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IT IS SO ORDERED.

Dated: May 3, 2022




Guy R. Humphrey
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: :
 :
 DAVID P. NIHART : Case No. 21-31155
 JASMINE D. NIHART, : Chapter 13
 : Judge Humphrey
 :
 Debtors. :
 :

**MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART
AMENDED APPLICATION FOR ATTORNEY FEES OF DEBTORS'
COUNSEL AND OPPORTUNITY TO OBJECT (DOC. 70)**

Factual and Procedural Background

Attorney G. Timothy Dearfield filed a petition under Chapter 13 of the Bankruptcy Code on behalf of Debtors David and Jasmine Nihart (“Debtors”) on July 1, 2021. The Debtors’ income, which is below the annual household median in this District, stems from their operation of a small trucking business in which they are both employed. Doc. 13 at 2; Doc. 12 at 31. While the business generated approximately \$144,214.85 in gross income in 2020, the business had earned only \$24,000 for the year as of the petition date. Doc. 12 at 38-39. Schedule J suggests that the business will earn around \$14,000 per month for the duration of the plan, while expenses

for the business will be approximately \$9,880 per month, leaving the Debtors and their minor child with a modest income to provide for living expenses and fund their Chapter 13 plan. Doc. 12 at 33-34. On the petition date, Dearfield filed only a skeletal petition. Doc. 1. After receiving a deficiency notice from this court (doc. 7), Dearfield filed the remaining schedules, the initial Chapter 13 plan, and other required documents (docs. 12, 13).

In the initial Disclosure of Compensation of Attorney for Debtor and Application for Allowance of Fees in Chapter 13 cases (“Initial Disclosure”), Dearfield disclosed that he had agreed to accept \$7,000 in attorney fees for the present case, \$300 of which had been paid by the Debtors in advance.¹ The initial Chapter 13 Plan filed by the Debtors also showed \$7,000 in attorney fees. Doc. 13 at 5; Doc. 33. In response to various objections from the Chapter 13 Trustee (“the Trustee”), Dearfield subsequently filed four amended plans. Docs. 31, 42, 49, and 55. While the attorney fees in the first two amended plans mirrored the initial plan and compensation disclosure, the Third Amended Plan included \$10,000 in attorney fees. Doc. 49. In the Fourth Amended Plan, Dearfield increased this number to \$11,000. Doc. 55. The court entered an order confirming the Fourth Amended Plan on March 21, 2022. Doc. 71.

On December 6, 2021 Dearfield filed his first Application for Compensation Pre-Confirmation and requested \$11,000 in compensation for legal services provided to the Debtors. Doc. 51. Subsequently that month, he filed a further amended Disclosure of Compensation also listing an \$11,000 attorney fee. Doc. 56. In response to concerns raised by the Trustee, Dearfield voluntarily reduced his fees and filed the *First Amended Application for Attorney’s Fees Pre-Confirmation* (doc. 70) (the “Application”). The Application seeks an award of attorney fees in the amount of \$9,002.50 for pre-petition and pre-confirmation services rendered by professionals

¹ He later amended his disclosure to show that the debtors paid \$700 in advance. Doc. 12 at 45-46; Doc. 33.

G. Timothy Dearfield (“TD”) and Matthew R. Dearfield (“MD”), and paraprofessional Julie Terry (“JT”) at Dearfield Law Firm, LLC (“Dearfield”). The services for which Dearfield seeks compensation through the Application include: pre-petition planning and counseling with the Debtors; analysis of the Debtors’ S corporation; analysis and counseling regarding a possible Subchapter V case; pre-filing analysis of tax returns and tax claims; preparation and filing of the Chapter 13 case; counseling prior to the § 341 meeting of creditors (“341”) and representation of Debtors at the 341; post-341 counseling regarding amendments to the schedules; drafting and filing of an objection to a mortgage claim and review of the response by the creditor; and confirmation hearing representation.² The attached itemization shows that TD billed 28.1 hours at \$275 per hour, MD billed 14.5 hours at \$175 per hour, and the paralegal, JT, billed 12.3 hours at \$75 per hour, for a total of 54.9 hours at \$11,618, subsequently reduced to 43.1 hours at \$9,002.50. (Doc. 70).

In accordance with its duty to independently evaluate fee applications, the court reviewed the Application and supporting itemization. The court also reviewed the compensation disclosures and the initial fee application and itemization. In addition, the court takes judicial notice of the docket in this case. Based upon this review, it appears to the court that the requested fees are not reasonable for the services provided in this case. The Trustee also expressed concerns over billing entries in the Application.

Legal Analysis

Under 11 U.S.C. § 330(a), bankruptcy courts exercise an independent duty to review fee applications for reasonableness. *In re Spear*, 636 B.R. 765, 769 (Bankr. S.D. Ohio 2022); *In re Pochron*, ___ B.R. ___, No. 21-31410, 2022 Bankr. LEXIS 1041, at *3-4, 2022 WL 1085459, at *2

² Because this case was confirmed by consent, no confirmation hearing took place.

(Bankr. S.D. Ohio Apr. 8, 2022); *In re Henson*, 637 B.R. 13, 15 (Bankr. S.D. Ohio 2022); *In re Harper*, No. 21-50709, 2022 WL 727573, at *1, 2022 Bankr. LEXIS 652, at *3 (Bankr. S.D. Ohio Mar. 10, 2022). As this court recently noted, debtor counsel bears the burden of demonstrating that requested fees are warranted for the services provided. *Pochron*, 2022 Bankr. LEXIS 1041, at *4-5, 2022 WL 1085459, at *2; *In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. B.A.P. 2008) (citing *In re Swartout*, 20 B.R. 102, 105 (Bankr. S.D. Ohio 1982)) (“The burden of proof in all fee matters is on the applicant.”). The court’s ability to determine the reasonableness of fees depends in part on whether the attorney’s itemization includes accurate and appropriately detailed time entries.³ See *Pochron*, 2022 Bankr. LEXIS 1041, at *26, 2022 WL 1085459, at *9 (citing *In re Maruko, Inc.*, 160 B.R. 633, 641 (Bankr. S.D. Cal. 1993)) (“It is counsel’s duty to fully explain the nature of the services rendered . . .”). The court “will not indulge in extensive labor and guesswork to justify a fee for an attorney who has not done so himself.” *In re Stover*, 439 B.R. 683, 687 (Bankr. W.D. Mich. 2010) (quoting *In re Woodward East Project, Inc.*, 195 B.R. 372, 375 (Bankr. E.D. Mich. 1996)).

In accordance with Sixth Circuit precedent, the court uses the lodestar method to calculate an estimate of the reasonable fees for this matter by “multiplying the number of hours reasonably expended on the matter by a reasonable hourly rate, taking into account the attorney’s experience level and comparable rates in the local market.” *Henson*, 637 B.R. at 15 (citing *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991)). Based on its review of local hourly rates as articulated in *Henson*, the court determines that Dearfield’s attorney rates (\$175-275) and paralegal rate (\$110) are reasonable. 637 B.R. at 16-19. See also *In re Williams*, 357 B.R. 434,

³ The court provides guidance for fee application itemization on its website. See Judge Humphrey’s Policies and Procedures – “Guidelines for Preparing Itemizations for Fee Applications” at the following link: <https://www.ohsb.uscourts.gov/OHSB/HearingSchedules/Dayton/Humphrey.GuyR/132392240207661225.pdf>.

438-39 (B.A.P. 6th Cir. 2007) (citing *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984)) (“A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparative skills, experience, and reputation.”). Because Dearfield billed time at two different attorney rates (\$175 and \$275), the court will use a blended attorney rate of \$225 when calculating the appropriate fees.

The court therefore turns to the second step of the lodestar analysis and determines the appropriate number of hours for the services provided. As a starting point, the court notes that District’s current maximum “No-Look” fee is set at \$4,350. See LBR 2016-1(b)(2)(A), as amended by General Order 50-1 (effective Feb. 24, 2021). The court views the \$4,350 fee, which equates to approximately 20-25 hours of combined attorney and paraprofessional time given the average rates in this area, as indicative of the time generally required for an attorney to competently provide the legal services required in a Chapter 13 case of typical complexity. LBR 2016-1(b)(2)(A)(i)-(xvii) (listing required legal services); see also *Henson*, 637 B.R. at 16-19 (noting local attorney rates).

Here, Dearfield requests compensation for 43.1 hours (reduced from 54.9 hours) of combined attorney and paraprofessional services at a total fee of \$9,002.50. Neither Dearfield’s itemization nor the court’s independent assessment of facts support the conclusion that 54.9 hours of legal services were necessary to provide competent representation in this case. See *In re Jeffrey A. Smith, Attorney at Law, PLLC*, No. 05-55819, 2007 Bankr. LEXIS 1626, at *10, 2007 WL 1406913, at *3 (Bankr. E.D. Ky. May 9, 2007) (“In stark contrast to the reasonableness of the hourly rates, the court is deeply troubled by the total hours billed for this representation.”). The court finds that the itemization generally contains entries that are excessive, unnecessary, or billed at higher rates than required by the complexity and nature of the work. The court notes that

this case is relatively typical and presents fairly routine issues. The confirmed Plan allows for the conduit payment of the Debtors' mortgage and provides for a small escrow deficiency. The Debtors have no secured debt beyond their mortgage and only thirteen unsecured claims, totaling \$30,541.08, were filed in this case. However, a few factors do indicate that this case somewhat more complex than a typical case. The Debtors are avoiding five liens, held by three creditors, on their residence.⁴ Because the Debtors own a small business with several assets and rely on their business income to fund the Plan, Dearfield spent additional time preparing the schedules and calculating the Debtors' income and plan payment. While this work may have rendered this case somewhat more difficult than a typical Chapter 13 case, the court does not believe these complexities presented challenges sufficient to require twice the amount of time required to represent a debtor in a typical case or warrant a fee of more than twice the maximum "No-Look" fee in this District. Instead, the court believes, based on an assessment of the complicating factors in this case, that no more than 4-5 hours of additional attorney time or an equivalent combination of attorney and paraprofessional time have been required to address these issues. The court also finds that 2-3 hours of combined attorney and paraprofessional time should have been sufficient to address the lien avoidance issues in this case. Accordingly, the court determines that approximately 30-32 hours of combined attorney and paraprofessional time for a total fee of \$6,000 - \$6,400 (using a blended hourly rate of \$200) would be reasonable given the facts of this case.

However, while the lodestar calculation is the starting point for review of a fee application, courts consider other factors when determining a reasonable fee. See *Spear*, 636 B.R. at 771 (discussing additional factors). To clarify its reasoning and identify a reasonable fee

⁴ The court notes that LBR 2016-1 allows debtor counsel who opt-in to a "No Look Fee" to request compensation beyond the flat fee for lien avoidance services. See LBR 2016-1(b)(3).

in the identified lodestar range, the court will explain what it views as allowable fees for the various categories of services provided by Dearfield and identify time entries that the court views as excessive, duplicative, or erroneous.

1. Chapter Choice

Counsel billed 4.7 hours (entries 1-7) at a total of \$1,002.50 for time spent meeting with the debtors and determining under which Chapter of the Bankruptcy Code they should file. As in *Pochron*, “While the court recognizes that every potential debtor’s situation deserves critical analysis to determine which chapter provides the best and most appropriate relief to the debtor, the time spent making that determination here was excessive.” 2022 Bankr. LEXIS 1041, at *24, 2022 WL 1085459, at *8. The court finds that the maximum allowable time for making that determination in this case is 3 hours and therefore deducts \$382.50 (1.7 hours at the blended attorney rate of \$225) and allows \$620 for this work.

2. Preparation of Schedules, Petition, and Plan

Counsel billed 14.9 hours (entries 13-20; 24; 30; 52-58; 72-73; 81) totaling \$3,218 for time spent preparing and revising the schedules, petition, and plan. In reviewing the itemization, the court observed that significant time periods between these tasks seem to have resulted in duplicative file review and schedule preparation that would have been unnecessary had the attorneys completed the work in a more efficient manner. See *In re Quiroz*, No. 17-10255, 2019 Bankr. LEXIS 3778, at *23-24, 2019 WL 9244665, at *8 (Bankr. C.D. Cal. Dec. 12, 2019) (quoting *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 599 (9th Cir. 2006)) (“[W]hen courts evaluate fees charged by debtors’ counsel in chapter 13 cases, they should do so in a manner that ‘encourages efficient use of attorney time by providing fair compensation to efficient practitioners and by preventing inefficient practitioners from passing

on the cost of their inefficiency.”). The court notes that counsel began meeting with the debtors a full year in advance of the petition date.

In addition, multiple entries are billed at the attorney rate when the firm’s highly experienced paraprofessionals, who billed only 2.3 out of the 14.9 total hours, could have performed the services at a lower rate. See entries 13, 14. Further, several entries were vague and continued insufficient detail to allow the court to determine the reasonableness and benefit of the services provided. See entries 15, 16. Additionally, multiple entries included excessive time for the tasks performed or otherwise duplicated other work. See entries 17, 19, 20, 24, and 52. The court has the same concerns in this case as it raised in the *Pochron* decision regarding the time spent preparing the schedules. 2022 Bankr. LEXIS 1041, at *24-25, 2022 WL 1085459, at *9. Considering this batched time includes preparation of the plan in addition to the petition and schedules, the court will allow \$2,000 in fees for this time but will deduct \$1,218 from the requested fees for this work related to preparing the schedules, petition, and plan.

3. Meetings

Counsel billed 3.8 hours (entries 18, 31, 32, 43, 44) and a total of \$895 for time spent meeting with the debtors. While it is appropriate for attorneys to update their clients and conduct meetings when necessary, the court views this amount of time as excessive and likely caused by the lengthy delay in filing. The court will therefore disallow \$175 and allow the remaining \$720 requested for this work.

4. Lien Avoidance

Counsel billed 4.1 hours (entries 33-42, 75-78) and a total of \$698.50 for services related to lien avoidance. As in another case involving a fee application filed by Dearfield, the court finds that the amount of time spent on lien avoidance was excessive. See *Harper*, 2022 WL

727573, at *3-5, 2022 Bankr. LEXIS 652, at *7-12. The court will therefore disallow \$165 and allow the remaining \$533.50 billed for lien avoidance services.

5. Claim Review

Dearfield billed multiple entries related to claim review and a single claim objection for a total of 7.8 hours (entries 51, 59-60, 67-68, 70-71) and a fee of \$1,980. As above, the court finds the amount of time Dearfield spent reviewing these filings to be excessive. The court notes that 14 claims were filed in this case, only one of which required an objection and was later resolved by an agreed order. Despite this, on September 14, 2021, Dearfield inaccurately claims to have spent two hours reviewing “proof of claims #1-16.” See entry 50. Subsequently, Dearfield spent another 2.5 hours reviewing Fifth Third Bank’s proof of claim. See entry 58. The court also finds the time spent reviewing paralegal drafts of the claim objection, a document with only eight sentences of substantive text, to be excessive. See entry 67. Because the court finds the time spent on claim review and the claim objection to be excessive, the court reduces the requested fees by \$350 and allows the remaining \$1,630.

6. Billing for Attorney Errors or Mistakes

Counsel billed 7.8 hours (entries 8-12; 21-29; 45; 46-50; 61-66; 69; 74; 79) at \$1,208.50 for other work related to document review, client communication, and case work. The court notes that multiple entries appear to impermissibly bill time for avoidable errors and mistakes made by counsel. *In re Freeman*, No. 09-12732-WHD, 2011 Bankr. LEXIS 5197, at *11, 2011 WL 7004180, at *4 (Bankr. N.D. Ga. Nov. 29, 2011) (disallowing compensation for services needed to correct errors made by attorneys and obtaining unnecessary extensions); *In re Redington*, Nos. 16-18407-ABA, Chapter: 13, 2018 Bankr. LEXIS 3835, at *25 (Bankr. D.N.J. Dec. 6, 2018) (Disallowing charges for mistakes made by counsel). Counsel billed for receipt of

multiple standard deficiency notices despite the fact that counsel knowingly filed a skeletal petition and would have been aware that such notices would be forthcoming when he delayed filing the schedules and other necessary documents. (See entries 21, 25A⁵, 65). If an urgent reason necessitated an incomplete filing, it is not evident from the record. Instead, the itemization shows that Dearfield began meeting with the Debtors a full year in advance of the petition date.

In another instance, counsel billed time for filing a motion to extend the deadline to file an amended plan. (See entries 47-48). On the following day, counsel again billed time to prepare an amended version of the same motion, apparently to correct errors made by counsel. (See entries 49-50). Subsequently, nearly a month later, counsel billed time for preparing a motion to withdraw this amended motion. (See entries 62-63). Counsel then charged for time spent preparing and filing an amended certificate of service to correct a service error in the withdrawal motion. (See entry 64). When the First Amended Plan was filed (doc. 31), the document included newly added information that should have been included by counsel in the original plan, especially given the lengthy lead up to the filing. The First Amended Plan also contained numerous errors that were pointed out by the Chapter 13 Trustee in his Objection to Confirmation (doc. 39). Among other things, the Chapter 13 Trustee noted that counsel submitted an outdated plan form, failed to list real estate taxes on Schedule J, failed to adjust the monthly plan payment despite raising the dividend significantly, failed to raise the dividend to percentage required by 11 USC. § 1325(a)(4), failed to propose a plan that would timely complete, and submitted a plan not signed by the debtors' counsel of record. Likewise, in the Second Amended Plan (doc. 42), counsel failed to properly serve a creditor, highlight changes as

⁵ Because the Itemization erroneously contains two entries identically numbered as "25," the court will refer to the first entry as "25A".

required, and to address the concerns previously raised by the Chapter 13 Trustee. (See doc. 48). In the Third Amended Plan (doc. 49), counsel again failed to serve a creditor properly and included attorney fees inconsistent with the Disclosure of Compensation of Attorney for Debtor (doc. 12) and the Application for Compensation (doc. 51), each of which listed a different attorney fee. (See doc. 53).

The court finally confirmed the Fourth Amended Plan nearly eight months after the filing of the bankruptcy petition.⁶ (See doc. 71). While amended plans are sometimes necessary to account for new information, proofs of claim, or other issues, an attorney cannot expect compensation when his own errors necessitate the filing of further plans. See *In re Yogi*, No. 13-01452, 2014 Bankr. LEXIS 3223, at *5, 2014 WL 3749553, at *2 (Bankr. D. Haw. July 29, 2014) (“But when an attorney makes a mistake, the attorney should bear the cost of fixing it, not the client or the bankruptcy estate.”); *In re Huffman*, 502 B.R. 205, 210-11 (Bankr. S.D. Ohio 2012) (discussing the unnecessary expense and delay caused when debtor counsel submits multiple defective plans). The court will therefore deduct \$418 as time billed for services related to attorney mistakes and allow the remaining \$790.50 for these categories of work.

7. Good Faith and Billing Judgment

The court reminds counsel of the duty to exercise good billing judgment when submitting fee applications. See *In re Atwell*, 148 B.R. 483, 492 (Bankr. W.D. Ky. 1993). While the court appreciates that Dearfield voluntarily reduced his fees in response to the Trustee’s concerns, his continued failure to exercise good billing judgment by including time spent addressing attorney

⁶ While the court recognizes that Dearfield’s itemization does not include charges for the third and fourth amended plans, the court is concerned with the numerous errors present in this case, particularly in light of the high fee requested.

mistakes and other excessive charges is of concern to this court.⁷ Another bankruptcy court considered similar issues and explained:

Here, Ms. Kasen failed to exercise billing judgment in her Fee Application. First, she improperly included charges for prepetition services that should never have been charged to the Debtor in this case. Only after the court took issue with it did Ms. Kasen adjust her Fees accordingly. Next, Ms. Kasen should not have charged the Debtor for mistakes she made or for items that were unnecessary Finally, there should have been no charge for work that was not required. The failure to exercise billing judgment further supports a reduction in the Fees.

Redington, 2018 Bankr. LEXIS 3835, at *25, 2018 WL 6444387, at *9. While the court will not reduce the fees further at this time, counsel is reminded that fee applications should be accurate, reasonable, and submitted in good faith. See *In re Waltenberg*, No. 05-25084EF, 2007 Bankr. LEXIS 2069, at*1-2, 2007 WL 1740274, at *1 (Bankr. E.D. Pa. June 15, 2007) (reducing attorney fees as a sanction when attorney repeatedly submitted fee applications that overcharged clients for work performed).

Conclusion

Accordingly, subject to the filing of a memorandum or request for hearing by debtor's counsel, the court grants the Application in part and awards Dearfield fees in the amount of \$6,294.00. However, the remaining \$2,708.50 in fees sought by Dearfield is denied. Any responsive memorandum and/or request for a hearing shall be filed not later than fourteen (14) days from the entry of this order.

In the absence of a timely filed memorandum or request for a hearing, this order shall be final.

IT IS SO ORDERED.

⁷ The court notes that this is the fourth recent case in which Mr. Dearfield has submitted an excessive fee application that was subject to significant reductions by the court. See *In re Spear*, 636 B.R. 765 (Bankr. S.D. Ohio 2022); *In re Pochron*, ___ B.R. ___, No. 21-31410, 2022 Bankr. LEXIS 1041, 2022 WL 1085459 (Bankr. S.D. Ohio Apr. 8, 2022); *In re Harper*, No. 21-50709, 2022 WL 727573, 2022 Bankr. LEXIS 652 (Bankr. S.D. Ohio Mar. 10, 2022).

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