

ENTERED ON DOCKET  
OCT 30 2008

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

|                   |   |                       |
|-------------------|---|-----------------------|
| IN RE:            | ) | CHAPTER 7             |
|                   | ) |                       |
| GEOFFREY A. GISH, | ) | CASE NO. 07-74427-MHM |
|                   | ) |                       |
| Debtor.           | ) |                       |

**ORDER DIRECTING TURNOVER OF RETAINER**


Counsel for Debtor filed an Application for Compensation August 22, 2008 (the "Application"). By order entered September 15, 2008, Debtor's attorney was directed to file an amended Application on or before October 4, 2008, or the Application would stand denied. Debtor's attorney failed to file an amended Application. Debtor's Statement of Financial Affairs shows Debtor's attorney received a \$1500 prepetition retainer.

The majority position in bankruptcy case law is that prepetition retainers are property of the estate and must remain in the attorney's trust account until entry of an order allowing payment of fees. *See, In re Printing Dimensions, Inc.*, 153 B.R. 715 (Bankr. D. Md. 1993), and cases cited therein. No definitive case law exists in this circuit on this issue but a decision from the Bankruptcy Court in the Middle District of Florida implies in *dicta* the court's recognition that the retainer is property of the estate until the fees are earned and approved by the bankruptcy court. *In re Bicoastal Corp.*, 118 B.R. 855 (Bankr. M.D. Fla. 1990) (J. Paskay). Accordingly, it is hereby

**ORDERED** that Debtor's attorney shall turn over to the Chapter 7 Trustee the \$1,500.00 prepetition retainer *instantly*.

The Clerk is directed to serve this Order upon Debtor, counsel for Debtor, the Chapter 7 Trustee, and the U.S. Trustee.

IT IS SO ORDERED, this the 27<sup>th</sup> day of October, 2008.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE