IT IS SO ORDERED.

Dated: November 25, 2025

Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	Case No. 2:24-bk-54407
Arlene Huff,	:	Chapter 7
Debtor.	:	Judge Nami Khorrami

MEMORANDUM OPINION GRANTING IN PART AND DENYING IN PART MOTION TO DETERMINE EXCESSIVENESS AND UNREASONABLENESS OF FEES UNDER 11 U.S.C. § 329(b) (DOC. 19)

I. Introduction

Andrew R. Vara, the United States Trustee for Regions 3 and 9 (the "U.S. Trustee"), has filed a motion[1] asking the Court to order the return of fees paid by the debtor, Arlene Huff ("Ms.

[1] *Motion To Determine Excessiveness And Unreasonableness Of Fees Under 11 U.S.C. § 329(b)* (Doc. 19) (the "Motion"). Gardner Legal, LLC d/b/a Option 1 Legal ("Option 1 Legal") opposed the Motion by filing a *Response To U.S. Trustee's Motion To Determine Excessiveness* (Doc. 23) (the "Response"). The U.S. Trustee filed a *Reply To Response To Motion To Determine Excessiveness And Unreasonableness Of Fees Under 11 U.S.C. § 329(b) (Doc. 23)* (Doc. 27) (the "Reply").

Huff"), to Option 1 Legal. Ms. Huff retained Option 1 Legal in July 2019 to provide debt settlement services in connection with certain credit card debts. Over the next four years, Option 1 Legal reached settlements with Ms. Huff's creditors and paid those settlements, and the fees of Option 1 Legal, out of funds that Ms. Huff paid monthly. Ms. Huff ultimately filed this chapter 7 case on October 31, 2024 (the "Petition Date"). The U.S. Trustee now asks this Court to review for reasonableness Option 1 Legal's fees under 11 U.S.C. § 329(b) and Rule 2017(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

A hearing was held on the Motion, the Response, and the Reply on August 13, 2025 (the "Hearing"). The evidence submitted to the Court was presented by stipulation (the "Stipulations"). Am. Stip., Dkt. No. 38.[2] The Hearing proceeded as an oral argument based on the stipulated record.[3] At the Hearing, the Court granted Option 1 Legal's request to file a supplemental brief regarding the scope of § 329(b) and subsequently entered an agreed order setting the briefing schedule. Am. Agreed Order Setting Briefing Schedule, Dkt. No. 41. Briefing was completed on September 10, 2025, and the matter is now ripe for decision.[4] For the reasons which follow, the Motion is granted in part and denied in part.

II. Findings of Fact

Ms. Huff met with Catherine DeLong ("Ms. DeLong"), a representative of Option 1 Legal, at a McDonald's restaurant in Carrollton, Ohio on July 24, 2019. Am. Stip. ¶ 3. At the meeting, Ms. DeLong showed Ms. Huff a PowerPoint presentation (the "PowerPoint") regarding the

[2] In addition to the stipulated facts, the parties also stipulated to the admissibility of Exhibits 1-4, which were admitted at the Hearing. As contemplated by Paragraphs 31-35 of the Stipulations, at the request of the parties, the Court took judicial notice of Ms. Huff's Schedules E/F and I as well as the Statement of Financial Affairs, all of which were filed with the Petition. Am. Stip. ¶¶ 30-35; Petition 18, 26, 31, Dkt. No. 1.

[3] The U.S. Trustee was represented by Laura Atack. Option 1 Legal was represented by Timothy Elliott. Ms. Atack appeared in person. With leave of the Court, Mr. Elliott appeared via Zoom video.

[4] *Gardner Legal, LLC's Supplemental Brief* (Doc. 43) (the "Option 1 Legal Supplemental Brief"); *Post-Hearing Brief In Support Of Motion To Determine Excessiveness And Unreasonableness Of Fees Under 11 U.S.C. § 329(B) (Doc. 19)* (Doc. 44) (the "U.S. Trustee Supplemental Brief").

services offered by Option 1 Legal. *Id*. ¶ 4; Ex. 1.[5] Ms. Huff decided to retain Option 1 Legal to negotiate settlements with specific credit card creditors and to provide litigation defense if she were sued by those creditors. Am. Stip. ¶ 2. She signed an agreement (the "Client Retainer Agreement") retaining Option 1 Legal on July 24, 2019. *Id.* ¶¶ 5-6.[6]

Between August 2019 and December 2023, Ms. Huff paid Option 1 Legal $6,710.99 in fees. Am. Stip. ¶¶ 21-22. Ms. Huff also paid $970.45 in account fees for the dedicated account used to fund her payments. *Id*. ¶ 23. Option 1 Legal negotiated eight settlements on Ms. Huff's accounts. *Id.* ¶ 25. Of a total original debt amount of $17,926.88, Option 1 Legal negotiated $8,228.41 in debt reduction, for a total settled debt amount (the "Settled Amount") of $9,699.07. [7] *Id*. Of the Settled Amount, Ms. Huff paid a total of $8,877.27. *Id.* ¶ 27. The amounts paid by Ms. Huff for legal fees to Option 1 Legal ($6,710.99), account fees ($970.45), and the debt settlement amounts ($8,877.27) totaled $16,558.71. *Id.* ¶¶ 22, 23, and 27. Option 1 Legal also provided litigation defense and settled a collection lawsuit filed in the Carroll County Municipal Court. *Id*. ¶ 28. While the parties have stipulated that none of the debts included in the Client Services Agreement appear on Ms. Huff's bankruptcy schedules, they have also stipulated that two settlements reached by Option 1 Legal, Second Round LP ($797.00 unpaid) and Portfolio Recovery ($25.00 unpaid), were not paid in full. Am. Stip. ¶ 27, 33.

Option 1 Legal does not maintain time records for any of the services it provides to its clients, and this is true for the services it provided to Ms. Huff. Am. Stip. ¶ 29. As a result, there

[5] A copy of the PowerPoint presentation was admitted into evidence as Exhibit 1. It reflects what purports to be Ms. Huff's initials at the bottom of each page, and the parties stipulated that those initials were placed on Exhibit 1 by Ms. Huff. Am. Stip. ¶ 4.

[6] A copy of the Client Retainer Agreement was admitted into evidence as Exhibit 2.

[7] There is a sixty-cent discrepancy in the column titled "Difference" in Paragraph 25 of the Stipulations. The parties stipulated that the difference between the original amount of the debt ($17,926.88) and settled amount of the debt ($9,699.07) was $8,228.41. Am. Stip. ¶ 25. However, $17,926.88 - $9,699.07 is $8,227.81, not $8,228.41. Because the discrepancy is not material, and because it is not apparent which is the correct figure, the Court will utilize the figures contained in the Stipulations.

is no evidence regarding how much time Option 1 Legal expended on behalf of Ms. Huff. Ms. Huff filed her bankruptcy under chapter 7 on October 31, 2024. Am. Stip. ¶ 30. Ms. Huff's Schedules I and J reflect that she has monthly income of $1,589 and expenses of $1,535.66, leaving monthly net income of $53.34. Am. Stip. ¶ 31. Ms. Huff's Schedule E/F reveals that she had $32,586 in general unsecured debt as of the Petition Date. Am. Stip. ¶ 32. The creditor names and account numbers that were settled by Option 1 Legal under the Client Retainer Agreement do not appear in Ms. Huff's bankruptcy schedules. Am. Stip. ¶ 33. Ms. Huff received a discharge on February 11, 2025. Am. Stip. ¶ 34.

Option 1 Legal also asserted in its Response and at the Hearing that, of the $6,710.99 in fees that it received, only $106.95 of them were received within the year before the Petition Date. Option 1 Legal's Resp. 3, Dkt. No. 23. The U.S. Trustee does not dispute this assertion. U.S. Trustee's Reply 3, Dkt. No. 27.[8]

III. Contentions of the Parties

The U.S. Trustee asserts that 11 U.S.C. § 329(b) and Bankruptcy Rule 2017 give the Court the authority to review all fees paid to Option 1 Legal dating back to when Ms. Huff signed the Client Services Agreement in July 2019. He asserts that all services performed by Option 1 Legal were either in contemplation of or in connection with this bankruptcy case, and that the one-year provision in § 329 does not limit the scope of the Court's review. The U.S. Trustee further asserts that, because Ms. Huff received the benefit of $8,228.41 in debt reduction but had to pay $6,710.99 in fees to Option 1 Legal (plus $970.45 in monthly account fees) to get that benefit, the fees paid

[8] Exhibit 3 confirms that in the year prior to the Petition Date (from October 31, 2023, to October 31, 2024), Option 1 Legal received a $55 fee payment on November 24, 2023, two "settlement fees" of $8 each on November 27, 2023, an "ancillary fee" of $19.95 on December 17, 2023, and two "settlement fees" of $8 each on December 28, 2023, for a total of $106.95. Ex. 3 at 11. The parties stipulated that these categories make up the fees received by Option 1 Legal. Am Stip. ¶ 22 n.3. The Court will accordingly use $106.95 as the amount of fees paid to Option 1 Legal after October 31, 2023.

to Option 1 Legal are excessive and unreasonable. The U.S. Trustee did not articulate what he views as the reasonable value of the services provided or request that the Court order the return of a specific amount from Option 1 Legal but left that for the Court to determine. U.S. Trustee's Suppl. Br. 3, Dkt. No. 44.

Option 1 Legal disputes that any return of fees is appropriate here. It argues that the one-year provision of § 329 precludes the return of any fees other than the $106.95 paid from October 31, 2023, to October 31, 2024. It argues that none of its services were rendered in connection with Ms. Huff's bankruptcy case, given that Ms. Huff's schedules do not list any of the creditors whose claims were listed in the Client Services Agreement. It further argues that the "in contemplation of" provision in § 329 is not applicable. To the extent that Bankruptcy Rule 2017 contains language expanding the time or scope of review of fees beyond that allowed by § 329, it argues that this violates the Rules Enabling Act, 28 U.S.C. § 2075. Finally, Option 1 Legal asserts that it did what it promised Ms. Huff it would do, and for approximately the price it had estimated, and therefore it asserts that the fees it received were reasonable notwithstanding the lack of contemporaneous time records.

IV. Legal Analysis

A. Jurisdiction

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. Motions brought pursuant to 11 U.S.C. § 329(b) and Federal Rule of Bankruptcy Procedure 2017 are core proceedings because they are matters affecting the administration of the bankruptcy estate under 28 U.S.C. § 157(b)(2)(A) and (O). *In*

re Rosales, 621 B.R. 903, 912 (Bankr. D. Kan. 2020). Venue is proper before this Court under 28 U.S.C. §§ 1408 and 1409.

Although Option 1 Legal does not dispute the Court's jurisdiction, it asserts that the requirement of "in contemplation of or in connection to the case" in § 329 limits the Court's jurisdiction such that services that do not meet § 329's requirement are beyond the Court's jurisdiction to review. Option 1 Legal Suppl. Br. 1, Dkt. No. 43 (citing *In re Walters*, 868 F.2d 665 (4th Cir. 1989) ("Certain services by attorneys, it is true, are so unconnected to bankruptcy that the bankruptcy court has no jurisdiction to review them under § 329."); *Roland v. Unum Life Ins. Co. of Am.*, 223 B.R. 499, 503 n.9 (E.D. Va. 1998)).). These cases suggest that whether prepetition fees are sufficiently related to the bankruptcy case to satisfy § 329's "in contemplation of or in connection with the case" requirement is a jurisdictional issue. *Id*. Even so, both these cases predate the Supreme Court's efforts, which started in earnest in 2006, to become "more disciplined in our use of the term 'jurisdictional.'" *Riley v. Bondi*, 606 U.S. 259, 275, 145 S. Ct. 2190, 2202, 222 L. Ed. 2d 497 (2025) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006)). Under this approach, the requirements in § 329 are properly viewed as merits-based elements of a claim rather than limits upon the Court's jurisdiction.

In *Arbaugh*, the Supreme Court recognized that it had been imprecise in use of the term "jurisdictional" in the past. As a result, "subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff's need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination." 546 U.S. at 511 (citation modified).[9] Accordingly, the court held that unless "the Legislature clearly states

[9] *Arbaugh* involved Title VII of the Civil Rights Act of 1964, which defines an "employer" to mean someone who employs fifteen or more employees. The court held that the provision was not jurisdictional but an element of the plaintiff's claim on the merits. 546 U.S. at 516.

that a threshold limitation on a statute's scope shall count as jurisdictional," courts should treat those limitations as elements of the claim for relief. *Id*. at 516.[10] And the Supreme Court has subsequently cautioned against the use of "old lower court cases that predate our effort to bring some discipline to the use of the term 'jurisdictional.'" *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 304, 143 S. Ct. 927, 215 L. Ed. 2d 262 (2023).

MOAC's caution applies with full force in this case. Here, the Motion asserts a claim created by § 329(b). Therefore, bankruptcy jurisdiction exists under 28 U.S.C. § 1334(b) because the Motion asserts a claim under 11 U.S.C. § 329(b). A claim arises under title 11 when it is "created or determined by a statutory provision of title 11." *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991); *Redhawk Glob., LLC v. World Projects Int'l*, 495 B.R. 368, 374 (S.D. Ohio 2013). Claims based upon § 329 arise under title 11. *In re Aquilino*, 135 F.4th 119, 130-131 (3rd Cir. 2025). And there is no indication in § 329 or elsewhere that Congress intended a departure from this standard jurisdictional analysis regarding claims based upon § 329(b).

Therefore, the Court holds that the provisions of § 329 establish elements of a claim rather than limits upon the Court's jurisdiction. That is not to say that the concerns expressed in *Roland* and *Walters* that attorney fees be sufficiently related to the bankruptcy case can be dismissed or ignored. It simply means that those concerns are not jurisdictional but relate to the merits of how § 329(b) should be applied. The Court now turns to those issues.

B. Burden of Proof

Defining the burden of proof under § 329(b) and Bankruptcy Rule 2017 is somewhat complicated. Where the attorney's fees are challenged, the burden is on the attorney to show that

[10] The Supreme Court recently noted that it has almost never found a statute that satisfies *Arbaugh's* "very demanding test." *Riley*, 606 U.S. at 275 (collecting cases).

they are reasonable. *Thomas v. Robinson (In re Robinson)*, 189 F. App'x 371, 374 (6th Cir. 2006). The parties have not cited, and the Court has been unable to locate, any cases assigning the burden of proof on the antecedent question presented here of whether § 329 applies at all. *Robinson* stated that "the burden of proof on all issues under 11 U.S.C. § 329 is on the attorney, and it is the attorney's burden to come forward with the appropriate proof, such as the fee schedule, to establish that the fee is reasonable." 189 F. App'x at 374. That said, in *Robinson*, the attorney had appeared on behalf of the debtor during the bankruptcy case so there was no question that § 329 applied, and the Sixth Circuit's statement must be understood in that context. And the general rule is that the party seeking to alter the status quo bears the burden of proof. *See, e.g., In re Brumley*, 570 B.R. 287, 289 (Bankr. W.D. Mich. 2017); *In re Energy Conversion Devices, Inc.*, 474 B.R. 503, 508 (Bankr. E.D. Mich. 2012). Therefore, the Court concludes that the U.S. Trustee here has the burden of showing that § 329(b) and Bankruptcy Rule 2017 apply. If the U.S. Trustee carries that burden, Option 1 Legal bears the burden of showing that its fees were reasonable.

C. Overview of 11 U.S.C. § 329

The first legal basis for the Motion is 11 U.S.C. § 329, which provides as follows:

> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to—
>
> (1) the estate, if the property transferred—
>
> (A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

"The provisions of the Bankruptcy Code and the Bankruptcy Rules that regulate attorney fees are designed to protect both creditors and the debtor against overreaching attorneys." *Henderson v. Kisseberth (In re Kisseberth)*, 273 F.3d 714, 720 (6th Cir. 2001); *see also In re Campbell*, 259 B.R. 615, 625 (Bankr. N.D. Ohio 2001) ("This section was enacted because payments to a debtor's attorney provide serious potential for evasion of creditor protection provisions of the bankruptcy laws, and serious potential for overreaching by the debtor's attorney, and should be subject to careful scrutiny.") (citation modified).[11]

Section 329(a) accordingly requires attorneys to make disclosures of fees that they have received. In particular, its disclosure requirement applies to "any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title . . . ." 11 U.S.C. § 329(a). Such attorneys "shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition." *Id*. And this statement must disclose any compensation "for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation." *Id*. In turn, § 329(b) complements this disclosure obligation by authorizing bankruptcy courts to order the return of those payments that are unreasonable or excessive: "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive . . . ." 11 U.S.C. § 329(b).

[11] Section 329 is the successor to section 60d of the Bankruptcy Act of 1898. *See In re Rheuban*, 121 B.R. 368, 375-379 (Bankr. C.D. Cal. 1990).

Although given a broad and expansive construction, § 329's language establishes that it is not unlimited. *Barron v. Countryman*, 432 F.3d 590, 595 (5th Cir. 2005) ("While these provisions are potent, they are not limitless"); *see also Walters*, 868 F.2d at 667 (noting that some services "are so unconnected to bankruptcy" that they are not subject to review under § 329); *In re Swartout*, 20 B.R. 102, 106 (Bankr. S.D. Ohio 1982) (same). Those limits are established by § 329's text, which references payments made or agreed to after one year before the petition was filed, and payments that are for services rendered "in contemplation of or in connection with the case."

D. The $106.95 Paid to Option 1 Legal After October 31, 2023, Was For Services Rendered In Contemplation of and In Connection With This Bankruptcy Case.

"[M]ost courts have interpreted the operative phrase—'in contemplation of or in connection with'—as incorporating two different concepts and have applied different standards under each sub-phrase." *In re Mayeaux*, 269 B.R. 614, 622 (Bankr. E.D. Tex. 2001) (collecting cases).

"A fee payment is made 'in contemplation of' a bankruptcy case if the underlying professional services were rendered at a time when the debtor was contemplating bankruptcy." *Mayeaux*, 269 B.R. at 622. This is a subjective test based on the debtor's mental state. *Id.* "[T]he controlling question is with respect to the state of mind of the debtor and whether the thought of bankruptcy was the impelling cause of the transaction." *Schilling v. Heavrin (In re Triple S. Rests., Inc.)*, 130 F. App'x 766, 772 (6th Cir. 2005) (quoting *Conrad, Rubin & Lesser v. Pender*, 289 U.S. 472, 477-78, 53 S. Ct. 703; 77 L. Ed. 1327 (1933)).[12] In this regard, "negotiations to prevent bankruptcy may demonstrate that the thought of bankruptcy was the impelling cause of payment.

[12] Given that the phrase "in contemplation of" appears in both § 60d and § 329, the Sixth Circuit has used caselaw under § 60d to interpret § 329. *Schilling v. Heavrin (In re Triple S. Rests., Inc.)*, 130 F. App'x 766, 772 (6th Cir. 2005).

A man is usually very much in contemplation of a result which he employs counsel to avoid." *Schilling*, 130 F. App'x at 772 (quoting *Pender*, 289 U.S. at 479).

"In connection with" the bankruptcy case is generally a more objective inquiry. *In re Keller Fin. Servs. of Fla., Inc.*, 248 B.R. 859, 878-79 (Bankr. M.D. Fla. 2000). "The phrase may include services related to the precipitating cause of the bankruptcy, or services which are inextricably intertwined with the bankruptcy." *Id.*; *In re Campbell*, 259 B.R. 615 (Bankr. N.D. Ohio 2001); *In re Busetta-Silva*, 314 B.R. 218 (B.A.P. 10th Cir. 2004).

The two standards thus ask similar questions but from different perspectives. The subjective test asks whether the thought of bankruptcy was the "impelling factor" in the debtor's mind when the services were performed. *Schilling*, 130 F. App'x at 772. The objective test simply asks whether the services were related to the "precipitating cause" of the bankruptcy. *Keller*, 248 B.R. at 878-79. Both "in contemplation of" and "in connection with" are broadly interpreted. *See, e.g.*, *In re Laferriere*, 286 B.R. 520, 528 (Bankr. D. Vt. 2002) ("Just as the courts give broad interpretation to the phrase 'in contemplation of,' bankruptcy courts also find the phrase 'in connection with' to have a broad scope.") (citing *In re Ostas*, 158 B.R. 312, 321 (N.D.N.Y. 1993)); *In re Storey*, No. 08–00198, 2009 WL 2855819, at *2 (Bankr. D.D.C. June 29, 2009) (collecting cases).

The Court finds that the payments made to Option 1 Legal were for services in contemplation of this bankruptcy case. The only evidence admitted to the Court regarding whether Ms. Huff was contemplating bankruptcy is that the Client Services Agreement contains two pages of discussion and disclosures that discuss the possibility of bankruptcy as an alternative to debt settlement. Ex. 2 at 22 ("As you have indicated in your compliance review, you prefer Option 1 to attempt debt negotiation as an alternative to bankruptcy or other options."). Evidence of this

nature has been found sufficient to demonstrate that debt settlement fees were paid "in contemplation of" bankruptcy. *Hearn v. Persels & Assocs., PLLC (In re Hearn)*, No. 10–09116, 2011 WL 5357849, at *5 (Bankr. M.D.N.C. Nov. 4, 2011) (holding that fees paid for a debt settlement program were in contemplation of the bankruptcy case based upon provisions in firm's retainer agreement that debtor was pursuing debt settlement "to avoid filing for bankruptcy"). Because the debt settlement plan was being used as an alternative to bankruptcy, the Court concludes that these payments were made in contemplation of bankruptcy.

Further, the fees paid by Ms. Huff to Option 1 Legal were paid "in connection with the case." "[This] phrase may include services related to the precipitating cause of the bankruptcy . . . ." *In re Campbell*, 259 B.R. 615, 626 (Bankr. N.D. Ohio 2001). And while the Court does not have evidence regarding the specific debts that were the precipitating cause that led Ms. Huff to file bankruptcy, her Schedules E/F and I make clear that she was indebted far beyond her ability to repay her debts based on her meager income. While Option 1 Legal was not addressing all of Ms. Huff's debts, it was still working to pay off those debts listed in the Client Services Agreement not yet paid.[13] This fits within the broad and extensive interpretation of "in connection with" under § 329. *See In re Brown*, No. 09–44254, 2011 WL 477822, at *9 (Bankr. D. Maine Feb. 7, 2011) (holding that debt settlement fees paid almost a year before the bankruptcy "were unquestionably paid in connection with Brown's bankruptcy case"). Lacking any evidence as to which, , of Ms. Huff's debts were the "precipitating cause" of her bankruptcy, the Court must conclude that all of them were – and therefore Option 1 Legal's efforts to try to resolve some were rendered in connection to the case.

[13] As mentioned earlier two settlements reached by Option 1 Legal, namely Second Round LP ($797.00 unpaid) and Portfolio Recovery ($25.00 unpaid), were not paid in full. Am. Stip. ¶ 27.

Option 1 Legal argues that its services are so far removed in time from the bankruptcy that those services could not have been rendered "in contemplation of or in connection with the case." Option 1 Legal Suppl. Br. 4-5, Dkt. No. 43. However, the settlements arranged by Option 1 Legal were never fully paid. Am. Stip. ¶ 27. The unpaid settlements continued to be a financial obligation for Ms. Huff in late 2023. The remaining payments on the settlements, after all, were as much a part of Ms. Huff's unsecured debt load as the new debt she incurred after signing the Client Services Agreement in August 2019. Accordingly, the Court concludes that the services rendered by Option 1 Legal were in connection with the bankruptcy case. Having found that the services provided by Option 1 Legal were both "in contemplation of and in connection to the case," the Court now turns to the one-year provision in § 329.

E. Section 329(b)'s Reachback Period Is Limited To One Year Before the Filing of the Petition Unless Compelling Equitable Circumstances Warrant the Application of Equitable Tolling.

Section 329(a) contains a critical timing provision: "if such payment or agreement was made after one year before the date of filing of the petition . . . ." Although § 329(a) is a disclosure provision, its one-year limitation is relevant here because § 329(b)'s references to "such compensation," "such agreement," and "such payment" all refer to those terms as they are used in § 329(a). *See In re Rheuban*, 121 B.R. 368, 377 (Bankr. C.D. Cal. 1990) (noting that "such," under the commonly accepted rules of grammar, refers to the immediately previous use of the term it modifies) (citing H.W. Fowler, *A Dictionary of Modern English Usage*, 602 (2nd ed. 1965)).[14] And the last usage of the term "payment" that precedes its use in § 329(b)'s "order the return of any such payment" is § 329(a)'s phrase "if such payment or agreement was made after one year

[14] "[B]ecause words are to be given the meaning that proper grammar and usage would assign them, the rules of grammar govern statutory interpretation unless they contradict legislative intent or purpose." *Nielsen v. Preap*, 586 U.S. 392, 407-08, 139 S. Ct. 954, 203 L. Ed. 2d 333 (2019).

before the date of the filing of the petition." Thus, as a matter of grammar, § 329(b) incorporates § 329(a)'s one-year lookback period. The limited caselaw under § 329(b), however, has not fully adopted this grammatical interpretation, finding that § 329(b) is subject to a presumptive but not absolute one-year limit.

The leading case is *Arens v. Boughton (In re Prudhomme)*, 43 F.3d 1000, 1002-03 (5th Cir. 1995), and there are several bankruptcy court decisions that rely upon it.[15] *Prudhomme* holds that the one-year provision of § 329(a) does not provide an absolute limit on the disgorgement under § 329(b). But *Prudhomme* does not hold that the one-year provision in § 329 can simply be ignored. Rather, it holds that the one-year provision creates a presumptive limit of one year. 43 F.3d at 1003 (citing 2 COLLIER ON BANKRUPTCY ¶ 329.03 (Lawrence P. King ed., 15th ed.). According to *Prudhomme*, this presumption can be rebutted under principles of equitable tolling where the attorney has engaged in fraud, concealment, or similar misconduct. 43 F.3d at 1003.

The U.S. Trustee relies upon *Prudhomme* and its progeny as the basis for the Court to reach back more than a year before the Petition Date. U.S. Trustee Reply 3, Dkt. No. 27. The U.S. Trustee does not assert any basis for equitable tolling to exceed § 329's one-year limit as required by *Prudhomme*, 43 F.3d at 1003. U.S. Trustee Reply 3, Dkt. No. 27. At the Hearing, Option 1 Legal's counsel agreed that the one-year provision in § 329 is not an absolute limit but argued that the evidence in this case does not support any exception to that limit.

The Court agrees with Option 1 Legal. The one-year provision in § 329 must mean something – it cannot simply be ignored. "Congress expresses its purpose by words. It is for us to ascertain—neither to add nor to subtract, neither to delete nor to distort." *Bd. of Educ. of Hendrick*

[15] These cases include *In re Hanawahine*, 577 B.R. 573, 578 (Bankr. D. Haw. 2017); *In re Glemaud*, No. 11–31697, 2013 WL 4498677, at *10 (Bankr. D. Conn. Aug. 21, 2013); and *In re Laferriere*, 286 B.R. 520, 526 (Bankr. D. Vt. 2002). Based on the parties' briefing and the Court's independent research, the proper application of § 329's one-year provision appears to be an issue of first impression for courts within the Sixth Circuit.

Hudson Cent. Sch. Dist, Westchester Cnty. v. Rowley, 458 U.S. 176, 190 n.11, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982) (quoting *62 Cases, More or Less, Each Containing Six Jars of Jam v. United States,* 340 U.S. 593, 596, 71 S. Ct. 515, 95 L. Ed. 566 (1951)). Put another way, a statute must be applied so that each part has "work to do." *Feliciano v. DOT*, 605 U.S. 38,, 52, 145 S. Ct. 1284, 221 L. Ed. 2d 712 (2025) ("Linguistically, our reading leaves no part of the statute ignored or left without work to do.").

Equitable tolling is typically applied in special circumstances. "We apply equitable tolling sparingly, meaning that absent compelling equitable considerations, a court should not extend limitations by even a single day." *Bozzo v. Nanasy*, No. 25-1199, __ F.4th ___, 2025 U.S. App. LEXIS 27073, at *10, 2025 WL 2945609, at *4 (6th Cir. Oct. 17, 2025) (citation modified) (quoting *Graham – Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000)). Here, the U.S. Trustee, as the party asserting that equitable tolling should apply, needed to show compelling factual circumstances to support that assertion. The U.S. Trustee has neither identified nor established, any compelling equitable considerations in this case that are akin to the facts in *Prudhomme*, *Laferriere*, or *Hanawahine*. [16] He does not assert any concealment, fraud, or any other facts that would demonstrate "compelling equitable circumstances." Without a factual basis, this Court cannot justify reaching back beyond the one-year limitation asserted in § 329.

[16] *Prudhomme* and its progeny all involved significant misconduct beyond that established in this case. In *Prudhomme*, not only did counsel to a chapter 11 debtor fail to fully disclose the retainers received from the debtor prepetition, the evidence showed "that counsel hurt the debtors more than helped them." 43 F.3d at 1003 n.1; *see also Laferriere*, 286 B.R. at 526 (applying § 329(b) to review reasonableness of retainer paid more than a year before the bankruptcy was filed because attorney had concealed the full extent of payments that had been made within the one-year period by filing an inaccurate Rule 2016(b) disclosure); *Hanawahine*, 577 B.R. at 578-79 (applying § 329(b) to payment made more than a year before the petition date where law firm defrauded the debtors by accepting their payment and then abandoning them). No such misconduct has been alleged or proven by the U.S. Trustee in this case. The U.S. Trustee has stipulated that services were performed by Option 1 Legal, and that Option 1 Legal negotiated $8,228 in debt reduction. Am. Stip. ¶¶ 24-28.

Absent any basis to extend the one-year limit in § 329, the Court concludes that the only payments to Option 1 Legal that are subject to review are those received after October 31, 2023 (one year before the Petition Date). Payments received before October 31, 2023 are not subject to review or disgorgement under § 329(b). For the same reason, the Client Services Agreement signed in July 2019 is not subject to cancellation under § 329(b). That leaves the $106.95 in fees that were paid to Option 1 Legal after October 31, 2023. Before proceeding to review those fees for reasonableness, the Court will consider the other legal basis for the Motion – Bankruptcy Rule 2017(a).

F. Bankruptcy Rule 2017(a) Cannot Extend § 329(b) Under the Rules Enabling Act, 28 U.S.C. § 2075.

Bankruptcy Rule 2017(a) provides as follows:

> (a) PAYMENTS OR TRANSFERS TO AN ATTORNEY MADE IN CONTEMPLATION OF FILING A PETITION OR BEFORE THE ORDER FOR RELIEF.
>
> On a party in interest's motion, or on its own, the court may, after notice and a hearing, determine whether a debtor's direct or indirect payment of money or transfer of property to an attorney for services rendered or to be rendered was excessive if it was made:
>
> (1) in contemplation of the filing of a bankruptcy petition by or against the debtor; or
> (2) before the order for relief is entered in an involuntary case.

The Advisory Committee's note to Bankruptcy Rule 2017 states that it "implements § 329 of the Code." Fed. R. Bankr. P. 2017, advisory committee's note to 1983 adoption; *see also Henderson v. Kisseberth (In re Kisseberth)*, 273 F.3d 714, 720 (6th Cir. 2001) ("Section 329 is implemented by Bankruptcy Rules 2016(b) and 2017."). Rule 2017(a) indeed implements § 329(b) by clarifying that any party in interest may bring the motion or a court may do so on its own motion. Further, it specifies that courts may only act after notice and a hearing. However, much of Rule 2017(a) is substantive in nature. It duplicates the substantive provisions of § 329(b): both

§ 329(b) and Rule 2017(a) authorize the Court to review prepetition fees paid to attorneys to determine whether they were excessive. The primary difference between the two provisions is that Rule 2017(a) contains no time limit about how far back the power to order disgorgement may reach.

In *Pruhdomme*, the Fifth Circuit held that Bankruptcy Rule 2017(a) provides an independent basis to review prepetition fees. 43 F.3d at 1003. The court also held that Rule 2017(a) is not subject to any time limit on how far back that review might reach. *Id.*; *see also Laferriere*, 286 B.R. at 526. Resisting this conclusion, Option 1 Legal argues that Rule 2017(a) cannot eliminate § 329's reachback period without violating the Rules Enabling Act, 28 U.S.C. § 2075. Option 1 Legal Suppl. Br. 1, Dkt. No. 43. The U.S. Trustee has not directly addressed this argument.[17] The Court agrees with Option 1 Legal.

The Rules Enabling Act authorizes the Supreme Court to prescribe rules of bankruptcy procedure. 28 U.S.C. § 2075. The Rules Enabling Act contains a vital limitation: "such rules shall not abridge, enlarge, or modify any substantive right." *Id*. Because of this limitation, "the bankruptcy rules cannot implicitly expand the scope of a congressionally enacted statute." *Teter v. Baumgart (In re Teter)*, 90 F.4th 493, 500 (6th Cir. 2024); *see also United States v. Cardinal Mine Supply, Inc.*, 916 F.2d 1087, 1089 (6th Cir. 1990) ("We cannot have a statute that specifically allows payment of tardily filed claims and rules that prohibit their filing. Accordingly, to the extent that Rule 9006 contradicts the statute, it cannot stand.").[18] For this reason, the Bankruptcy Code must prevail in the event of a conflict, though courts must harmonize the Code and Rules wherever possible. *In re Dow Corning Corp.*, 237 B.R. 374, 378 (Bankr. E.D. Mich. 1999) (stating that "the

[17] Neither *Prudhomme* nor *Laferriere* addressed the Rules Enabling Act.

[18] *See also In re Burkett*, 329 B.R. 820, 828 (Bankr. S.D. Ohio 2005) (holding that, under the Rules Enabling Act, neither the Bankruptcy Rules nor the Official Forms can expand the statutory bases for disallowance of a claim set forth in 11 U.S.C. § 502).

Court is bound to interpret the Code and Rules harmoniously if it is possible to do so" and that the goal is to "to harmonize the Code and the Rules to achieve a rational and practical procedure").

This case presents a dramatic example of the substantive effect of Bankruptcy Rule 2017(a) if it is enforced as written. If the Court were to apply the literal language of Rule 2017(a) here, it would give the U.S. Trustee the benefit of a reachback period over five times larger than the reachback period provided by § 329. And it would do so even though the Court has found that there were no grounds established to extend § 329's lookback period under concepts of equitable tolling. The conclusion is unavoidable that, as applied to the facts of this case, Rule 2017(a) would modify substantive rights in a manner prohibited by the Rules Enabling Act. The Court therefore concludes that to enforce Bankruptcy Rule 2017(a) according to its literal terms would ignore the Rules Enabling Act by substantially expanding the remedy provided by § 329(b).

As confirmed by *Dow Corning*, 237 B.R. at 378, Rule 2017(a) must be harmonized with § 329(b) if possible. In order to avoid running afoul of the Rules Enabling Act, the Court holds that Rule 2017(a) is subject to the one-year reachback period that is provided in § 329. That leaves the Court's determination of the reasonableness of the fees paid after October 31, 2023, in the amount of $106.95, to which the Court now turns.

G. The $106.95 Fee Is Unreasonable and Excessive.

Where § 329(b) applies, the burden is upon the attorney to show that the compensation is reasonable. *Thomas v. Robinson (In re Robinson)*, 189 F. App'x 371, 374 (6th Cir. 2006). Reasonableness under § 329 is judged by the same standards as under 11 U.S.C. § 330(a)(3). *American Law Ctr. PC v. Stanley (In re Jastrem)*, 253 F.3d 438, 443 (9th Cir. 2001) ("Section 330 sets out the standard by which courts should determine the reasonableness of fees under § 329.")

(citations omitted); *In re Geraci*, 138 F.3d 314, 318 (7th Cir. 1998); *In re Williams*, 384 B.R. 191, 194 (Bankr. N.D. Ohio 2007).

Section 330(a)(3) requires the Court to consider "all relevant factors," including the time spent, the rates charged, whether the services were necessary or beneficial, whether the time spent was reasonable, whether the person performing the services was certified or otherwise demonstrated expertise, and what comparable practitioners would charge in other cases. 11 U.S.C. § 330(a)(3). The Court may consider other factors, such as results obtained. *In re Vill. Apothecary, Inc.*, 45 F.4th 940 (6th Cir. 2022).

No evidence was provided as to these factors other than the results obtained. Option 1 Legal contends that it did what it promised Ms. Huff it would do and did so at a cost very close to with what it promised in 2019, and therefore any review of the reasonableness of its fees is unfair and arbitrary. And the U.S. Trustee does not dispute this assertion. U.S. Trustee Suppl. Br. 3, Dkt. No. 44. Other than results achieved, Option 1 Legal has provided no evidence. The Court was provided no evidence regarding how much time was spent on the services, who performed the services, whether services were provided by licensed attorneys, or any other details. The absence of any evidence related to these factors makes it impossible for the Court to evaluate the reasonableness of the post-October 31, 2023, fees. And since Option 1 Legal had the burden of proof with respect to reasonableness, the Court concludes that Option 1 Legal must return the sum of $106.95 to the chapter 7 trustee here.

The Court closes by noting that, although it has ruled largely in favor of Option 1 Legal based on the one-year provision in § 329(b) and the lack of any basis to extend it, this resolution does not signal the Court's approval of the business practices of Option 1 Legal as evidenced by the facts of this case. The facts here are concerning. From August 2019 to December 2023, Ms.

Huff paid $6,710.99 in fees to Option 1 Legal. During that time, Option 1 Legal negotiated a total of $8,228.41 in debt reduction on her behalf. Thus, of the $8,228.41 in debt reduction, 81.5% of it was consumed by payments to Option 1 Legal for its attorney fees. After taking into account the payments made by Ms. Huff for the Settled Amount, the attorney fees for Option 1 Legal, and the monthly account fees, she paid $16,558.71 to settle $17,926.88 in debt. She could have paid far less to file for bankruptcy and discharge these debts, and she could have obtained that relief far more quickly.[19] The Court questions how it made sense to proceed with a debt settlement arrangement when Ms. Huff was eligible for chapter 7, which would have provided her with broader and faster relief at a fraction of the cost she ultimately paid.[20] The Court, however, does not believe that § 329(b) permits it to reach back over five years, at least under the facts that have been presented here.

V. Conclusion

For these reasons, the Court grants the Motion with respect to the $106.95 in fees received by Option 1 Legal in the year before the Petition Date. In all other respects the Motion is denied. The Court shall issue a separate order in conformity with this Opinion.

IT IS SO ORDERED.

copies to: Default list

John J. Rutter

Timothy D. Elliott

[19] In 2024, she paid $1,085 to her lawyer in this case and has obtained a full discharge from her credit card debts. Disclosure of Compensation 38, Dkt. No. 1.

[20] The only evidence before the Court is set forth on Exhibit 2, which indicates (though in boilerplate fashion) that Ms. Huff was advised of the option to file for bankruptcy and chose to pursue debt settlement instead. Ex. 2 at 21-22. There is, of course, no way to know whether this provision was reviewed in any detail and whether Ms. Huff gave it any serious thought or whether she regarded it as just another form to sign. Given the difference in fees, of course, Option 1 Legal had a significant financial incentive to steer Ms. Huff towards its debt settlement services.