

DEC 07 2005

**HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT**

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

6	In re:)	BAP No.	SC-04-1591-NMoPa
)		
7	DEAN A. GARCIA and KAREN)	Bk. No.	03-06041-H7
	M. JENCKS GARCIA,)		
8)		
	Debtors.)		
9	_____)		
)		
10	FERRETTE & SLATER,)		
)		
11	Appellant,)		
)		
12	v.)	OPINION	
)		
13	UNITED STATES TRUSTEE,)		
)		
14	Appellee.)		
15	_____)		

Argued by Telephone Conference
and Submitted on October 20, 2005

Filed - December 7, 2005

Appeal from the United States Bankruptcy Court
for the Southern District of California

Honorable John J. Hargrove, Chief Bankruptcy Judge, Presiding.

Before: NIELSEN¹, MONTALI and PAPPAS, Bankruptcy Judges.

¹ Hon. George B. Nielsen, Jr., Bankruptcy Judge for
the District of Arizona, sitting by designation.

1 NIELSEN, Bankruptcy Judge:

2
3 This is an appeal of the bankruptcy court's decision denying
4 appellant's request for an award of professional fees and
5 reimbursement of costs. We **AFFIRM IN PART AND REVERSE AND REMAND**
6 **IN PART.**

7 **FACTS**

8 Dean A. and Karen M. Jencks Garcia ("debtors") filed a
9 voluntary petition for relief under Chapter 7 of the Bankruptcy
10 Code on June 26, 2003.² Richard M. Kipperman was appointed
11 trustee.

12 A principal asset was a residence located in San Marcos,
13 California ("San Marcos Property"). Debtors scheduled its value at
14 \$255,000, reported a \$175,000 first deed of trust and claimed a
15 \$59,600 homestead exemption.

16 The trustee obtained a real estate broker valuation for the
17 San Marcos Property of \$310,000. He calculated a return to the
18 estate of up to \$38,000, if this estimated value was obtained in a
19 sale.

20 The trustee initially notified debtors' attorney that he
21 intended to sell the San Marcos Property, but would also be
22 agreeable to debtors' purchase. In the bankruptcy court, Ferrette
23 & Slater ("Firm" or "Appellant") contended: "the Trustee made
24 attempts to negotiate with Debtors' attorney regarding either a
25 sale of the Debtors' residence, or Debtors' purchase of the net
26

27 2

28 Unless otherwise indicated all references to "chapter"
or "section" are to the Bankruptcy Code, 11 U.S.C. §§ 101-
1330.

1 equity in the residence. These attempts were unsuccessful, and
2 therefore the Trustee sought to employ . . . Slater to assist with
3 the resolution of certain legal issues" In re Garcia, 317
4 B.R. 810, 821 (Bankr. S.D. Cal. 2004) (questioning the necessity for
5 the trustee to retain counsel at this juncture).

6 On October 20, 2003, the Firm filed an application on behalf
7 of the trustee for employment of the Firm as general counsel to the
8 trustee. Relevant portions of the application provide:

9 2. Applicant has undertaken an investigation
10 of the statements and representations made in
11 the schedules Applicant believes that the sale of
12 the debtors' real property . . . will likely
13 constitute a source of recovery
14

15 3. Based on the above, your Applicant is
16 informed and believes . . . that sufficient
17 assets exist to generate a dividend for the
18 payment of the creditors . . . as more
19 particularly described in the Declaration of
20 Gary E. Slater, filed herewith.

21 4. Consequently, your Applicant desires to
22 employ Ferrette & Slater. . . as
23 general counsel, whose attorneys have
24 conducted a review of certain pleadings and
25 documents on file

26 5. Your Applicant believes that the sale of
27 the San Marcos Property will generate funds
28 which can be used to pay the creditors . . .
and is necessary to preserve the estate and to
prevent loss thereto. Applicant has selected
Ferrette & Slater for the reason that it is
familiar with the relevant facts and
applicable law and is well-prepared to
undertake the legal services required in this
matter that may be necessary. . . .

29 Attorney Slater's declaration in support of the employment
30 application reflects:

31 On or about September 29, 2003. . . Declarant
32 consulted with the Trustee about the scope of
33 the proposed representation in this matter.
34 From that consultation, the Trustee concluded

1 it would be prudent and necessary for him to
2 retain Ferrette & Slater, as general counsel
for the following reasons:

3 a) . . . The Trustee intends to sell the
4 San Marcos Property. In the context of that
5 sale, the Trustee has indicated a desire to
6 receive an opinion from counsel regarding all
7 legal issues including the legal adequacy of
the offers for sale, to draft counteroffers,
to deal with the title insurance issues, to
review escrow instructions, and to assist with
the closing of the sale.

8 b) The Trustee will also need counsel to
9 assist him with the analysis of certain
10 creditor's claims in this estate, except as
11 limited above, and any other miscellaneous
matters which may be appropriate for general
counsel to be engaged.

12 The bankruptcy court entered an order authorizing employment
13 of the Firm as general counsel on October 21, 2003. The application
14 was "approved pursuant to 11 U.S.C. section 327 subject to review
15 under 11 U.S.C. section 330. All rates, fees and costs are subject
16 to court approval"

17 The court's docket reveals the Firm prepared its own
18 employment application and also submitted an application to hire the
19 trustee's real estate broker. However, the docket also reflects it
20 was the trustee who prepared an employment application to retain an
21 accountant.

22 Upon approval of its employment, the Firm initiated
23 negotiations with debtors' counsel. Eventually a settlement was
24 reached. Debtors agreed to pay the estate \$28,000 in exchange for
25 trustee's abandonment of the estate's interest in the San Marcos
26
27
28

1 Property.³

2 The Firm prepared the settlement documents and a Notice of
3 Intended Action and Opportunity for Hearing, which was served on all
4 creditors. There were no objections. The court entered its order
5 approving the stipulation and compromise on January 20, 2004.

6 In June of 2004, Appellant filed its only fee application for
7 services and expenses, covering September 29, 2003, through July 16,
8 2004. The Firm sought a total of \$10,679.50 in fees and cost
9 reimbursement of \$273.15. The Firm also sought a "clean up" fee of
10 \$750.00 to deal with matters occurring after filing of the
11 application or after the July 16, 2004, hearing date.

12 At the initial hearing, the bankruptcy court questioned the
13 Firm about its services and provided an opportunity to submit a
14 supplemental brief and declaration addressing, among other things:
15 "1) whether some of the work performed by the firm should have been
16 performed by the trustee; and 2) whether the time spent on the fee
17 applications was excessive." In re Garcia, 317 B.R. at 815.

18 At a subsequent hearing, the court denied the entire

19 _____
20 3

21 Appellant explains that upon reaching the sale
22 agreement with debtors, the broker's services were no longer
23 necessary. Appellant argues that the equity sale, in addition to
24 \$28,000 cash paid by debtors, also benefitted the estate in the
25 approximate amount of \$25,000—the amount saved by avoiding a
26 broker's commission (approximately 6% of \$310,000) and costs of sale
27 (approximately 2% of \$310,000). As with any settlement, however,
28 the estate was required to give something up. While noting the
costs saved by not resorting to a public sale, Appellant neglects
to discuss the possible downside. In the real estate broker's
employment application, prepared by Appellant, trustee asserted the
sale was likely to yield a substantial net equity. Estimated net
sale proceeds at the full listing price of \$310,000, after
deducting 8% for sales costs, would be \$50,600, or \$22,600 more than
what the estate realized by settling with debtor.

1 application. In denying all fees, the court concluded: "In short,
2 the trustee did not need to employ an attorney in this case." Garcia
3 supra at 826-27.

4 Appellant timely appealed, and review has been limited to the
5 denial of fees for employment applications, sale of the San Marcos
6 Property and preparation of a fee application. Appellant withdrew
7 its request for fees relating to obtaining waiver of a possible
8 conflict of interest from the Bank of America.⁴

9 ISSUES

10 1. Whether the bankruptcy court applied the correct legal
11 standard in disallowing all Appellant's fees and expenses.

12 2. Whether the bankruptcy court abused its discretion in
13 denying compensation for services regarding the San Marcos Property
14 sale and for preparing employment and fee applications.

15 STANDARDS OF REVIEW

16 A bankruptcy court's findings of fact are reviewed for clear
17 error. Its conclusions of law are reviewed de novo. Leichty v.
18 Neary (In re Strand), 375 F.3d 854, 857 (9th Cir. 2004). We do not
19 disturb a bankruptcy court's award of attorneys' fees, unless the

20
21 ⁴
22 The trustee was originally a party to the appeal. On
23 January 31, 2005, the BAP issued a Clerk's Order requiring
24 Appellant to file a response regarding the finality of the order on
25 appeal and the parties to the appeal. Appellant responded on
26 February 11, 2005. On March 22, 2005, the panel ordered that the
27 scope of appeal was limited to a review of the denial of the Firm's
28 final fee application. The portion of the bankruptcy court order
granting interim compensation to the Chapter 7 Trustee was found to
be interlocutory and not currently subject to appeal. Accordingly,
trustee Richard M. Kipperman has been removed as an appellant.
Finally, the panel ordered that the United States Trustee ("UST")
should be listed as appellee. The Clerk added this agency to the
docket and service list. The UST requested to be deleted from the
appeal docket. This was denied, although the UST's participation
by filing a brief was deemed optional. No appellee brief has been
filed.

1 court abused its discretion or erroneously applied the law. Id.
2 The legal standard to determine the allowance of fees involves
3 statutory interpretation and construction of section 330(a). It
4 is therefore reviewed *de novo*. Roberts, Sheridan & Kotel, P.C. v.
5 Bergen Brunswick Drug Co. (In re Mednet), 251 B.R. 103, 106 (9th Cir.
6 BAP. 2000).

7 DISCUSSION

8 This appeal involves an interplay of sections 704, 327 and
9 330(a).

10
11 The Bankruptcy Code requires the trustee
12 to ". . . collect and reduce to money the
13 property of the estate . . . and close such
14 estate as expeditiously as is compatible with
15 the best interest of parties in interest."
16 § 704(1). When necessary, and with the
17 court's approval, the trustee ". . . may
18 employ one or more attorneys. . . or other
19 professional persons . . . to represent or
20 assist the trustee in carrying out the
21 trustee's duties under this title." § 327(a).
When so employed, the trustee's attorney (or
other professional) is entitled to ". . .
reasonable compensation for actual, necessary
services rendered by such . . . attorney . . .
based on the nature, the extent, and the value
of such services, the time spent on such
services, and the cost of comparable services
other than in a case under this title . . ."
§ 330(a)(1). . . . Such compensation is not
awarded, however, without limitation. . . .

22 In re Scoggins, 142 B.R. 940, 943 (Bankr. D.Or. 1992) (citing
23 authority).

24 The trustee sought services of an attorney, an accountant, and
25 a real estate broker to assist in his statutory duties. At issue
26 is whether the services rendered by the Firm are compensable in any
27 amount.

1 However,

2 [T]he court shall not allow compensation for—

3 (i) unnecessary duplication of services;
4 or

5 (ii) services that were not—

6 (I) reasonably likely to benefit
7 the debtor's estate; or

8 (II) necessary to the administration
9 of the case.

10 11 U.S.C. § 330(a) (4) (A) .

11 In sum, "[s]ection 330(a) (1) authorizes 'reasonable
12 compensation for actual, necessary services rendered' by a
13 professional. Section 330(a) (2) authorizes a court to award
14 compensation that is less than the amount of compensation requested.
15 Section 330(a) (3) (A) outlines factors a court should consider when
16 determining what is reasonable compensation for services rendered.
17 In addition, section 330(a) (4) (A) outlines when compensation should
18 not be allowed." In re Mednet, 251 B.R. at 106.

19 Mednet noted a split of authority regarding the legal standard
20 to determine whether services are necessary or beneficial to the
21 estate. Id. at 107. We rejected a standard that services are only
22 compensable if they result in a material benefit to the estate
23 because this does not comport with the clear meaning of the statute.
24 Id. at 108. Instead, a professional need demonstrate only that the
25 services were reasonably likely to benefit the estate at the time
26 rendered. Id.

27 In addition, a bankruptcy court examines the circumstances and
28 manner in which services are performed and results achieved to
determine a reasonable fee. Id. Such examination includes:

- 1 (a) Were the services authorized?
2 (b) Were the services necessary or beneficial
3 to the administration of the estate at
4 the time they were rendered?
5 (c) Are the services adequately documented?
6 (d) Are the fees required reasonable, taking
7 into consideration the factors set forth
8 in section 330(a)(3)?
9 (e) In making the determination, the court
10 must consider whether the professional
11 exercised reasonable billing judgment.

12 Id.; see also In re Strand, 375 F.3d at 860.

13 In exercising reasonable billing judgment, the professional
14 must consider:

- 15 (a) Is the burden of the probable cost of
16 legal services disproportionately large
17 in relation to the size of the estate and
18 maximum probable recovery?
19 (b) To what extent will the estate suffer if
20 the services are not rendered?
21 (c) To what extent may the estate benefit if
22 the services are rendered and what is
23 the likelihood of the disputed issues
24 being resolved successfully?

25 In re Mednet, 251 B.R. at 108 n. 7, citing to Unsecured Creditors'
26 Committee v. Puget Sound Plywood, Inc., 924 F.2d 955, 959 (9th
27 Cir. 1991).

28 The bankruptcy court began its analysis by asking the
fundamental question of whether the services were compensable
legal services. In re Garcia, 317 B.R. at 817-818. This
essential question is part of the analysis of Puget Sound Plywood.
924 F.2d at 957-58.

The first part of the analysis asks "[a]re the "services
which are the subject of the application properly compensable as
legal services". Id. at 957. "A finding of compensability merely

1 means the services performed were properly charged as legal
2 services, as opposed to administrative or otherwise nonlegal
3 services." Id. at 958.

4 Determining what are compensable legal services is assisted
5 by examining the relationship between trustee and counsel.
6 Section 327 allows trustees to hire professionals to perform
7 services requiring special expertise, beyond that expected of an
8 ordinary trustee. Such professionals can be separately
9 compensated for actual, necessary services under § 330(a). Boldt
10 v. U.S. Trustee (In re Jenkins), 130 F.3d 1335, 1341 (9th Cir.
11 1997); see also In re McKenna, 93 B.R. 238, 241-42 (Bankr. E.D.
12 Cal. 1988) (A trustee may employ professionals only for tasks that
13 require special expertise beyond that expected of an ordinary
14 trustee).

15 Section 328(b) provides that an attorney or accountant may
16 not receive compensation for the performance of any trustee's
17 duties that are generally performed by a trustee without the
18 assistance of an attorney or accountant. U.S. Trustee v. Boldt
19 (In re Jenkins), 188 B.R. 416, 420 (9th Cir. BAP 1995); aff'd 130
20 F.3d 1335 (9th Cir. 1997).

21 In a case involving trustee's compensation, the applicant
22 attempted to distinguish between attorneys who serve as trustee
23 and non-attorney trustees. Sousa v. Miguel (In re U.S. Trustee),
24 32 F.3d 1370, 1373 (9th Cir. 1994). The Court of Appeals
25 observed:

26 In In re McKenna, 93 B.R. 238 (Bankr. E.D.
27 Cal. 1988), the court refused to award
28 attorney's fees to an attorney trustee for
services ordinarily performed by a trustee.
The court held that a "trustee may not be paid

1 an attorney's fee for any task that ordinarily
2 would be performed by a competent trustee
3 without assistance from counsel." Id. at 240.
4 Discussing trustees who serve as their own
5 counsel under 11 U.S.C. § 328(b), the court
6 recognized Congressional intent that "the
7 court [] differentiate between the trustee's
8 services as trustee, and his services as
9 trustee's counsel, and to fix compensation
10 accordingly." Id. (citing H.R.Rep. No. 95-595,
11 95th Cong., 1st Sess. 328-29 (1977); S.Rep.
12 No. 95-989, 95th Cong., 2d Sess. 39 (1978),
13 U.S.Code Cong. & Admin.News, 1978, pp. 5787,
14 5825, 6285).

15 The Fourth Circuit limited the fees of an
16 attorney in a similar case. In United States
17 Trustee v. Porter, Wright, Morris & Arthur (In
18 re J.W. Knapp), 930 F.2d 386 (4th Cir. 1991),
19 the Fourth Circuit refused to compensate a
20 trustee's attorney who performed duties
21 statutorily required of the trustee. The
22 court stated that "courts may not compensate
23 an attorney for services statutorily required
24 by the trustee. Only when unique difficulties
25 arise may compensation be provided for
26 services which coincide or overlap with the
27 trustee's duties and only to the extent of
28 matters requiring legal expertise." Id. at
388. Thus, attorney trustees may not charge
attorney's fees when performing trustee duties
and include overhead costs in their hourly
rates.

Id. at 1373 (omitting footnote).

2. APPLICATION OF SECTION 330 STANDARDS

Mindful of this guidance, we must determine whether the
bankruptcy court abused its discretion in disallowing Appellant's
total fee application. We consider the individual components of
the work performed.

A. Under the facts of this case, the Bankruptcy Court did
not err in refusing to compensate counsel for preparing employment
applications.

Appellant billed for services in preparing and filing the

1 trustee's applications for employment of the firm and the real
2 estate broker. The denial of fees for this work is not an abuse of
3 discretion. Routine employment applications, "are generally
4 prepared and presented by a trustee without the assistance of an
5 attorney for the estate." In re McKenna, 93 B.R. at 241.

6 As to Appellant's employment application, the bankruptcy court
7 observed:

8 Unfortunately, after extensively
9 reviewing the time sheets, and making the
10 adjustments noted above, the Court finds that
11 the remaining services relate to routine case
12 administration services in Category "A" for
13 Standard Bankruptcy Administration
14 (approximately \$128 remaining after taking
15 deductions for disallowed time above); the
16 firm's employment application which is listed
17 under Category "B" Employment Applications;
18 and its services related to the preparation of
19 fee applications in Category "E" Fee
20 Applications (\$2,425). Since the vast
21 majority of the firm's services were
22 disallowed because they constituted the work
23 of the trustee, the Court cannot justify
24 allowing compensation for the remaining time
25 under Standard Bankruptcy Administration, nor
26 can the Court justify allowing compensation
27 for services related to the firm's employment
28 application and preparation of the fee
application.

20 Garcia, supra at 825-26.

21 This panel may exercise discretion to examine the record
22 provided. In doing so, we look for any plausible basis upon which
23 the bankruptcy court might have exercised its discretion to do what
24 it did. If we find any such basis, we affirm. Sallie Mae Servicing,
25 LP v. Williams (In re Williams), 287 B.R. 787, 792 (9th Cir. BAP.
26 2002).

27 Again, preparation of an application for employment of a
28 professional is a duty generally performed by a trustee without the

1 assistance of an attorney. In re McKenna, 93 B.R. at 241 (emphasis
2 added). This does not mean that preparation of an employment
3 application is *per se* not compensable. It simply means, absent a
4 showing by applicant to the contrary, routine employment
5 applications remain a trustee duty.⁵ As applied to counsel's
6 employment application, the court's disallowance here is not an
7 abuse of discretion.

8 B. Under the facts of this case the Bankruptcy Court did
9 not err in refusing to compensate counsel for work in connection
10 with the sale of the San Marcos Property.

11 Appellant expended 29.7 hours and requested \$5,676 for
12 sale related services. Garcia at 820. In denying all fees, the
13 court summarized the firm's legal services as: "reviewing the
14 listing agreement; communicating with the broker; negotiating with
15 debtors' attorney regarding the sale of equity to the debtors;
16 reviewing the title report; and preparing the stipulation and mutual
17 releases between the debtors and the trustee." Id.

18 The court noted "[t]here is also no satisfactory explanation
19 as to why both Gary E. Slater and his paralegal needed to review the
20 listing agreement and no description regarding the legal analysis
21 of the issues involved." Id. at 820-21. Absent this detail, the
22 court was not in a position to determine whether the fees incurred
23 were compensable as legal services. This finding is not an abuse of
24 discretion. Again, a case trustee may only employ professionals for
25 tasks that require special expertise beyond that expected of an
26

27 5

28 For example, employment of special counsel pursuant
to section 327(e) might involve more than a routine
general counsel application.

1 ordinary trustee. In re Jenkins, 188 B.R. at 420. Routine
2 negotiations regarding sale of real property are properly within the
3 trustee's province. See In re McKenna, id. at 242. Also see In re
4 Castro, 320 B.R. 690, 696 (Bankr. S.D. Cal. 2005).

5 Appellant is ultimately responsible for its own actions. In
6 re Strand, 375 F.3d at 859. The court must take into consideration
7 whether the professional exercised reasonable billing judgment.
8 Mednet, 251 B.R. at 108, Puget Sound Plywood, 924 F.2d at 958.
9 (observing that a bankruptcy professional is not free
10 "to run up a tab without considering the maximum probable
11 recovery").

12 Employment of counsel to assist in the sale did not give
13 counsel free rein to step into the trustee's shoes and undertake
14 efforts statutorily assigned to the trustee.⁶ Simply put, the
15 court cannot compensate an attorney for performing the statutory
16 duties of a trustee. In re Castro, 320 B.R. at 696.

17 The bankruptcy court also denied fees for the Firm's review of
18 the title report, noting:

19 [T]he only explanation offered by the firm is
20 that its "preliminary assessment indicated that
21 the property might be subject to a 'wild' deed
22 of trust." Supp. Br. 5:22:25. The firm,
23 however, provides no additional facts regarding
24 the so-called wild deed. Further, no sale of
25 the property ever took place and the debtors

24 6

25 Appellant argues that attorneys should be able to rely
26 on court approval of an employment application to the extent the
27 court initially approves the nature of the proposed services
28 detailed in the application. Appellant's Brief at 21-23. Detail in
the employment application is not a safe harbor or guarantee of
compensable services, especially where the detail is included in
counsel's declaration, rather than in the body of the application.
Counsel should know the law: legal fees are subject to disallowance
under section 330(a) for services duplicating work of a trustee.
See Garcia at 815, fn. 1, section 328(b).

1 simply bought the equity. With no apparent
2 legal issues present, reviewing the title
3 report is part of the trustee's duties.
4 McKenna, 93 B.R. at 241 (citation omitted).

5 Id. at 821-22.

6 The bankruptcy court's decision in this regard is not an abuse
7 of discretion. See In re McKenna 93 B.R. at 242 (reviewing title
8 reports generally a duty of the trustee).

9 C. The Bankruptcy Court erred in refusing any compensation
10 to counsel for preparing legal papers involving a stipulation and
11 mutual release between the trustee and debtors.

12 The court ruled:

13 [T]he firm spent approximately 16.4 hours for
14 a total of \$3,155.50 on preparing the
15 stipulation and mutual releases between the
16 debtors and the trustee. The stipulation and
17 order is a mere five pages, with one page
18 consisting of signatures. See Stipulation and
19 Order [Docket # 27]. The stipulation was
20 quite simple and no releases were indicated
21 within the stipulation. The Court accepted Mr.
22 Slater's offer of proof at the September 30,
23 2004, hearing that the releases were prepared
24 and signed. But, the releases were not
25 included in the record, so the Court did not
26 have the opportunity to examine how complex
27 they might have been. The declaration of Gary
28 E. Slater accompanying the order approving the
stipulation consisted of one and one-half
pages. See Declaration of Gary E. Slater in
Support of Seeking Entry of Order Approving
Stipulation Re Compromise and Liquidation of
Debtors' Residence [Docket # 28]. Lastly, the
Notice of Intended Action was simply a form
with a few paragraphs typed in regarding the
agreement between the trustee and the debtors.
See Notice of Intended Action re Trustee and
Debtors [Docket # 23].

26 In light of the simplicity of the
27 documents noted above, and the lack of
28 evidence regarding the releases, the Court
finds that the services relating to the
stipulation and mutual releases are not
compensable as legal work.

Garcia, supra at 822. (emphasis supplied).

1 Preparation of legal documents, such as the agreement and
2 releases here, are regarded as legal services. It is well settled
3 in California that "practicing law" means more than just appearing
4 in court. Estate of Condon, 76 Cal. Rptr. 2d 922 (1998). Under
5 California law, the practice of law includes the preparation of
6 legal instruments and contracts by which legal rights are secured,
7 whether the matter is pending in court or not. Frankfort Digital
8 Services, Ltd. v. Neary (In re Reynoso), 315 B.R. 544, 552 (9th Cir.
9 BAP. 2004) (layperson's solicitation of information which is
10 translated into completed bankruptcy forms is unauthorized practice
11 of law).

12 The fact that documents are not complex is not dispositive as
13 to whether their drafting is properly within the sphere of legal
14 services. Settled California law establishes that preparing legal
15 documents that secure legal rights is normally considered practicing
16 law. The bankruptcy court's conclusion is an abuse of discretion.

17 Possibly the court's determination that fees should not be
18 awarded rests on more than a conclusion that appellant's preparation
19 of documents did not constitute *compensable* legal services. The
20 court noted it had not seen any evidence regarding the releases.
21 Implicit in this ruling is that the simple documents drafted failed
22 to justify fees of \$3,155.50. This is buttressed by the court's
23 observation that:

24 Again, usually in these situations where a
25 debtor purchases the equity in his or her
26 residence in order to avoid losing it to a
27 sale, the debtors' attorney would prepare the
28 stipulation. Perhaps the trustee may hire an
attorney to review the stipulation for legal
issues, but that is not the situation in this
case since the firm again simply took over all
the work in the case.

1 Garcia, supra at 822.

2 Given that drafting legal papers is normally compensable as
3 legal work, this matter is remanded to the bankruptcy court to enter
4 explicit findings. If the court determines such work was necessary
5 in this case, it can review the drafted documents and establish a
6 reasonable fee for what was done.

7 D. The Bankruptcy Court erred in refusing to award any
8 fees for preparation of the firm's fee application.

9 The rationale for requiring detailed fee statements is to
10 enable the bankruptcy court to fulfill its obligation to examine
11 carefully requested compensation to ensure expenses are justified.
12 In re Nucorp Energy Corp., Inc., 764 F.2d 655, 658 (9th Cir. 1985).
13 Section 330(a)(6) provides that any compensation awarded for
14 preparation of a fee application must be reasonable in light of the
15 level and skill required to prepare it. Based on this record,
16 disallowance of *all* fees for preparation of the fee application was
17 an abuse of discretion. Fees sought for preparation of the
18 application are not normally disproportionate to the full amount of
19 fees sought. Nevertheless, there is ordinarily an estate cost in
20 preparing such required pleadings, when compensable legal services
21 have been rendered. This matter is remanded to the bankruptcy court
22 to reconsider the compensation denial.

23 **CONCLUSION**

24 An attorney employed by a trustee must be mindful that
25 professional services are limited to tasks not routinely performed
26 by a trustee. Appellant stepped into the shoes of the trustee,
27 regarding aspects of the sale of the San Marcos Property and
28 preparation of employment applications. The bankruptcy court

1 correctly denied fees in those instances.

2 In an exhaustive, thoughtful memorandum decision, the
3 bankruptcy court nevertheless went too far in denying all
4 compensation to the Firm for preparing the stipulation and release
5 solely because such were not compensable legal services. Indeed,
6 these services should qualify for compensation, assuming they were
7 necessary and the amount sought is reasonable. If the bankruptcy
8 court decides any services should be compensated, the court must
9 then allow reasonable compensation for the preparation and
10 presentation of a fee application. We reverse on these issues only
11 and remand for further consideration.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28