Not Intended for Publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
THOMAS J. CAHILLANE	)	CASE NO. 04-65210
	)	
	)	
Debtor	)	

DECISION AND ORDER GRANTING MOTION TO STRIKE

At Fort Wayne, Indiana, on

The debtor, who is proceeding pro se, objected to an application for compensation filed by the trustee's attorney, Catherine Boncela. That objection did not identify any particular services or groups of services debtor found objectionable or any reason why the fees sought for the services described were not reasonable. Instead, the objection is a generalized complaint that guidelines established by the office of the United States Trustee were not followed by the trustee and complaints about the involvement of another attorney, a Mr. Carter, who has not sought to paid from the estate. The court held a hearing on the application and the objection, and, given that the debtor is pro se,[1] gave him sixty days within which to supplement his objection in order to better explain just what he was complaining about. See generally, Matter of Hunt's Health Care, Inc., 161 B.R. 971, 981-82 (Bankr. N.D. Ind. 1993). The order from the hearing stated: "If the debtor objects to any particular time entries, within sixty days, he shall file a supplement to his objection which identifies each and every such entry and the reason or reasons he claims it is objectionable." Order dated Feb. 20, 2013. On May 1, the debtor filed what he considers to be the contemplated

[1]The court is mindful that, as a pro se litigant, the debtor's filings should be construed with a degree of liberality. Korsunskiy v. Gonzales, 461 F.3d 847, 850 (7th Cir. 2006); Kincaid v. Vail, 969 F.2d 594, 598 (7th Cir. 1992)

supplement.[2] Not only was the supplement filed late, but it does nothing more than continue the debtor's complaints about Mr. Carter and the trustee's perceived failure to follow the United States Trustee's rules and guidelines for administering cases. It says precious little about Ms. Boncela and never identifies any particular services she rendered that the debtor finds objectionable or why that may be so. Because of this, the applicant has filed a motion to strike the supplemental objection and it is that motion together with the debtor's response thereto that is presently before the court.

Although they are disfavored, see, Heller Financial, Inc. v. Midwhey Powder Co., Inc., 883 F.2d 1286, 1294 (7th Cir. 1989); see also, Knudsen v. Liberty Mutual Ins. Co., 411 F.3d 805 (7th Cir. 2005) ("we hope that in the future [parties] will address the issues directly rather than move to strike the [opponent's] papers."); Dexter v. Miller, 2011 Bankr. LEXIS 442 (Bankr. N.D. Ind. Jan. 19, 2011) (it is generally more productive to address the merits of a particular filing than to argue about whether it should be stricken), motions to strike are addressed to the court's discretion. Cleveland v. Porca Co. 38 F.3d 289, 297 (7th Cir. 1994). In very general terms, the purpose of a motion to strike is to remove things from the docket that do not deserve to be part of the court's record, see, Fed R. Civ. P. Rule 12(f) (redundant, immaterial, impertinent, or scandalous material may be stricken); Rosemary B. on Behalf of Michael B. v. Board of Educ. of Community High School Dist. No. 155, 52 F.3d 156, 158-59 (7th Cir. 1995) (a filing that does not comply with applicable rules may be stricken), or to challenge the sufficiency of a particular filing. See, Fed. R. Civ. P. Rule 12(f) (striking an insufficient defense). See also, Heller Financial, 883 F.2d at 1294.

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[2]The court willingly accepts the debtor's contention that his submission of May 1 represents the supplement to his objection. It notes, however, that not only is the filing late, but it does not, on its face, purport to be such a thing. Its format suggests that it is nothing more than a letter to the court, which undoubtedly explains why the clerk docketed it as just that: a letter.

The second category of motions really tests whether a particular filing is sufficient to accomplish its ostensible purpose, and that is the question presented by the present motion. Does the debtor's submission of May 1 do what the order of February 20 required? The answer to that question is no.

The usual method for determining fees is the lodestar approach: reasonable time devoted to a matter multiplied by a reasonable hourly rate yields a reasonable fee. Hunt's Health Care, Inc., 161 B.R. at 976. There are several ways (and combinations of them) that one can go about objecting to an application for fees. One can object to discrete services or entries based upon the argument that the services are not adequately described to properly evaluate them; or contend that the compensation being sought for adequately described services is not reasonable because of some problem with the services themselves: they were not necessary or somehow redundant, the amount of time devoted was unreasonable, that counsel's hourly rate is not a reasonable one, etc. Another is to argue that, for one reason or another (a reason that often has little to do with the amount of time counsel devoted to the matter or counsel's hourly rate), the fee generated by the lodestar calculation is not a reasonable one. Given the variety of challenges that can be made, the purpose of the order of February 20 was to get the debtor to clarify precisely what the nature of his objection to Ms. Boncela's fees was. See, Hunt's Health Care, Inc., 161 B.R. at 982 ("The objector must, at some point, identify any allegedly improper, insufficient, or excessive entries and direct the court's attention to them. The objector should also be able to identify a reason why the hourly rates involved and the time charged are not reasonable or why the market would place a lower value on counsel's labors . . ."). It required him to identify any particular time entries he found objectionable along with the reasons why.

The untimeliness of the debtor's filing is, by itself, sufficient to strike it. See, Pfeil v. Rogers,

757 F.2d 850, 858 (7th Cir. 1985) (disregarding material submitted after the expiration of a reasonable filing deadline not abuse of discretion). But even if that were not so, the supplement to debtor's objection does not even begin to even comply with the court's order. Nowhere does he identify any particular services Ms. Boncela rendered that he claims are objectionable or offer an explanation why. Instead, all he has done is continue his complaints about the United States Trustee's guidelines not being followed and Mr. Carter. These things have nothing to do with Ms. Boncela's fees. As a result, debtor's supplement of May 1 is not sufficient to accomplish its ostensible purpose.

The trustee's motion to strike is GRANTED and the supplement to debtor's objection to Ms. Boncela's application for fees is hereby stricken.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court