

Plain English in Bankruptcy-Fee Orders

By Susan McIntyre

Legal assistants who work in the area of bankruptcy and corporate reorganization are often asked to perform two kinds of services as a matter of routine. One is to verify numbers and calculations on which the results of various actions are based. The other is to draft pleadings and proposed orders regarding administrative matters, such as objections to claims; or non-contested rejections of leases or executory contracts; or, in the example used here—the allowance of compensation for counsel for debtors, creditors' committees, or trustees. This article will consider some of the problems and remedies in drafting organized and well-written fee orders, and how the language of the order affects the process of verifying information.

To draft an order according to the principles of plain language, two specific goals should be considered: (1) eliminating unnecessary or stilted language, otherwise known as legalese; and (2) organizing the facts and figures within a complete, logical, and easily-verifiable format.

Legalese can be eliminated with the skillful use of red ink. (The extent to which legal assistants may use this device on other than their own work

product will probably depend on factors which only they may determine—but whenever the opportunity arises, give it a try!)

The second consideration in producing an order in plain language will require more time than editing with a red pen, but the time spent in analysis and organization will be appreciated by the attorney or paralegal who is assigned to verify the numbers and results. The more precisely the facts involved in the calculations are stated within the order, the less time will be required to review underlying information in order to verify the amounts recited. A well-drafted order will also be appreciated at a later time, when a clear understanding of the provisions is required to prepare a report or to reconcile amounts requested, awarded, written-off, and received within the accounting department. Often the rationale behind the original calculations is uncertain or forgotten by that time, and notes may not be readily available.

The following excerpt from an order allowing compensation is an example of an unclear recital of the elements in the court's ruling and the absence of information necessary to verify the net result.

... it is hereby

ORDERED that the compensation as applied for in the First Interim Application, with the reduction of fees of \$2,450.00 and a deferral of consideration of \$440.00 in fees for unexplained time and \$6,069.50 in fees billed in excess of \$225.00 per hour, are allowed on an interim basis; and it is further

ORDERED that the fees earned for legal services rendered from August 31, 1990 through and including December 31, 1990 of \$72,326.00, for which ap-

proval was sought and as reduced pursuant to the above modifications, are hereby approved; and it is further

ORDERED that Applicant may apply at the time of a final fee hearing for allowance of fees earned from August 31, 1990 through and including December 31, 1990, the consideration of which has been deferred as provided herein in the amount of \$6,509.50 and such fees of which Applicant has voluntarily deferred consideration in the amount of \$909.50...

The first paragraph includes four separate amounts which the court has either disallowed or deferred. A quick calculation shows that the total is \$8,959.50 and that the sum of the fees deferred is \$6,509.50.

The second paragraph states that fees of \$72,326 have been approved as reduced by the amounts stated in the first paragraph.

The third paragraph states that the fees deferred may be applied for in the final application in the amount of \$6,509.50, along with fees voluntarily deferred in the amount of \$909.50. It is unclear if the deferral of the \$909.50 is reflected in the amount awarded (\$72,326).

The language of the order implies that the final interim award is \$72,326. However, if the recital were to begin with the amount of the original request, it would be clear that the amount of the award is incorrect.

The total fees requested:	\$81,285.50
The reductions recited	
in the first paragraph:	(2,450.00)
	(440.00)
	(6,069.50)

Total fees approved	
as stated in the	
second paragraph:	\$72,326.00

"Plain Language" is a regular feature of the **Michigan Bar Journal**, edited by Joseph Kimble for the State Bar Plain English Committee. Assistant editor is George H. Hathaway. Through this column the Committee hopes to promote the use of plain English in the law. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

When the language is reduced to a mathematical calculation, it becomes obvious that the \$909.50 mentioned in the third paragraph is not reflected in the calculations. Therefore, total fees approved are not \$72,326 as stated in the second paragraph, but \$72,326 less \$909.50, or \$71,416.50. With a very careful reading, the result may be discernible, but would remain in doubt because of the language of the order. If the order had been drafted with the focus on the numbers instead of the descriptive language, the inadequacy would have been immediately apparent, and the order could have been revised to reflect the proper amount.

The order may be edited for a quick remedy, or it can be rewritten in two different styles for a better result. First, the editing of the original format for language and for the addition and correction of information:

... it is hereby [ORDERED:]

~~ORDERED~~ that the compensation as applied for in the First Interim Application, with the reduction of fees of \$2,450.00 and a deferral of consideration of \$440.00 in fees for unexplained time and \$6,069.50 in fees billed in excess of \$225.00 per hour, are allowed on an interim basis; and it is further



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~~ORDERED~~ that the fees earned for legal services rendered from August 31, 1990 through and including December 31, 1990 of \$72,326.00 [\$71,416.50], for which approval was sought and as reduced pursuant to the above modifications, are hereby approved; and it is further

~~ORDERED~~ that applicant may apply at the time of a final fee hearing for allowance of fees earned from August 31, 1990 through and including December 31, 1990, the consideration of which has [the Court] been deferred as provided herein in the amount of \$6,509.50 and such fees of which Applicant has voluntarily deferred consideration in the amount of \$909.50...

However, even with those changes, the net result remains somewhat in doubt. A better way would be to re-draft the order.

Forms of orders are diverse, and the style that becomes the standard in a particular venue is familiar and considered proper by those who practice there. However, the most important consideration should be an accurate, complete, concise, and readable document. With revision, the court's ruling can be stated accurately, completely, and concisely in two paragraphs:

IT IS ORDERED:

Compensation in the total amount of \$81,285.50, less \$2,450 disallowed, \$440 (unexplained time) and \$6,069.50 (attorney fees billed in excess of \$225 per hour) deferred by the court, and \$909.50 (paralegal fees billed in excess of \$55 an hour) voluntarily deferred by Applicant, is allowed in the reduced amount of \$71,416.50 for services rendered from August 31, 1990 through December 31, 1990 and is approved on an interim basis.

Applicant may apply at the time of the final fee hearing for deferred fees of \$7,419.

In its ruling the court included three things: (1) the allowance of fees in a certain amount, (2) the approval of fees

on an interim basis, and (3) the right of the applicant to apply at a later time for deferred amounts. All three provisions originally stated in three paragraphs, along with all amounts involved, are easily contained in two paragraphs.

A better alternative, adopting a different style, would simply involve inserting within the text of the order the mathematical calculation that should have been prepared before the order was drafted in the first place:

IT IS ORDERED:

Applicant is awarded interim compensation for August 31, 1990 through December 31, 1990 as follows:

Total fees requested:	\$81,285.50
Fees disallowed for unnecessary duplication of services	2,450.00
Fees deferred (unexplained time)	440.00
Attorney fees deferred (billed in excess of \$225 an hour)	6,069.50
Paralegal fees voluntarily deferred (billed in excess of \$55 an hour)	909.50
Interim fees awarded	\$71,416.50

Applicant may apply at the time of the final hearing for the fees deferred on an interim basis in the amount of \$7,419.

An important consideration in support of a clear and complete statement of facts and figures is the effort saved in verifying the amounts and the math—which is something most attorneys will do, regardless of the clarity of the order, before taking someone else's word on the amount of the fees awarded!

Because of the many factors affecting the allowance of fees in a bankruptcy case, drafting a proposed order to accurately reflect the fees requested, awarded, deferred, held back, or disallowed is critical to bankruptcy practice accounting, and for the preparation of the final application which may occur many years later. ■