

**FILED**

SEP 26 2006

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

In re: ) Chapter 7  
RICARDO J ESPINOZA and TABITA )  
ESPINOZA, ) No. 4:06-bk-00399-JMM  
) **MEMORANDUM DECISION (RE: ORDER**  
Debtors. ) **TO SHOW CAUSE)**

On September 26, 2006, this court held an order to show cause hearing concerning a law firm which received a \$300 retainer for bankruptcy advice, without having filed a notice of appearance or any pleading or document in a bankruptcy case. After hearing, the matter was taken under advisement. The court now rules.

**FACTS**

1. The Debtors filed a chapter 7 petition on April 18, 2006.
2. The Debtors represented themselves.
3. The Debtors, at the time the petition was filed, owned a 2002 Mazda MPV minivan, automobile, in which DM Federal Credit Union ("DM") held a lien.
4. The balance due on the DM debt was approximately \$12,983.
5. In due course, DM's attorney sent the Debtors a proposed reaffirmation agreement concerning the vehicle.



1 (a) Any attorney representing a debtor in a case under this title, or in  
2 connection with such a case, whether or not such attorney applies for  
3 compensation under this title, shall file with the court a statement of the  
4 compensation paid or agreed to be paid, if such payment or agreement was  
5 made after one year before the date of the filing of the petition, for services  
6 rendered or to be rendered in contemplation of or in connection with the case  
7 by such attorney, and the source of such compensation.

8 (Emphasis supplied.) Bankruptcy Rule 2017(b) elaborates upon this duty, and upon the court's role  
9 in policing the bar:

10 (b) PAYMENT OR TRANSFER TO ATTORNEY AFTER ORDER  
11 FOR RELIEF. On motion by the debtor, the United States trustee, or on the  
12 court's own initiative, the court after notice and a hearing may determine  
13 whether any payment of money or any transfer of property, or any agreement  
14 therefor, by the debtor to an attorney after entry of an order for relief in a case  
15 under the Code is excessive, whether the payment or transfer is made or is to  
16 be made directly or indirectly, if the payment, transfer, or agreement therefor  
17 is for services in any way related to the case.

18 It is not disputed that the law firm has never filed the 2017(b) statement required by  
19 the statute.

20 These Debtors, so far as the court knew (until they mentioned it), were representing  
21 themselves. Moreover, they paid \$300 for bankruptcy services to a firm which never reported the  
22 payment nor filed the required statement until required to appear by the court's order to show cause.

23 Additionally, the advice given concerning the reaffirmation agreement was contrary  
24 to that required by the code, to wit, to have a bankruptcy judge advise unrepresented debtors as to  
25 their rights, and whether signing such an agreement was in their best interests. After a hearing, the  
26 court felt reaffirmation was not in their best interests, and denied their request. See 11 U.S.C.  
27 § 524(c)(6)(A).

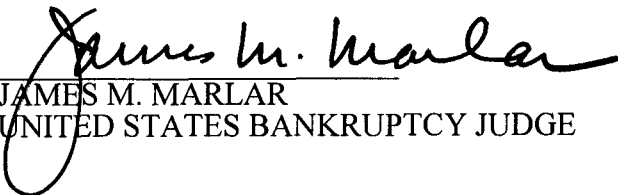
28 Consequently, the court finds that the "value" of the undisclosed legal services is zero.

1 Hopefully, the firm will read the statute and rules before attempting bankruptcy services in the  
2 future.<sup>1</sup>

3  
4 **RULING**

5 Accordingly, a separate order will issue simultaneously with this Memorandum  
6 Decision, which requires the firm of King & Frisch, P.C. to disgorge and return the \$300 fee  
7 collected from the Debtors within ten (10) days, and to file a notice that it has done so with the  
8 bankruptcy court.

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10 DATED: September 26, 2006.

11   
12 JAMES M. MARLAR  
13 UNITED STATES BANKRUPTCY JUDGE  
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27 <sup>1</sup> The firm argues that 11 U.S.C. § 327 and Rules 2014 and 2016 are inapplicable.  
28 The court agrees. However, the firm totally fails to address applicable Rule 2017(b) and  
11 U.S.C. § 329.

1 COPIES served as indicated below this 26  
day of September, 2006, upon:

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By /s/ M. B. Thompson  
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