

SIGNED.

Dated: October 16, 2012



*James M. Marlar*

James M. Marlar, Chief Bankruptcy Judge

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA**

In re:  
DENNA GAIL DAVIS and STACY CYLER  
DAVIS,  
Debtors.

Chapter 13  
No. 2:09-bk-04318-JMM  
**MEMORANDUM DECISION**

This matter involves a review of attorneys' fees, by two different firms, for work performed in this Chapter 13 case (ECF Nos. 58, 74).

**KIRK GUINN'S REPRESENTATION**

These Debtors filed a Chapter 13 proceeding on March 10, 2009. Attorney Kirk Guinn accepted original representation for what appeared to be an overly aggressive, unreasonable and ambitious "cafeteria style" hybrid fee. He noted that his fee agreement was \$4,000, but then he piled on additional future services, each of which had varying dollar amounts attached to them.

According to the file, Mr. Guinn was paid \$2,200 of that \$4,000 amount.<sup>1</sup> (ECF No. 1, Disclosure of Compensation.) Mr. Guinn sought to withdraw as counsel on November 1, 2011, two years and eight months after commencing work on the case (ECF No. 45). For that period, there were 47 docket entries, none of which was an order confirming a chapter 13 plan.

<sup>1</sup> At a hearing on February 22, 2012, Mr. Guinn was directed to disgorge or turn over \$250 to the Trustee. It is unknown whether that occurred.

1 In spite of this lack of diligent effort on Mr. Guinn's part, Mr. Guinn now seeks  
2 additional fees (ECF No. 58). In a pleading filed on November 29, 2011 (ECF No. 58), a  
3 month after moving to withdraw, Mr. Guinn states:

- 4 • He took the case for a flat fee of \$4,000.
- 5 • He received \$2,200 prior to filing (the retainer);
- 6 • He was paid another \$750 to respond to a dismissal, a second amended plan and a  
7 request for moratorium. This fee and "new" representation occurred on October  
8 24, 2011 (ECF No. 58 at 2, lines 6-10). The Amended Plan filed by Mr. Guinn  
9 (ECF No. 42) was never confirmed.
- 10 • The total in fees paid to Mr. Guinn was \$2,950.
- 11 • Mr. Guinn requested a total fee of \$4,500, and for the Trustee to remit \$1,550  
12 (\$4,500 less \$2,950 previously paid).

13 To add to the Guinn fee mess, Mr. Guinn filed an amendment to schedules (ECF No. 60)  
14 which contained a "Disclosure of Compensation," nowhere signed by the Debtors, and nowhere  
15 explaining why the original Disclosure (ECF No. 1) had been changed, upping the fee.

16 The Debtors' new counsel, Matthew Linn, objected to Mr. Guinn's request for fees (ECF  
17 No. 61) on grounds that Mr. Guinn's representation had been essentially ineffective, and was  
18 therefore inherently unreasonable and was not supported by time records.

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20 **MATTHEW LINN'S REPRESENTATION**

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22 On November 10, 2011, attorney Matthew Linn entered an appearance for the Debtors.  
23 His disclosure of compensation (ECF No. 51) stated that his representation was for a flat fee.  
24 "For legal services, I have agreed to accept \$1,000.00." It also reflected payment of the \$1,000,  
25 and an amount still owing of zero. Mr. Linn appeared on November 10, 2011, and got the  
26 Debtors' second amended plan confirmed by February 24, 2012 (ECF No. 72). That plan also  
27 provided for a flat fee of \$1,000 (ECF No. 50).

28 Now, Mr. Linn seeks a total of \$2,053.50, on some "hourly rate" theory. However, this  
fee schedule is inconsistent with his initial disclosure, and the provisions of the confirmed plan

1 (ECF No. 72). Mr. Linn seeks an additional \$1,053.50 above his original agreement and  
2 payment of \$1,000, without anywhere advising the court at what point, if any, the fee  
3 arrangement changed from the initial agreement, or whether the clients knew about and agreed  
4 to doubling the fee.

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6 **DISCUSSION OF FEES EARNED**

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8 **Kirk Guinn**

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10 Mr. Guinn has received \$2,950 in fees. He has been ordered to return \$250 to the  
11 Trustee. A total fee of \$2,700 is allocated to Mr. Guinn for the value of reasonable services  
12 rendered.

13 If he has not already done so, Mr. Guinn is ORDERED to disgorge \$250 to the Trustee  
14 within ten (10) days. IF MR. GUINN FAILS TO DO SO, THE TRUSTEE IS ORDERED TO  
15 IMMEDIATELY MOVE FOR CONTEMPT SANCTIONS AGAINST MR. GUINN,  
16 INCLUDING SEEKING HIS DISBARMENT FROM THE FEDERAL COURTS.

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18 **Matthew Linn**

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20 Mr. Linn agreed to accept the case for a \$1,000 fee (ECF No. 50, 51), and he was paid  
21 that amount.

22 Having been paid, under the agreed fee arrangement and order confirming plan, no other  
23 sums are compensable.

24 Separate orders will be entered on both attorneys' fees issues.

25  
26 DATED AND SIGNED ABOVE.

1 To be NOTICED by the BNC ("Bankruptcy Noticing Center") to:

2 Debtors

3 Matthew J. Linn, Attorney for Debtors

4 Kirk Guinn, Attorney for Debtors

5 Trustee

6 Office of the U.S. Trustee

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