

DEC 19 2023

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:  
ALEJANDRO RIVERA and BRENDA  
JIMENEZ-CONTERAS,  
Debtors.

BAP No. AZ-23-1047-LCF  
Bk. No. 0:18-bk-04468-SHG

JIM D. SMITH,  
Appellant,  
v.  
UST-UNITED STATES TRUSTEE,  
PHOENIX,  
Appellee.

MEMORANDUM\*

Appeal from the United States Bankruptcy Court  
for the District of Arizona  
Scott H. Gan, Bankruptcy Judge, Presiding

Before: LAFFERTY, CORBIT, and FARIS, Bankruptcy Judges.

INTRODUCTION

Jim D. Smith, trustee of the chapter 7<sup>1</sup> estate of Alejandro Rivera and Brenda Jimenez-Conteras, was employed to serve as attorney for the estate

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\* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and “Rule” references are to the Federal Rules of Bankruptcy Procedure.

with the approval of the bankruptcy court. Smith later filed a fee application seeking attorney's fees of \$3,390, incurred during his administration of the estate. Based on the U.S. Trustee's ("UST") opposition to the fee application and the bankruptcy court's independent analysis of the requested fees, the bankruptcy court reduced the fees to \$870. Smith appeals the reduction. Seeing no error, we AFFIRM.<sup>2</sup>

### FACTS<sup>3</sup>

#### A. The bankruptcy case and Smith's activities

Alejandro Rivera and Brenda Jimenez-Conteras filed their chapter 7 petition on April 24, 2018.<sup>4</sup> Smith was appointed trustee.

Four months later, Smith filed a two-page application to have himself appointed "attorney for the estate." Concurrent with the application, Smith filed a one-page declaration which simply stated that he is a sole practitioner and had no conflicts. There being no objections, the application was approved.

On August 21, 2018, Smith filed a two-page "Motion for Accounting" which asserted that "the Debtors made cash withdrawals from their AEA

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<sup>2</sup> This appeal was concurrently heard with three others: (1) *Smith v. UST (In re Figuero)*, BAP No. AZ-23-1048-LCF; (2) *Smith v. UST (In re Banghart)*, BAP No. AZ-23-1049-LCF; and (3) *Smith v. UST (In re Earle's Custom Wines, Inc.)*, BAP No. AZ-23-1050-LCF. These companion appeals are the subject of their own separate written decisions.

<sup>3</sup> We exercise our discretion to take judicial notice of documents electronically filed in the underlying bankruptcy case and adversary proceeding. See *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

<sup>4</sup> The Debtors' discharge was entered on August 28, 2018, after the time period to object had elapsed.

Federal Credit Union Account . . . totaling \$5,000 which was within two months prior to filing Bankruptcy. . . . [T]he \$5,000 Cash Withdrawals were not disclosed and are property of the Bankruptcy Estate. . . . [T]he Trustee has requested and the Debtors have not provided receipts for the disposition of the \$5,000 Cash Withdrawal.” The motion contained no evidence to support the allegations and no legal argument as to why a failure to disclose prepetition spending caused the amount spent to be property of the estate.

Smith and the Debtors settled the dispute described in the motion for \$2,500 to be paid over time. Smith prepared and filed a two-page motion to approve the settlement and attached a three-page settlement agreement. Again, the application contained no declaration setting forth factual support, nor any argument or discussion of why the settlement was appropriate. There being no objections to the settlement motion, an order was entered approving the motion.

On July 22, 2019, the IRS sent Smith \$9,419.58 representing the Debtors’ tax refund for 2018. Smith subsequently paid the Debtors \$6,415.19 as their pro rata share of the refund which was approved by the court.

The bankruptcy court clerk filed and served a Notice of Bar Date and ultimately three proofs of claim were filed, all by credit card companies, totaling \$9,813.39.

## **B. The fee applications and UST objections**

On October 24, 2019, Smith filed a six-page Application for Allowance of Administrative Expense – and – Rule 2016 Disclosure. The application sought attorney’s fees of \$3,465.00 for 12.6 hours of work at \$275 per hour. The time was limited to the following categories: 8.4 hours for “litigation” with the Debtors over the \$5,000 alleged to be property of the estate; .7 hours for the preparation of the employment application documents; and 1.5 hours for the fee application. The 12.6 hours included an anticipated 2.0 hours for preparing for and attending a hearing on the application should there be objections. Smith noted that if there were no objections to the application, he would reduce the amount requested to \$2,500. Again, Smith included no declaration to support the application.

The UST timely objected to Smith’s application, arguing that there was improper lumping of time on specified time entries and that Smith should not be paid for drafting and filing his own employment application. The UST also objected to the inclusion by Smith of time which might be spent attending a hearing because an attorney cannot be compensated for responding to an opposition to the fee application under *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 131 (2015).

There was no further activity on the fee application until almost a year later, in October 2020, when Smith filed an amended fee application which sought fees of \$3,390 for 11.3 hours at \$300 per hour (the “Amended Fee Application”). The Amended Fee Application provided more detail in

response to the UST's lumping objection and removed the request for time to appear at a hearing if that were necessary. It replaced the 1.5-hour entry for preparation of the original fee application with a 2.0-hour entry for the Amended Fee Application. There was no explanation why the total time increased slightly (less the two hours for the opposition hearing) or why the rate went from \$275 to \$300 per hour.<sup>5</sup>

The UST objected again that the Amended Fee Application still had inappropriate lumping and that the application sought attorney's fees for "the performance of . . . trustee's duties." The UST specifically identified eight of the time entries totaling 3.9 hours as objectionable.

Shortly thereafter, the bankruptcy clerk filed a preprinted Memorandum to Case Trustee noting that there had been no activity in the case for more than one year and that "it is unclear as to whether this case is continuing to be administered or whether an appropriate final report should be filed and the case closed."

### **C. The hearings on Smith's Amended Fee Application**

Neither Smith nor the UST timely responded to the case memorandum; rather eight months later the UST filed a "request for status hearing regarding Memorandum to Case Trustee and United States Trustee's Objection to First Amended Application for Allowance of Administrative Expenses – Attorney's Fees," noting that there was no activity in the case and that the Amended Fee Application was pending.

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<sup>5</sup> Smith's employment application disclosed an hourly rate of \$300 per hour.

Thereafter, the bankruptcy court set a status hearing which was heard on August 4, 2022.<sup>6</sup>

At the hearing, Smith suggested that the bankruptcy court simply rule on the outstanding fee application and the objection without further hearings. The court invited Smith to file a response to the UST's objection, but Smith demurred. The court then stated on the record that the matter was submitted.

On September 8, 2022, the bankruptcy court entered its order requiring simultaneous further responses from Smith and the UST and setting a further hearing on the fee application. In its order, the court made tentative findings including that all but one of the trustee's time entries were "presumptively non-compensable trustee duties." The court ordered Smith to explain the need for the "research" entries and to "de-lump" each entry so it could "accurately determine the reasonableness of the fees requested." The court instructed Smith to respond to the UST objections as well as its tentative findings.

As to the UST, the court ordered the UST to file a reply "describing its procedure for identifying such violations when it reviews fee applications and whether it uses the same procedure and scrutiny to review fee applications by independent counsel as it does to review those by trustees also serving as attorneys for the estate."

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<sup>6</sup> This was a combined hearing for all four of the cases for which the Panel heard argument on September 28, 2023.

Smith's response repeated his position that all his billed time was for services "routinely performed" by attorneys employed by chapter 7 trustees. The response further complained that the UST was not objecting to the fees requested by trustee Lawrence Warfield's<sup>7</sup> attorney who "was paid over \$800,000 in the Year 2021 . . . for representing Chapter 7 Case Trustees in cases where issues similar to this Case were made and litigated."

The UST's response summarized its process for reviewing chapter 7 fee applications.

On November 1, 2022, the bankruptcy court conducted a second hearing and advised the parties that its review of the supplemental responses left it with questions and further concerns directed at both parties. After lengthy colloquy between the court and the parties, the court invited the parties to file further supplemental pleadings regarding its specific concerns. The court requested "case law" from the parties that differentiated a trustee's efforts as trustee and those of trustee's counsel. The court stated that it wished to better understand the UST's position on that issue so that it could "more clearly set a standard . . . to apply across the board." As to Smith, the court asked him to "take a hard look" at his time entries as some appeared to be administrative overhead expense. Over Smith's objection, the court set an evidentiary hearing in December.

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<sup>7</sup> Apparently, the only other chapter 7 trustee in the Yuma, Arizona area.

Subsequently, the UST filed a further memorandum which essentially repeated its earlier statement of its procedures regarding fee applications. It attached numerous exhibits containing turnover motions filed by trustees without counsel arguing that this type of turnover action is routinely done by trustees without counsel.

Smith filed a list of thirty-four “recent” cases purporting to establish that “the Attorney for the Chapter 7 Trustee was compensated (without objection) for services which the U.S. Trustee now claims are services that must be provided by the Chapter 7 Trustee, not an Attorney.” The list contained some details about each case and a “[d]escription of the work” but contained no analysis or statement by Smith establishing a direct relationship between those cases and his case nor showing any relevance to the tasks Smith performed.

Smith also filed a Proof of Pre-Litigation Demands which contained a copy of a “Trustee’s Second Document Request” and a follow-up letter Smith sent to the Debtors a few weeks later asking for an accounting including receipts for the prepetition expenditures totaling \$5,000.

On December 20, 2022, the bankruptcy court conducted an evidentiary hearing at which Smith testified and was cross-examined. Smith testified summarily that his efforts amounted to “turnover litigation” which brought \$2,500 into the estate. He suggested he was forced into the litigation because Debtors’ counsel, Mr. Hineman, was “a particularly difficult lawyer to deal with.”



On cross-examination, Smith continued to insist that he hired himself to do the legal work because it was litigation and that made it “legal work.” He stated in response to the court’s question, “[a]ll of this litigation has to do with an attempt to recover money for the estate. If it was easy and they would send me the money, all of this wouldn’t be necessary.”

**D. The bankruptcy court’s ruling on the Amended Fee Application**

The bankruptcy court issued its “Ruling on United States Trustee’s Objection to Jim Smith’s Attorney Fee Application on February 21, 2023” (the “Memorandum”). In the Memorandum, the court disallowed all the line entries for the litigation and allowed the entries related to Smith’s employment and amended fee application. As to each of the litigation entries, the court stated:

Without a showing that legal issues or disputes were present, recovery of pre-bankruptcy cash withdrawals is a duty routinely performed by trustees without counsel assistance. Mr. Smith’s argument that Mr. Hineman was “difficult to work with” is not sufficient to show this involved any kind of dispute with the Debtors. Mr. Smith further failed to demonstrate what type of legal issues or complexities were involved. Accordingly, recovery of pre-petition assets, without objection or dispute, is a duty routinely performed by trustees.

As to the employment and fee applications, the court stated that the time was compensable “as it is routine in this district for attorneys for the estate to request compensation for preparing . . . the applications.”

The bankruptcy court concluded that the disallowed “services were neither reasonable nor necessary.” It stated that “Smith . . . failed to demonstrate how any of those services performed involved legal expertise beyond the duties routinely performed by trustees without counsel assistance.” It further noted that the reduction “is warranted based on [the court’s] review for reasonableness and necessity and the anticipated return to creditors in this case.” The court reduced the attorney’s fees requested from \$3,390 to \$870.

Smith timely appealed.

### **JURISDICTION**

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

### **ISSUE**

Did the bankruptcy court abuse its discretion in reducing the trustee’s attorney’s fee request from \$3,390 to \$870?

### **STANDARDS OF REVIEW**

We review for abuse of discretion a bankruptcy court’s order awarding compensation to an estate professional under § 330. *Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 915 (9th Cir. BAP 2012). We will not disturb a bankruptcy court’s award of attorney’s fees “absent an abuse of discretion or an erroneous application of the law.” *In re Nucorp Energy, Inc.*, 764 F.2d 655, 657 (9th Cir. 1985); *see also Dawson v. Wash. Mut. Bank F.A. (In re Dawson)*, 390 F.3d 1139, 1145 (9th Cir. 2004).

Factual findings made in the course of awarding compensation are not disturbed unless clearly erroneous. *See Friedman Enters. v. B.U.M. Int'l, Inc. (In re B.U.M. Int'l, Inc.)*, 229 F.3d 824, 830 (9th Cir. 2000). A finding is not “clearly erroneous” unless, based on the entire evidence, the reviewing court is left with the definite and firm conviction that a mistake has been committed. *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

We may affirm on any basis supported by the record. *Black v. Bonnie Springs Family Ltd. P'ship (In re Black)*, 487 B.R. 202, 211 (9th Cir. BAP 2013).

## DISCUSSION

In his opening brief, Smith cites three specific issues to be resolved in this appeal: 1) were the bankruptcy court’s conclusions “correct” in disallowing the fees “to obtain Turnover of non-disclosed assets?”; 2) did the bankruptcy court err in finding that it was Smith’s “burden of proof to establish each and every time entry was compensable and that the objecting party (U.S. Trustee) did not have any burden of proof?”; and 3) did the UST provide any evidence to support its position?<sup>8</sup>

There are reasons why a court of appeals defers to the trial court, especially when reviewing attorney’s fee applications. Fundamentally, the Bankruptcy Code and cases interpreting § 330 make clear that the trial

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<sup>8</sup> Smith does not argue for reversal on the basis that the UST targeted him by objecting to his fee application while at the same time not objecting to similar fee applications by other trustees. That issue is therefore waived and not discussed herein. *Maloney v. T3Media, Inc.*, 853 F.3d 1004, 1019 (9th Cir. 2017) (issue not argued in briefs is waived).

court has an independent obligation, whether a party objects or not, to review, critique, and reduce the fees requested if necessary, using the given standards; see *In re Crown Orthodontic Dental Grp.*, 159 B.R. 307, 309 (Bankr. C.D. Cal. 1993). See also *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 298 B.R. 392, 399 (9th Cir. BAP 2003) (the court has “wide discretion in determining reasonable and necessary fees under § 330(a)”), *aff’d in part, rev’d in part and remanded by* 468 F.3d 592 (9th Cir. 2006).<sup>9</sup>

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<sup>9</sup> Section 330(a) states in relevant part:

(a) (1) [The bankruptcy court may award] –

(A) reasonable compensation for actual, necessary services rendered by the . . . attorney . . . employed by [the trustee];

. . .

(2) The court may . . . award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded . . . the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) . . . the court shall not allow compensation for—

(i) unnecessary duplication of services; or

The basis for the extremely deferential standard is that the bankruptcy court is uniquely in the best position to assess the amount of work done, its contribution to the administration of the estate, and its benefit to the stakeholders; and thus, to determine the appropriate amount of fees. *See Phillips v. Gilman (In re Gilman)*, CC-18-1101-STaL, 2019 WL 3074607, at \*4 (9th Cir. BAP July 12, 2019) (“It is uniquely the province of the bankruptcy court to determine the level of review and the basis for critique in fee review, and a reviewing court should defer as thoroughly to that decision by the bankruptcy court as it would to any other decision concerning reasonableness of fees[.]”) (citations omitted), *aff’d*, 836 F. App’x 511 (9th Cir. 2020). The skill requisite to achieve those results may be much more obvious in mid-size or larger cases of some complexity than they may be in cases such as the one before this Panel where there is very little activity and the court simply does not have the same opportunity to assess the nature of the work or whether it was actually necessary.

These cases represent exactly that dilemma. While we do not suggest that in every small case the court should schedule a hearing to probe the necessity of employing counsel, neither do we accept the proposition that the court must rely on the general assertion by the trustee in the employment application regarding the need for attorney assistance as

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- (ii) services that were not—
    - (I) reasonably likely to benefit the debtor’s estate; or
    - (II) necessary to the administration of the case.

establishing that any particular services actually rendered required the expertise of counsel.

The Bankruptcy Code requires the trustee to do his or her own work; this requirement sometimes creates a tension in small cases like these between the work that should be done by the trustee and that which genuinely requires the assistance of an attorney. Therefore, it is not surprising that the only meaningful review of the fees in small cases occurs at the end of the case, and may frequently be predicated on an objection, or the court's independent concern, that the services for which compensation is requested do not rise to the level of tasks for which the expertise of an attorney was required.

**A. The bankruptcy court properly ruled that Smith had the burden of proof to establish that his requested compensation complied with the Bankruptcy Code.**

Smith's principal argument is that the party objecting to an application for compensation has the burden of proof to show that fees are unreasonable or unnecessary, citing *Koncicky v. Peterson (In re Koncicky)*, BAP No. WW-07-1170-MkPaJ, 2007 WL 7540997 (9th Cir. BAP Oct. 19, 2007). We agree that a party objecting to the fees must establish that the fees are unreasonable. But we do not agree that the burden of the objecting party somehow relieves the professional from its burden to establish that its requested fees are reasonable in the first instance. In *Koncicky*, the debtor objected to the Trustee's Final Report including the requested fees and

costs. The bankruptcy court overruled the objection on the basis that the debtor offered no factual or legal basis for reversal. *Id.* at \*1. The Panel in *Koncicky* noted that the record contained ample evidence to support the fee award and affirmed the ruling.

Neither *Koncicky* nor any other authority creates a presumption in favor of the trustee which can only be overcome by objection to the request. The Bankruptcy Code permits a court to award fees to the trustee as attorney but “only to the extent that the trustee performed services as attorney . . . for the estate and not for performance of any of the trustee’s duties that are generally performed by a trustee without the assistance of an attorney . . . for the estate.” *See* § 328(b).<sup>10</sup> The court is required to find that the fees are reasonable and only for services actually and necessarily rendered. *See* § 330(a). The Bankruptcy Code requires the court to “tak[e] into account all relevant factors, including” whether the services were “beneficial at the time at which the service was rendered” and “reasonably likely to benefit the estate.” § 330(a)(3) and (4).

Smith asks the Panel to find that his fees were appropriate solely because the UST did not establish that the fees were inappropriate. That

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<sup>10</sup> Section 328(b) states in relevant part:

(b) If the court has authorized a trustee to serve as an attorney . . . for the estate under section 327(d) of this title, the court may allow compensation for the trustee’s services as such attorney . . . only to the extent that the trustee performed services as attorney . . . for the estate and not for performance of any of the trustee’s duties that are generally performed by a trustee without the assistance of an attorney . . . for the estate.

standard would stand the statute on its head. The burden is on the party requesting allowance of the fees to establish that the requirements of the Code have been met. See *In re McKenna*, 93 B.R. 238, 242 (Bankr. E.D. Cal. 1988); *In re Gary Fairbanks, Inc.*, 111 B.R. 809, 811 (Bankr. N.D. Iowa 1990) (“The burden is on the trustee to demonstrate that services for which attorney’s fees are sought are not duties generally performed without the assistance of counsel.”). In *In re King*, 546 B.R. 682, 697 (Bankr. S.D. Tex. 2016), the court stated, “[w]here insufficient explanatory information is provided for determining the precise nature of the services rendered, the [C]ourt is compelled to determine that the services are not compensable as legal services.” (Citation omitted) (alteration in original).

Smith also obliquely complains that, even if it is his burden of proof, he should not have to support “each and every time entry.” We disagree. Section 330(a) does not modify the professional’s or the court’s duties based on the size of the time entry. Smith cites no authority to support his position.

In the last analysis, the bankruptcy court reduced the requested attorney’s fees, as it is expressly permitted to do in § 330(a)(2), because Smith failed to offer sufficient evidence that the fees were reasonable and necessary under the requirements of § 330(a).<sup>11</sup> There is no erroneous application of the law on this issue.

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<sup>11</sup> We note that the bankruptcy court referenced in its Memorandum that, for each time entry disallowed, the UST objection was sustained even though the UST did



**B. The bankruptcy court did not abuse its discretion in disallowing the requested compensation.**

**1. There was insufficient evidence to permit the bankruptcy court to find that the services were reasonable and necessary.**

Section 330 requires that an applicant establish that the fees incurred were reasonable and necessary as the bankruptcy court correctly ruled. Smith's application simply does not demonstrate adherence to that standard.

Smith's Amended Fee Application contained no separate declaration ascribed under penalty of perjury or narrative in the application itself that would support the proposition that the services rendered were actually and necessarily performed within § 330. The single-sentence explanation in the application for the work is: "[t]hat the legal services rendered in this Case were required and benefitted the Estate including (but not limited to) the following: Legal work to prosecute and settle Litigation to recover the Bankruptcy Estate's interest in Estate Assets."

Smith's response to the UST objection contained his short declaration which simply concluded that "in [his] legal opinion," the services performed were "not duties which are required to be performed by a chapter 7 Trustee[.]" He offered no evidentiary support for that position beyond his bare conclusory statements. His testimony at the evidentiary

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not specifically object to some of the time entries. Because the bankruptcy court is required to make an independent determination of the allowability of each entry, we treat any error as harmless.

hearing was no more than that: a few conclusory comments of the work he did and his belief that he should be paid for it. Smith commented at trial that he relied on his time entries to establish the work accomplished.

In his opening brief, Smith set forth seventeen time entries that are “specific examples of disallowance where the findings and conclusions are illogical, implausible and without support in the record.” For these entries, Smith offers a cursory explanation: “[t]he itemized services were to recover non-disclosed Bank withdrawals. The Court documents evidence the dispute and the Court Ordered Proof of pre-litigation demands clearly show that there was a dispute.” That conclusory statement is woefully short of the sort of factual support necessary to establish that the requested fees were reasonable and necessary. And identifying a task as related to a dispute does not remove it from the trustee’s obligations.

The bankruptcy court’s ruling does not leave us with a definite and firm conviction that a mistake has been committed.

**2. There was insufficient evidence to permit the bankruptcy court to find that the disallowed services required special expertise.**

The UST’s main objection to the fee application was that the services performed by Smith purportedly as the trustee’s attorney were services which the trustee would generally undertake. Section 328(b) unambiguously requires that the fees awarded to an attorney representing a trustee in a bankruptcy case **must not include any time** for “performance

of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney . . . for the estate."

Section 704 sets forth the trustee's duties which include collecting and reducing to money the property of the estate, investigating the financial affairs of the debtor, examining the proofs of claim with a view toward objecting to allowance, and preparing the trustee's final account. The role of counsel for the trustee is to perform those tasks that require special expertise beyond that expected of an ordinary trustee. "Only when unique difficulties arise may compensation be provided for services which coincide or overlap with the trustee's duties and only to the extent of matters requiring legal expertise." *Ferrette & Slater v. U.S. Tr. (In re Garcia)*, 335 B.R. 717, 725 (9th Cir. BAP 2005) (quotation marks and citation omitted). Attorneys must therefore present sufficient evidence including billing records with enough detail to establish that the services rendered went beyond the scope of the trustee's statutory duties and involve unique difficulties. *Id.* at 727. The cryptic descriptions in the billing statements provoked the court's concern about Smith's dual role in this case. Even the bankruptcy court's entreaties to Smith before the evidentiary hearing did not prompt Smith to adequately explain why the tasks required attorney expertise. Smith's failure to adequately explain the context of the time entries prevented the court from making the required findings in Smith's favor.

Except for his employment application and fee application, Smith's billing statement places all of his requested time into a category entitled "Litigation to Recover Transfer(s)." The cryptic descriptions of the tasks support the finding that Smith seeks to be paid for the efforts both as a trustee as well as those of a professional.

There is nothing in the record that would support a finding that the efforts disallowed by the bankruptcy court required expertise beyond that expected of an ordinary trustee. It is not clear error to find that these and similar entries are efforts Congress intended to be undertaken by the trustee and compensated under § 326(a).

**3. Section 330 implicitly requires counsel to exercise billing discretion; therefore, the bankruptcy court properly considered the anticipated return to creditors standard when disallowing the time and fees.**

Beyond the literal language that the services must be reasonable and necessary to be compensable, "[p]rofessionals have an obligation to exercise billing judgment." *Lobel & Opera v. U.S. Tr. (In re Auto Parts Club, Inc.)*, 211 B.R. 29, 33 (9th Cir. BAP 1997). Having an attorney perform a task does not compel a finding that the fees were necessary per se, and we implicitly rely on the trustee to exercise appropriate discretion before burdening the estate, and in particular a small estate, with attorney's fees where the task might well have been performed by the trustee.

The "actual and necessary" prong of § 330(a)(1) requires the trustee to consider the potential for recovery and balance the effort required

against the results that might be achieved. See *Unsec. Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood, Inc.)*, 924 F.2d 955, 961 (9th Cir. 1991) (“Absent unusual circumstances, an attorney must scale his or her fee at least to the reasonably expected recovery.”).

Smith offered no explanation as to why litigation was required to monetize what was obviously going to be a simple and nominal recovery for the estate. Smith offered no evidence that he considered the potential for recovery and did any balancing assessment before filing the turnover motion. That was his burden, and we cannot second guess the bankruptcy court’s finding that the litigation was not necessary given the dynamics of the case at the time. Smith’s blind insistence that it was compensable professional time because he said so is not sufficient to satisfy the requirements of the Bankruptcy Code.

## CONCLUSION

For these reasons set forth above, we AFFIRM.