment, once on the merits and for not timely answering (doc 17) and again upon reconsideration

by the Court of the Plaintiff's summary judgment response (doc 19) filed after the entry of the summary judgment (doc 36). On this basis, and upon review of the docket in the case and the merits of the pleadings, the Court finds that it would not be inequitable to award attorney fees and costs, and indeed such an award would serve the purposes contemplated by the statute.

Plaintiff's counsel offered no objection to the details of the affidavit and proposed billings. In itself that lack of objection might justify this Court in awarding the amount requested. But see In re Albrecht, 245 B.R. 666, 672 (10<sup>th</sup> Cir. B.A.P. 2000) (court has independent duty to review professional fee applications, even if no party objects; ruling was in the context of an application for trustee's counsel fees), aff'd In re Albrecht, 233 F.3d 1258, 1260 (10<sup>th</sup> Cir. 2000). Nevertheless, the Court has reviewed the affidavit and the attached billings. The Court finds that overall, the rate charged for the legal assistant services is quite reasonable, especially in light of the sophistication of the services rendered by the legal assistant, and that the amount of time spent by counsel and by the legal assistant on each task is also reasonable. However, the Court did not find in the affidavit or the attached bills a statement of the rate

charged by counsel for his services, and was unable to deduce the rate (or at least a rate that was a whole number) by working through some of the bills. The Court will therefore require a supplemental affidavit from Defendant's counsel setting out the rate that he usually and actually charges for representing debtors in cases of this nature, and setting out the rate used in this adversary proceeding.

In addition, there appear to be significant billing errors and the following items should be disallowed for payment:

- 01/14/02 Counsel ("ECG") charged 1.0 for a preliminary hearing, reciting that "We have to wait." Assuming that counsel was in his office available to work on other matters, he should not have charged anyone for waiting for a phone call from the court for a hearing, and therefore this charge will be reduced to .5.
- 01/14/02 The legal assistant ("DV") sat in on the hearing, which is not billable, and drafted a letter resulting from the hearing, for which .1 is allowed.
- 01/15/02 DV telephoned the client about the "other hearing"; since it is not clear that the hearing referred to had anything to do with this adversary proceeding, no time is allowed.
- 01/29/02 ECG's discussion with the client appears to focus mostly on a matter having to do with another attorney (albeit perhaps the attorney who was originally handling the civil litigation for Defendant), and therefore only .1 will be allowed.
- 03/08/02 This entry on the April 2002 bill duplicates the identical entry on the March 2002 bill.

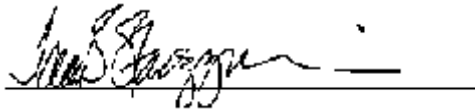
- 03/12/02 This entry on the April 2002 bill duplicates the identical entry on the March 2002 bill.
- 04/22/02 DV sat in on a hearing - this time is disallowed in its entirety.
- 05/31/02 This entire bill, except for the last entry, is a duplicate of the April 2002 bill, and therefore is disallowed in its entirety except for the last entry.
- 09/30/02 This entire bill is a duplicate of the August 2002 bill, and is therefore disallowed in its entirety.
- 10/22/02 DV typed a motion; this charge for clerical services is disallowed in its entirety.
- 02/04/03 In light of the inaccuracies in the billing, this entire entry - 1.5 by DV and 0.5 by ECG - for reviewing the file, pulling together the bills, drafting an affidavit and reviewing the resulting product before filing, is disallowed in its entirety.

IT IS THEREFORE ORDERED that

1. Plaintiff's objection to the awarding of fees is overruled;
2. Defendant's counsel shall file a supplemental affidavit setting out the rate that he usually and actually charges for representing debtors in cases of this nature, and setting out the rate used in this adversary proceeding; and
3. The supplemental affidavit shall state what the attorney fees, costs and applicable gross receipts tax are, after taking into account the disallowances set forth in this

order.

4. The affidavit shall be filed within twenty (20) days of the entry of this order, and Plaintiff shall have fifteen (15) days to file any objections to the extent, and only to the extent, that the supplemental affidavit does not comply with the provisions of this order.



Honorable James S. Starzynski  
United States Bankruptcy Judge

I hereby certify that on March 18, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.

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