IT IS SO ORDERED.

Dated: August 1, 2022

Guy R. Humphrey
United States Bankruptcy Judge

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

In re:	:	
	:	Case No. 21-31957
SARAH B. SPURLOCK,	:	Chapter 13
	:	Judge Humphrey
Debtor.	:	
	:	

MEMORANDUM ORDER CONCERNING DEBTOR COUNSEL'S APPLICATION FOR COMPENSATION (DOC. 1)

I. Introduction

This matter is before the court on the *Application for Allowance of Fees in Chapter 13 Case* (doc. 1 at 52) (the "Application") filed by Thomas Fesenmyer ("Fesenmyer"), counsel for the debtor, Sarah B. Spurlock ("Debtor"). Fesenmyer seeks a flat fee award of $4,350 in attorney fees, the maximum no-look fee in this district, for representing the Debtor throughout this Chapter 13 case. See LBR 2016-1(b)(2)(A), as amended by General Order 50-1. The Debtor in this case seeks only to address a secured debt on a motor vehicle through her Chapter 13 Plan; she owns no other significant assets and owes no other secured or priority debts. If not for her desire to preserve the equity in her motor vehicle, this case may have been filed under Chapter 7. Nevertheless,

Fesenmyer argues that he is entitled to receive the maximum allowable flat fee for his work in this case. The question presented by these circumstances is whether Local Bankruptcy Rule 2016-1(b)(2)(A) (the "No-Look Fee Rule") entitles attorneys to receive the highest allowable flat fee, currently $4,350, for every Chapter 13 case filed by an attorney, without regard to the facts or circumstances of the case. Interpreting the No-Look Fee Rule in accordance with § 330, the Sixth Circuit's *In re Boddy* decision,[1] and the Ohio Rules of Professional Conduct, the court determines that the No-Look Fee Rule adopted by the Southern District of Ohio requires attorneys who opt-in to the flat fee structure to assess the facts and issues presented by each individual case to determine a reasonable flat fee, which may be equal to or lower than the maximum allowable flat fee. In the alternative, counsel may itemize their fees pursuant to Local Bankruptcy Rule 2016-1(b)(2)(C). The court determines that the No-Look Fee Rule does not entitle attorneys to receive an identical fee in every case or eliminate the requirement that a fee be reasonable and tied to actual and necessary work for the benefit of the estate or the debtor.[2]

Here, the court does not find that the actual and necessary work required to effectively represent the Debtor in this case supports an award of the maximum allowable flat fee as reasonable compensation. Therefore, for the reasons that follow, the court approves attorney fees for this case in the total amount of $4,320. This sum represents an adjusted $3,660 flat fee for representing the Debtor during this Chapter 13 case and an additional $660 for time spent preparing a confirmation statement.

[1] 950 F.2d 334, 337 (6th Cir. 1991)

[2] See *In re Pochron*, No. 21-31410, 2022 Bankr. LEXIS 1041, at *7-14, 2022 WL 1085459, at *3-5 (Bankr. S.D. Ohio Apr. 8, 2022) (explaining the circumstances in which a debtor's attorney may be compensated for work that benefits that debtor but not necessarily the estate).

II. Facts and Procedural Background

The Debtor filed her Chapter 13 petition on November 18, 2021. Doc. 1. She is a below median income debtor.[3] On her schedules, she indicated ownership of one automobile, a 2015 Honda Civic, with a value of $10,400 (the "motor vehicle"). Doc. 1 at 15-16. She filed a Chapter 13 Plan on December 1, 2021 (doc. 13) (the "Plan"). The Plan pays the fully secured claim on the motor vehicle. The Plan does not provide for any of the other types of relief – for example, lien avoidance or curing arrearages on secured debt – that are commonplace in many Chapter 13 cases. The Debtor will pay approximately $15,000 ($250 x 60) over the life of the Plan, assuming that the Plan period extends to 60 months.[4] To address the motor vehicle claim, the Plan provides for an estimated secured claim of $1,958.00 to be paid at the *Till i*nterest rate of 5.5% with minimum monthly payments of $100.00.[5] The Plan accounts for the attorney fee of $4,350 and shows that the Debtor paid $625 up front. The remaining $3,725.00 is to be paid through the Plan in monthly payments of at least $125.00. At the rate of $125 per month, the $3,725 balance would be paid in 30 months. The Plan provides a 3% dividend to non-priority unsecured creditors.

The court entered an Order on February 23, 2022 which summarized the Plan and raised issues about whether the Plan was confirmable and whether the $4,350 fee was reasonable and necessary. Doc. 20. Fesenmyer filed a *Debtor's Statement in Support of Confirmation and*

[3] See Plan, § 2.3. See also 11 U.S.C. § 1325(b)(4)(A)(ii) (defining the applicable commitment period for below median debtors as three years).

[4] Fesenmyer testified at the Hearing that the Plan length is currently 60 months for feasibility purposes, but that the debtor would "strive to pay off" the amounts due under the Plan "as soon as she can." Transcript of the April 7, 2022 Hearing, Doc. 36 at 40.

[5] The "*Till*" rate is a "coerced loan theory" rate that is commonly used in Chapter 13 cases for computing interest to be paid to secured creditors. *Till v. SCS Credit Corp.*, 541 U.S. 465, 478–79 (2004). The Plan provides a *Till* rate of 5.5%**.** See ¶ 7.

No-Look Fee (doc. 23) (the "Statement in Support") and the Trustee's counsel filed the *Chapter 13 Trustee's Memorandum Concerning Court's Order* (doc. 24) (the "Trustee's Memorandum").

The Statement in Support advised the court that "[t]he Debtor's motivation in filing this case is to protect equity in her 2015 Honda Civic,[6] repay as much debt as feasible, and reorganize her financial situation on a good faith basis[.]" Statement in Support at 5. Upon review of the Statement in Support, the court determined that confirmation of the Debtor's Chapter 13 Plan was appropriate, and the Plan was confirmed (docs. 25, 26). However, the court proceeded with a hearing on whether the maximum no-look fee of $4,350 was a reasonable attorney fee for this Chapter 13 case.[7]

The court conducted a hearing on April 7, 2022 on the Application (the "Hearing"), participated in by Fesenmyer; his co-counsel, Courtney A. Cousino; Scott G. Stout, counsel for the Chapter 13 Trustee; and John G. Jansing, the Chapter 13 Trustee. Fesenmyer, and an expert witness, Nannette Dean, testified.

III. Debtor Counsel's and Trustee's Positions

In response to the court's concerns, Fesenmyer asserted in the Statement in Support that the maximum allowable flat fee of $4,350 was justified in this case. After noting the benefits of a court's use of a no-look structure for Chapter 13 cases, Fesenmyer described the services which

[6] A number of Chapter 13 cases that have been recently filed in this court address car loans and appear intended to address equity in a debtor's vehicle. This recent phenomenon of Chapter 13 cases being filed to protect debtors' interests in motor vehicles arises from the fact that car prices and values are very high as a result of the supply chain issues which have confronted the industry recently. Don Lee, *In another pandemic fallout, used car prices are way up,* L.A. Times, July 25, 2022; Michael Wayland, *Americans Are Paying Record-High Prices for New Vehicles*, CNBC, July 13, 2022 (last viewed July 21, 2022), *https://www.cnbc.com/2022/07/13/americans-are-paying-record-high-prices-for-new-vehicles.html*; Michael Wayland, *Used-Car Prices are Down from Record Highs, Easing the Impact of Inflation*, CNBC, May 6, 2022 (last viewed July 21, 2022), CNBC, *https://www.cnbc.com/2022/05/06/used-car-prices-are-down-from-record-highs-easing-the-impact-of-inflation.html* (last viewed July 28, 2022).

[7] The court has scheduled hearings on similar Chapter 13 cases that primarily involve the restructuring of a car loan to determine the appropriateness of the no-look fee. See e.g. the order in *In re Putteet*, Case No. 21-31952, doc. 30 (The attachment to those orders lists the cases the court originally scheduled for hearing. The court's concern with the fees in some of those cases has been resolved. Hearings on the unresolved cases are upcoming.).

he has performed and those that he anticipates performing for the Debtor as the case progresses. He attached an itemization of his fees for the case and walked the court through it.

The Trustee's Memorandum also noted the benefits of a no-look fee structure in Chapter 13 cases and provided:

> The Chapter 13 Trustee believes that Debtors deserve a competent bankruptcy bar to represent them in this very complicated area of the law. To the extent that a no look fee in Chapter 13 cases acts as an incentive and/or allows the bankruptcy bar to be successful in its representation of Chapter 13 Debtors, the Trustee supports the no-look fee.
>
> However, the Trustee does agree that the issue of approving fees is the province of the court and no one else, 11 U.S.C. §330(a)(4)(B).
>
> In this case, it is the Trustee's position that the plan was filed in good faith and should be confirmed with the attorney fees to be set by the court.

Doc. 24 at 2-3.

IV. Hearing

Fesenmyer testified and introduced two exhibits into evidence – the Statement in Support and counsel's itemization of fees for the case (the "Fee Itemization") (doc. 31). The Fee Itemization was the same one that was attached to the Statement in Support.

Fesenmyer testified in support of the fees requested in the Application and Fee Itemization. He stated that he was admitted to practice in the State of Ohio in 2001 after attending Capital University Law School. Doc. 36, Transcript of the Hearing (Tr.) at 11. Fesenmyer currently bills $250 an hour, has represented debtors in Chapter 13 cases for over 20 years, and has filed over 4,000 bankruptcy cases. Tr. 12, 13, 52, 54.

Fesenmyer performed all the legal work for the Debtor in this case. Tr. 14. He does not employ paralegals because he cannot afford to do so. Tr. 13. He charges between $500 and $625 for Chapter 7 bankruptcy cases and charges the same amount up front for Chapter 13 cases, with the balance of the no-look fee being paid from Chapter 13 plan payments. Tr. 15. He has used

itemized billing in two business cases and prior to the Hearing had never used itemized billing for any non-business Chapter 13 cases. Tr. 33, 34.

He charges a flat fee in all his consumer Chapter 13 cases because he believes it helps all constituents involved, including the court and the Chapter 13 Trustee, and because it gives debtors certainty as to what their attorney fees will be for the case. Tr. 15, 33. He also believes that he could not help as many clients as he does if he billed hourly, as they almost all would pay higher fees and that he earns the no-look fee in a typical Chapter 13 case. Tr. 15, 16. While he provides debtors with the option to pay an hourly fee, they, like this Debtor, usually opt to pay a flat fee. Tr. 15. All of his clients sign a contract which sets forth the flat fee. *Id*. However, no such fee agreement was introduced in evidence in this case, and the Debtor did not appear or testify at the Hearing.

Fesenmyer testified as to the normal amount of time he spends on a Chapter 13 case and the tasks he performs in representing a Chapter 13 debtor. Tr. 16-20. He believes that he is entitled to the maximum allowable flat fee in every case based on the time that he spends on a typical Chapter 13 case. Tr. 33.

The itemization of fees in this case for pre-petition and preconfirmation services was based on contemporaneous time entries, which he testified he keeps in every case. Exhibit B; Tr. 35-36. Fesenmyer estimated his time for anticipated future services based on his experience. Exhibit B at 3; Tr. 44. Fesenmyer billed five hours for researching and preparing the Statement in Support, with two hours spent on the confirmation issues and three hours spent on the no-look fee issues. Exhibit B at 3, Tr. 42-43.

The Debtor also called Nannette Dean ("Dean"), a Columbus, Ohio bankruptcy attorney, to testify as an expert witness in support of the fees. Dean testified she attended Capital University

Law School and was admitted to the practice of law in Ohio in 1995. Tr. 47. She has been practicing in bankruptcy court since 1996 and has experience in both medium and small law firms. *Id*. Dean frequently represents both Chapter 13 and Chapter 7 debtors and has also represented creditors in bankruptcy court. Tr. 48. She is a regular presenter at bankruptcy seminars, was on the Executive Board of the Credit Education Coalition, and is a member of the Attorney Advisory Committee, Consumer/Small Business Subcommittee for the United States Bankruptcy Court for the Southern District of Ohio (the "Attorney Advisory Committee"). *Id*. Dean was a member of the Attorney Advisory Committee at the time it recommended that this district increase the maximum allowable flat fee to the current $4,350. Tr. 65.

Dean has a "base rate" of $1,000 for Chapter 7 cases, defined as a Chapter 7 case with no anticipated "issues," such as securing a reaffirmation agreement. Tr. 64. Her "base rate" for Chapter 7 cases involving real estate is $1,250. Tr. 65. Dean filed a dozen bankruptcy cases in the last year, including three Chapter 13 cases.[8] Tr. 63-64. In one of the three Chapter 13 cases ("Maurer"), she charged a debtor $3,700, the prior maximum flat fee amount, because she had quoted that figure when Mr. Maurer first came into her office before the maximum flat fee increased to $4,350. Tr. 65-66. Maurer was a below median income case involving a $747 monthly payment by the debtor to the Chapter 13 Trustee; a secured Harley Davidson motorcycle, with payments to be made under the plan; a second vehicle that was not secured by a creditor and had equity; and an estimated 22% dividend to unsecured creditors, with $26,892 anticipated to be paid into the plan. Tr. 66-67. The second Chapter 13 case in the last year she filed involved an above median income debtor for which she took the maximum $4,350 flat fee. Tr. 69. It was a 100% plan under which the debtor paid $2,000 each month to the Chapter 13 Trustee and involved a Jeep

[8] Dean's filings "in the last year with the pandemic were down 60 percent." Tr. 70. That is consistent with the district-wide case filing information provided below.

Liberty automobile with a $200 monthly payment and a $1,000 monthly distribution to Dean for attorney fees. Tr. 68. The third case ("Hernandez") involved an above-median income couple with initial plan payments to the Trustee of $1,660 which stepped up to $1,714, with a total of $102,786 to be paid into the plan and a 45% dividend to unsecured creditors. In Hernandez, Dean took a $4,350 flat fee. The plan involved a 2020 pickup truck, a 2013 sport utility vehicle, a "Can-Am four wheeler," and real estate. Tr. 68-69.

Dean's testimony suggested that she views the No Look Fee Rule as establishing a single flat fee for Chapter 13 cases, rather than a range of allowable flat fees up to the current maximum, $4,350. Dean testified that the "no-look" flat fee is reasonable to cover all legal services in most Chapter 13 cases, but that "the difficulty with the no-look fee is in defining a typical case." Tr. 49. She does not "know that there is such a thing as a typical case, but for the majority of cases, the no-look fee will cover counsel's fee for the entire case." *Id*. She believes that the no-look flat fee is intended to cover the standard work that an attorney is required to perform in every Chapter 13 case and is intended to "give a presumption that the fee was reasonable for a typical case." Tr. 50. She admitted that sometimes a Chapter 13 case can be handled by counsel in less time than what is anticipated by the "typical" Chapter 13 case for which the no-look flat fee provides but stated that those cases are "rare." Tr. 63.

She believes that the "pros" of the no-look fee structure are that it provides certainty for the debtor, debtor's counsel, the court, and the Chapter 13 Trustees in knowing what the attorney fees for the case will be, in calculating plan payments, and in determining feasibility of the plans. Tr. 50. "[W]ithout some certainty in the fee, people either just ignore … issues [needing attention from counsel] and then your plans fail or we just don't get paid for that." Tr. 62. She also noted that the no-look fee structure saves resources because attorneys do not have to itemize fees or

spend time preparing fee applications, and the court and Chapter 13 Trustees need not spend time reviewing fee applications. Tr. 50. She concluded that the failure to appropriately compensate debtors' counsel would have a detrimental impact on debtors' ability to retain competent bankruptcy counsel. Tr. 61.

She testified that the biggest "con" of the no-look fee structure is that debtor's counsel "doesn't necessarily get paid for the full value of the work that they perform." Tr. 50. She also believes that attorneys "who have more experience, more knowledge, don't necessarily get increased compensation for that experience and knowledge. You're getting the same rate as the brand new lawyer just out of law school." Tr. 50-51.

Dean opined that Fesenmyer's $250 hourly rate was "very" reasonable and reviewed Fesenmyer's itemization and generally found the charges on the itemization to be reasonable. Tr. 52. She opined that the 6.2 hours which Fesenmyer spent for "the file preparation and petition signing process" reflected on lines 1-11 of the itemization was "probably light" because although "[t]his is technically a simple car case," "when you have a simple car case, you have actually analyzed this case twice" – once under the framework of Chapter 7 and once under the framework of Chapter 13. Tr. 53.

She stated that the time spent seeking approval of the requested flat fee in this case was "a factor that bodes in favor of the no-look fee as being reasonable" and that the requested flat fee is reasonable compensation for this case. Tr. 58. She also opined that Fesenmyer's services will benefit the bankruptcy estate and are necessary for the administration of the case. Tr. 62.

No other evidence was introduced by Fesenmyer as to fees applied for or awarded in other Chapter 13 cases in Dayton or the Southern District of Ohio.

V. Background

Because this case concerns the scope and application of the district's No Look Fee Rule, the court finds it appropriate to review the history and use of court-sanctioned flat fees in this district and elsewhere in the United States. No look fees, also called presumptive fees, are court-sanctioned flat fee ranges that are presumed to be reasonable attorney fees in Chapter 13 cases. See *In re Biggs*, No. 20-11716, 2021 Bankr. LEXIS 2224, at *1, 2021 WL 3566035, at *1 (Bankr. S.D. Ala. Jan. 19, 2021) (quoting *In re Dellutri Law Grp.*, 482 B.R. 642, 650 (Bankr. M.D. Fla. 2012)) and *In re Villaverde*, No. 11-37442-BKC-LMI, 2016 Bankr. LEXIS 941, at *1, 2016 WL 1179343, at *1 (Bankr. S.D. Fla. 2016) ("A no look fee is a flat fee, usually adopted within a district by local rule or guideline . . . It is a presumptively reasonable fee based on local hourly rates, and the general amount of work required by a typical chapter 13 case.") (internal quotation marks omitted); see also BLACK'S LAW DICTIONARY (8th ed. 2004) (defining "fixed fee" as "[a] flat charge for a service; a charge that does not vary with the amount of time or effort required to complete the services."). No-look fee structures allow attorneys to charge a flat fee up to a maximum amount for a set of basic services involved in Chapter 13 representation that are typically detailed in the local rule or general order adopting the structure. See *Villaverde*, No. 11-37442-BKC-LMI, 2016 Bankr. LEXIS 941, at *2-3, 2016 WL 1179343, at *1 (describing the Chapter 13 flat fee procedure in the Southern District of Florida). Attorneys who opt to charge a flat fee in accordance with a no-look fee structure are not required to file formal fee applications. See e.g. *id*.; *Dellutri*, 482 B.R. at 650-51.

A. The No-Look Fee Structure in the Southern District of Ohio

Since at least 1991, the Bankruptcy Court for the Southern District of Ohio has approved a no-look fee structure and established a flat fee range which is presumed to be reasonable for most

services provided to a debtor in a Chapter 13 case. As reflected by the archived Local Bankruptcy Rules on the Court's website, the maximum allowable flat fee since that time has been as follows:

Year	No Look Amount	Location	Case Filings (for the District)[9]	Chapter 13 Filings (for the District)
1991	$850	S.D. Ohio	No data	No data
1997	$850	Columbus & Cincinnati	26,947	6,738
1997	$900	Dayton		
1999	$850	Columbus & Cincinnati	26,544	6,304
1999	$900	Dayton		
2000	$1,200	S.D. Ohio	26,168	6,056
2002	$1,500	S.D. Ohio	36,842	8,608
2005	$1,500	S.D. Ohio	60,814[10]	11,501
2006	$3,000[11]	S.D. Ohio	17,021	6,645
2009	$3,500	S.D. Ohio	32,666	9,276
2013	$3,500	S.D. Ohio	21,803	6,280
2018	$3,700	S.D. Ohio	17,017	5,424
2020	$3,700	S.D. Ohio	12,033	2,890
2021	$4,350	S.D. Ohio	9,354[12]	2,293

1. Changes in the Chapter 13 Practice Compelled by BAPCPA and Subsequent Attorney Fee Changes in the District

The passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") resulted in a number of changes to the practice of bankruptcy, particularly in

[9] These are the total case filings, under all Chapters of the Bankruptcy Code, taken from Table F-2 concerning bankruptcy court filings on the U.S. Courts' website: *https://www.uscourts.gov/statistics-reports*. Years 1997, 1999, and 2000 are for the 12-month period ended September 30. Years 2002, 2005, 2006, 2009, 2013, 2018, 2020, and 2021 are for the 12-month period ending December 31. The Chapter 13 filings for this District are taken from the same tables containing the filings by chapter of the Bankruptcy Code.

[10] The passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") resulted in an extraordinary number of bankruptcy filings made in 2005 prior to the effective date of BAPCPA in an apparent attempt by debtors to avoid filing under the changes made to the Bankruptcy Code by that legislation. Of the 60,814 cases filed in 2005, 49,233 (81%) were Chapter 7 cases and 11,501 (19%) were Chapter 13 cases. There were also a negligible number of Chapter 11 and Chapter 12 cases filed that year.

[11] The doubling of the no-look fee in 2006 may have reflected the increased responsibilities imposed upon debtors' counsel by BAPCPA.

[12] Of the 9,354 cases filed in the Southern District of Ohio in 2021, 7,041 (75%) were Chapter 7 cases and 2,293 (25%) were Chapter 13 cases.

consumer cases. Perhaps the lynchpin of BAPCPA was the adoption of a "means test" applied to debtors whose debts "are primarily consumer debts" to determine whether they may file a Chapter 7 liquidation case, or rather, must file a Chapter 13 case to pay their creditors over a period of time. Generally, if debtors file under Chapter 7 and do not "pass" the means test (i.e., their disposable income exceeds a certain threshold) their cases may be dismissed. See 11 U.S.C. § 707(b)(2). If the debtors whose debts are primarily consumer debts have an "above median" income and file a Chapter 13 case, they generally must submit their disposable income to the Chapter 13 trustee for distribution to their creditors over a sixty-month "applicable commitment period." 11 U.S.C. § 1325(b)(4). If the debtors have a "below median" income, they may submit their disposable income to the Chapter 13 trustee for distribution to their creditors over a thirty-six-month "applicable commitment period." *Id.* In short, BAPCPA infused a new regimen in consumer bankruptcy for determining the chapter of the Code under which debtors may file.

In addition, BAPCPA added a number of other requirements for consumer debtors and bankruptcy counsel, including: a) a requirement to provide annual tax returns to trustees [11 U.S.C. §§ 521(e)(2)(A)(i) and 1308]; b) a requirement that all individual debtors take a prebankruptcy credit briefing course and file a certificate evidencing that such a course was completed [11 U.S.C. § 109(h)]; c) a similar requirement that all individual debtors take a post-petition financial management course and file a certificate evidencing that such a course was completed [11 U.S.C. §§ 727(a)(11) and 1328(g)]; and d) a provision making all persons, including attorneys, who provide assistance to consumer debtors "debt relief agencies" with specific responsibilities placed upon those agencies. 11 U.S.C. §§ 526, 527, and 528. After BAPCPA was enacted, the court doubled the maximum no-look fee from $1,500 to $3,000 in 2006. See fn. 10, *infra*.

Prior to 2018, the court served all initial Chapter 13 plans on creditors and parties-in-interest and only required counsel to serve amended plans. However, in 2018, in order to reduce costs, the court began requiring debtors' counsel to serve all Chapter 13 plans on creditors and parties-in-interest. At that time, the court increased the maximum no-look fee from $3,500 to $3,700.

It is fair to conclude, over the last 17 years, Chapter 13 debtor counsels' tasks have increased and the Chapter 13 practice has become more complex. However, during this BAPCPA era, the court, with the assistance of many others, including the court's judges, this district's Chapter 13 trustees, the Local Bankruptcy Rules Committee, the court's law clerks, members of the bar, and court staff, has implemented a number of measures to assist practitioners in streamlining the Chapter 13 process within this district. These steps, while certainly not eliminating counsel's additional burdens, have served to mitigate them.

Of primary importance in streamlining Chapter 13, one uniform Chapter 13 Plan has been developed for the entire district, which is a PDF fillable form with check-mark and drop-down boxes to be completed by counsel. See LBR 3015-1(a)(1); General Order 22-1 (District Wide Mandatory Form Chapter 13 Plan and Amending Local Bankruptcy Rule 3015-1(a)(1)) (Effective December 1, 2016). The intention was and is to standardize and simplify the practice for Chapter 13 practitioners, the Chapter 13 trustees, and the court.[13] In addition, the court has provided debtors' counsel with a number of fillable forms available on the court's website. First, the Local

[13] From at least 2013 through 2016, each filing location in the Southern District of Ohio (Columbus, Cincinnati, and Dayton) had its own fillable form Chapter 13 plan. See archived Local Bankruptcy Rules (LBR 3015-1). As of December 1, 2016, the District adopted one uniform District-wide fillable Chapter 13 Plan. See Bankr. S.D. Ohio General Order 22-1 (December 1, 2016 General Order Adopting District-Wide Plan and Amending LBR 3015-1(a)(1)). In 2017, shortly after the court's adoption of a uniform plan for the District, the Federal Rules of Bankruptcy Procedure were amended to require all districts in the country to either adopt a new uniform national plan or to adopt a district-wide plan which included certain provisions. See Fed. R. Bankr. P. 3015.1. To the extent those provisions were not already included in the form plan, the court revised its form uniform District Chapter 13 Plan to include them.

Bankruptcy Rules Forms include: a Disclosure of Compensation of Attorney for Debtor and Application for Allowance of Fees in Chapter 13 Case (LBR Form 2016-1(b)); an Interim Application For Allowance of Compensation (LBR Form 2016-1(a)(1)(A)); a Debtor's Certification Regarding Issuance of Discharge Order (LBR Form 4002-1); and a Statement of Death (LBR Form 1016-1). In addition, fillable forms for motions routinely filed in Chapter 13 cases are included on the court's website including a motion to avoid wholly unsecured mortgages; a motion to avoid judicial liens; a motion to avoid nonpossessory, nonpurchase money security interests; and a motion to redeem a motor vehicle.[14] A variety of additional form motions are also included under Judge Humphrey Policies and Procedures on the court's website, including form motions to sell property and to retain proceeds from such a sale; to retain funds received from third-parties, such as employment bonuses and tax refunds; and for approval of settlements, compensation of special counsel, distribution of the settlement proceeds, and for retention of a portion of those settlement proceeds.[15] In addition, the court adopted and implemented a mortgage modification mediation program with detailed procedures and forms[16] and a form order authorizing debtors to enter into loan modification agreements is also included under the aforementioned Judge Humphrey Policies and Procedures. Thus, while BAPCPA did increase counsel's responsibilities, the court has participated with others to streamline and simplify the Chapter 13 practice for the benefit of debtors, creditors, the Chapter 13 Trustees, counsel, and the court.

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14 See *https://www.ohsb.uscourts.gov/local-form-motions-and-orders* (last visited July 21, 2022).

15 See *https://www.ohsb.uscourts.gov/judge-humphrey-policies-and-procedures* (last visited July 21, 2022).

16 See *https://www.ohsb.uscourts.gov/mortgage-modification-mediation-program* (last visited July 21, 2022).

2. The Current No-Look Fee Structure and Attorney Compensation Procedures

The No-Look Fee Rule describes the following as the services which debtors' counsel is generally to provide in exchange for a flat "no-look fee":

> **(A)** No-Look Fee. Upon confirmation of the plan, fees may be allowed ***up to*** $3,700 [currently $4,350][17] ("no-look fee") without further application or specific itemization for services rendered. The no-look fee includes the general legal services performed in a chapter 13 case listed below, whether performed preconfirmation or postconfirmation:
>
> > **(i)** initial client interview, preparation and signing of any retainer or representation agreement, analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether, and under what chapter, to file a petition in bankruptcy;
> >
> > **(ii)** advising the debtor concerning his or her obligations and duties pursuant to the Code, the Rules, these Local Rules, applicable court orders, and provisions of his or her chapter 13 plan;
> >
> > **(iii)** preparation and filing of any document required by § 521 of the Code, including Official Form 122C-1 and Official Form 122C-2 (if applicable), the petition, schedules, statement of financial affairs and any amendments thereto that may be required;
> >
> > **(iv)** preparation and filing of the chapter 13 plan, and any preconfirmation amendments thereto that may be required; provided, legal services performed relative to avoidance of wholly unsecured mortgages / liens, avoidance of judicial liens impairing an exemption in real property, or avoidance of nonpossessory, nonpurchase-money security interests in exempt property within a chapter 13 plan are not covered by the no-look fee and may be compensated through a separate application for fees; however, in such event, no additional compensation will be allowed for the preparation and filing of a motion pursuant to Rule 5009(d).
> >
> > **(v)** preparation and filing of payroll orders and amended payroll orders, except amended payroll orders prepared in connection with the modification of a plan or the temporary suspension of payments;
> >
> > **(vi)** representation of the debtor at the § 341 meeting of creditors and confirmation hearing, and at any adjournments thereof;
> >
> > **(vii)** filing of address changes for the debtor;

[17] Effective February 24, 2021, after a recommendation by the Attorney Advisory Committee, the court approved an increase of the maximum no-look flat fee to $4,350. General Order 50-1.

> **(viii)** review of claims;
>
> **(ix)** review of notice of intention to pay claims;
>
> **(x)** preparation and filing of objections to non-real estate and nontax claims, exclusive of any hearings;
>
> **(xi)** preparation and filing of first motion to suspend or temporarily reduce plan payments;
>
> **(xii)** representation of the debtor in the submission of the annual tax refund pursuant to the Mandatory Form Chapter 13 Plan, exclusive of any subsequent inquiry, amendment, status report, motion, objection or hearing;[18]
>
> **(xiii)** filing of a notice of final cure payment, when filed by the debtor, exclusive of any hearings;
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> **(xiv)** preparation and filing of debtor's certification regarding issuance of discharge order;
>
> **(xv)** routine phone calls and questions;
>
> **(xvi)** file maintenance and routine case management; and
>
> **(xvii)** any other duty as required by local decision or policy.

LBR 2016-1(b)(2)(A) (emphasis added). In essence, the no-look flat fee serves as base compensation for the set of Chapter 13 legal services that are routinely performed in most cases, though time and effort required to perform those services may vary depending on the relative complexity of the case. The maximum flat fee amount may be changed from time to time by general order. *Id.*

In addition to this base flat fee compensation, counsel in the Southern District of Ohio frequently seek additional compensation for services that are not included in the services covered by the base flat fee. See LBR 2016-1(b)(3). Those services include, but are not limited to, motions to modify a Chapter 13 plan; motions to avoid a certificate of judgment and other liens; motions

[18] This subsection was also amended by General Order 50-1.

to avoid wholly unsecured junior mortgages; motions to retain and use non-exempt tax refunds, personal injury recoveries, social security recoveries, insurance recoveries, workers compensation recoveries, inheritances, life insurance proceeds, and other recoveries from third-parties; motions to sell property – frequently the debtor's home – and to retain the proceeds from the sale; applications to incur credit; objections to mortgage and tax proofs of claim; responses to and defense of motions to dismiss; and responses to and defense of and motions for relief from the automatic stay. See LBR 2016-1(b)(3); Tr. 49-50. Attorneys in the Southern District of Ohio may also opt out of the no-look fee structure and file a fee application with itemized time within sixty days of confirmation order entry. See LBR 2016-1(b)(2)(C).

B. No-Look Fee Structures in Other Jurisdictions

No-look fee structures used in other jurisdictions vary greatly. Some are sanctioned through local bankruptcy rules,[19] general orders,[20] or individual judicial determinations.[21] For instance, the Bankruptcy Court for the Northern District of California has a local rule which permits the court to adopt guidelines for attorney fees. Bankr. N.D. Cal. R. 9029-1. As authorized, the bankruptcy judges for this district have adopted guidelines establishing presumptive fees for routine services in Chapter 13 cases.[22]

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[19] See Bankr. E.D. Ky. R. 2016-2; Bankr. N.D. Ala. 2016-1(l); Bankr. W.D. Pa. R. 2016-1(f); Bankr. E.D. Mich. R. 2016-1(c) and (d); Bankr. E.D. Wash. R. 2016-1(e).

[20] See Bankr. W. D. La. General Order. 2022-1; M.D. Fla. Misc. Proc. No. 07-mp-00002-MGW, Doc. 40 (Aug. 21, 2017) and *Walton v. Whitcomb* (*In re Whitcomb*), 479 B.R. 133, 141 (Bankr. M.D. Fla. 2012) describing this order as the United States Bankruptcy Court for the Middle District of Florida's "'soup to nuts' no-look Chapter 13 attorney compensation structure, which follows the Newman Procedures," originating out of *In re Newman*, No. 00-06154-8W3, 01-12534-8W3, 2003 Bankr. LEXIS 105, at *8-14, 2003 WL 751327, at *4-6 (Bankr. M.D. Fla. Feb. 18, 2003).

[21] See *In re Tcherneva*, 638 B.R. 676 (Bankr. E.D.N.Y. Feb. 28, 2022).

[22] See also Bankr. O.S.C. R. 2016-1 providing for an "expedited fee approval procedure" through which counsel may obtain approval of fees in a Chapter 13 case without the filing of a formal fee application and hearing when the attorney and the debtor(s) agree in writing that the fee for representation will be equal to or less than the amount set forth in Chambers Guidelines at the time of the filing of the case." *In re Smith*, 624 B.R. 781 (Bankr. D.S.C. 2021).

In addition to variances as to how no-look fee structures are established in different jurisdictions, the approved flat fee ranges and the services covered by a no-look flat fee vary greatly. The Middle District of Florida's Chapter 13 no-look fee structure has a maximum flat fee of $4,500 and covers "all bankruptcy-related matters required for the successful confirmation and completion of a debtor's case."[23] The Eastern District of Michigan has a no-look fee structure that allows attorney fees and expenses up to $3,500 for "preconfirmation services." Bankr. E.D. Mich. R. 2016-1(c).

In some jurisdictions, including this district, there is one no-look fee structure. In other jurisdictions, there are multiple no-look fee structures depending on the nature of the Chapter 13 case. By example, the no-look fee structure for the Eastern District of Washington permits up to $4,000 for consumer cases but up to $5,000 for business cases.[24] The Western District of Louisiana authorizes a no-look flat fee of up to "$4,000 in ordinary cases" and a "fixed fee capped at $2,250 in cases in which the total amount to be paid-in to the Trustee by the debtor . . . is $7,200 or less." Bankr. W.D. La. General Order 2022-1. As of January 29, 2020, the maximum no-look fee in the Central District of Illinois became $4,250, except that the maximum fee for "fee-only" cases is $3,000.[25] *Standing Order Regarding Attorney Fees for Debtor's Counsel in Chapter 13 Cases in the Central District of Illinois (All Divisions)* (Bankr. C.D. Ill. Jan. 29, 2020). The implementing

[23] See Bankr. M.D. Fla. Misc. Proc. No. 07-mp-00002-MGW, Doc. 40.

[24] The rule further provides that these fees: "shall be compensation for all services and associated expenses excluding filing fees and credit counseling/education program fees in connection with the case that are ordinary, necessary and reasonably foreseeable." Bankr. E.D. Wash. R. 2016-1(e)(1). However, counsel may file a supplemental application for fees with "a certification by the attorney that the compensation applied for was not reasonably foreseeable with an explanation as to why it was not foreseeable and is outside that contemplated by the agreed flat [no-look] fee." Bankr. E.D. Wash. R. 2016-1(e)(4).

[25] The Order describes "fee-only" cases as "those that pay only the attorney's and trustee's fees-and no other administrative expense, priority, or secured claims-through the plan and provide no meaningful dividend to unsecured creditors."

order makes clear that attorneys "may charge less than $4,250 and are encouraged to consider doing so in small or simple cases." *Id.*

The Northern District of Ohio has also used a no-look fee structure for a significant period of time. See *In re Williams*, 357 B.R. 434 (B.A.P. 6th Cir. 2007); *In re Karipides,* No. 17-61935, 2018 Bankr. LEXIS 3228, 2018 WL 5099658 (Bankr. N.D. Ohio Oct. 18, 2018).[26] In 2019 the Canton location adopted Administrative Order 19-06, effective for Chapter 13 cases filed on and after January 1, 2020.[27] The order provides for two separate Chapter 13 no-look flat fee caps – one in the amount of $2,950 for "smaller" cases and another in the amount of $3,900 for "larger" cases.[28] A "smaller case" is presumably one that does not qualify as a "larger" case. A "larger" case is one that:

> the percentage to be paid to unsecured, non-priority creditors equals or exceeds 30% as a percentage and five thousand dollars ($5,000) or ten thousand dollars ($10,000) without regard to the percentage distribution[.]

In the smaller cases, the fee may be paid with a $600 or less up-front fee paid by the debtor, plus $2,050 or less paid through the Chapter 13 plan payments, plus a $600 case termination fee and a $300 "extended commitment fee," all as provided by and described by the order. Similarly, the fees for the "larger" cases may be paid with a $600 or less up-front fee paid by the debtor, plus

[26] The court has also posted annual summaries of professional fees awarded for 2014-2019 on its website in the form of an Electronic Court Filing / Case Management report. See *https://www.ohnb.uscourts.gov/content/professional-fees-awarded.*

[27] Bankr. N.D. Ohio Admin. Order 19-06.

[28] Counsel for the debtor may request additional fees and expenses "exceeding the amount set forth in paragraph 3 upon formal application under Bankruptcy Rule 2016(a) and in accordance with the Guidelines for Compensation and Expenses of Professionals prescribed under Local Bankruptcy Rule 2016-1 ("Guidelines"), with notice and a hearing. Allowance of fees and expenses greater than amounts specified in paragraph 3 of this Order shall be by separate order of the Court. Debtor's counsel may not receive a post-petition retainer or payment from the debtor other than as specified in this Order without leave of court. Requests for additional compensation will be considered in extraordinary circumstances even if including services within the literal terms of this order." Bankr. N. D. Ohio Admin. Order 19-06, ¶ 4.

$3,000 or less paid through the Chapter 13 plan payments, plus a $600 case termination fee and a $300 "extended commitment fee." *Id.*[29]

The Eastern District of Kentucky has one no-look fee structure with a maximum flat fee of $4,000.[30] To opt-in to the no-look fee structure, counsel must sign and comply with the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" included on the Court's website as Local Form 2016-2(a)(i). The services to be rendered by counsel in exchange for an allowed flat fee include:

> (i) all services rendered up to and including confirmation of a plan as set forth in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys;[31]
>
> (ii) services rendered in post-confirmation matters referenced in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys; and
>
> (iii) representation in any two (2) post-confirmation matters from the following list:
>
> - Responding to a motion to dismiss the case for failure to make plan payments, including a motion to modify;
> - Responding to a motion for relief from stay;
> - Filing a motion to modify the plan (including a motion to suspend plan payments);
> - Addressing a trustee's motion to modify the plan;
> - Filing an application to incur debt; or
> - Filing a motion to sell property.
>
> (iv) All expenses incurred in connection with the above, excluding filing fees and reimbursement of actual costs for required prepetition credit counseling.

Bankr. E.D. Ky. R. 2016-2(b).

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[29] Like the Eastern District of Kentucky and the Southern District of Indiana, the Order also requires the filing with the court of an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and their Attorneys." Bankr. N. D. Ohio Admin. Order 19-06.

[30] Bankr. E.D. Ky. R. 2016-2.

[31] The "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys" lists twenty-eight enumerated items to which counsel are to attend in representing debtors in Chapter 13 cases.

The no-look fee structure does not include:

> (i) Defense of any adversary proceeding;
>
> (ii) Representation in any unanticipated litigation or contested proceeding(s) arising from the debtor's failure to provide complete and accurate information to the attorney; or
>
> (iii) Representation in any matter not otherwise addressed in the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

E.D. Ky. R. 2016-2(c).

The Southern District of Indiana's practice with respect to no-look fees in Chapter 13 cases is very similar to the Eastern District of Kentucky.[32] It establishes a $4,000 maximum no-look flat fee, and counsel also are required to sign and comply with a similar "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys."[33]

Finally, the Western District of Pennsylvania also has a no-look fee structure with a $4,000 maximum flat fee. W.P.A. LBR 2016-1. The flat fee encompasses all "matters necessary to properly and timely complete the bankruptcy case[.]" W.P.A. LBR 2016-1(g). However, counsel may opt out of the no-look fee and itemize their fees and expenses if they desire and may also seek additional fees through the Chapter 13 plan if such fees can be paid "without decreasing the percentage or amount originally to be paid to other creditors through the plan" and proper application for allowance of those fees is filed with and approved by the court. W.P.A. 2016-1(f), (g), (h), and (i). Counsel may also be awarded additional fees which result in a diminution of the

[32] Bankr. S.D. Ind. R. 2016-1(c)(2) and Bankr. S.D. Ind. Gen. Order 22-0004 (Order Setting Maximum Fee For Chapter 13 Cases Under Local Rule B-2016-1(c)).

[33] See *https://www.insb.uscourts.gov/content/rights-and-responsibilities-chapter-13-debtors-and-their-attorneys* (last viewed August 1, 2022). In addition, "Counsel may apply for additional fees if Counsel opted for the fee award process set out in subparagraph (b)(2) of this rule, but later determines that the Presumed Reasonable Fee is not sufficient. The application shall request only the amount in excess of the Presumed Reasonable Fee and be accompanied by time records supporting the total fees sought by Counsel in the case or by an affidavit explaining why the Presumed Reasonable Fee is inadequate and describing the services rendered in the case. The Clerk shall provide notice of the total fees requested." Bankr. S.D. Ind. R. 2016-1(c)(3).

dividend paid to unsecured creditors if counsel can establish that the additional services "provide a benefit to the estate" and the court determines that the benefit to the estate "warrants a diminution in the dividend paid to unsecured creditors." W.P.A. LBR 2016-1(j).

C. Current Chapter 13 Billing Practices in Dayton

Counsel have sought award of a $4,350 flat fee in the majority of Chapter 13 cases filed in the Dayton location since the maximum fee was increased to that amount for cases "filed on or after February 24, 2021[.]" General Order 50-1. However, counsel have pursued alternative billing arrangements as well. In other cases counsel have billed a flat fee that is less than the maximum amount.[34] In some cases counsel have itemized fees, with those fees exceeding the $4,350 no-look fee.[35] In other cases, although not completed, counsel have itemized fees for less than the $4,350 maximum no-look fee.[36] And of course, in addition to the flat fees taken by counsel in Dayton cases, counsel frequently apply for and are awarded additional attorney fees for the matters that are not included within the scope of the no-look fee structure.

[34] See e.g. *In re Jones*, No. 21-12648 (Doc. 14) ($3,000); *In re Walker-Baskin*, No. 21-30966 (Doc. 5) ($3,250); *In re Shank*, No. 21-31255 (Doc. 26), ($3,700); *In re Howard*, No. 21-31265 (Doc. 25), ($3,600); *In re Atkinson*, No. 21-31604 (Doc. 10), ($3,700); *In re Harris*, No. 21-31639, ($3,200); *In re Fletcher*, No. 21-31949 (Doc. 23), Bankr. S.D. Ohio ($2,500); *In re Beckley*, No. 21-32034 (Doc. 32) ($3,700); *In re Artkamp*, No. 22-30120 (Doc. 17) ($3,500); *In re Brooks*, No. 22-30138 ($3,500); *In re Brown*, No. 22-30206 (Doc. 28), ($3,700); *In re Kilby*, Case No. 22-30217 (Doc. 16) ($3,700); *In re Pelfrey*, No. 22-30900 (Doc. 9) ($3,700) *In re Geisler*, No. 21-31971 (Doc. 30) ($3,262.50), *In re Ashe*, No. 21-32132 (Doc. 19) ($3,900).

[35] See e.g. *In re Thomas*, No. 21-30359 (Docs. 28, 33) ($5,374.46 & $200); *In re Collins*, No. 21-31731 (Doc. 34), ($8,267); *In re Pochron*, No. 21-31410 (Doc. 51) (fee reduced by the court $7,731.50); *In re Nihart*, No. 21-31155 (Doc. 87) (fee reduced by the court $6,294.00).

[36] See e.g. *In re Bilpuch*, No. 21-30764 (Doc. 25) ($2,617.50); *In re Erbaugh*, No. 21-30885 (Doc. 27) ($2,705.23); *In re Marzette*, No. 21-31951 (Doc. 40) ($2,000).

VI. Legal Analysis

A. Independent Review of Attorney Fee Applications in Chapter 13 Cases

Bankruptcy courts guard the public interest and the integrity of the bankruptcy system when carrying out the independent duty to review and determine the reasonableness of attorney fees in Chapter 13 cases. *Spear*, 636 B.R. at 769. This duty exists even in the absence of an objection or when the debtor appears to support the fee application. *Id.*; see also *Dery v. Cumberland Cas. & Sur. Co.* (*In re 5900 Assocs.*), 468 F.3d 326, 329-30 (6th Cir. 2006) (discussing the importance of judicial fee review in bankruptcy cases). As another bankruptcy court explained, "A chapter 13 debtor's lack of sophistication and usually desperate situation make it difficult for him or her to shop around or negotiate for attorney's fees. And where, as here and in most chapter 13 cases, the debtor is paying less than 100% to unsecured creditors under the plan, every dollar paid to debtor's counsel is a dollar less for unsecured creditors." *In re Biggs*, No. 20-11716, 2021 Bankr. LEXIS 2224, at *3, 2021 WL 3566035, at *1 (Bankr. S.D. Ala. Jan. 19, 2021); see also *In re Ulrich*, 517 B.R. 77, 80 (Bankr. E.D. Mich. 2014) (quoting *In re Pettibone Corp.*, 74 B.R. 293, 299 (Bankr. N.D. Ill. 1987)) (similar).

Bankruptcy Code § 330 addresses the compensation of attorneys and states in relevant part:

> (a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to . . . a professional person employed under section 327 or 1103 —
>
> (A) reasonable compensation for actual, necessary services rendered by the . . . attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.
>
> (2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

11 U.S.C. § 330(a). The applicant seeking attorney fees always carries the burden of proof to establish that the fees are warranted and should be approved. *In re Hutter Constr. Co*., 126 B.R. 1005, 1011-12 (Bankr. E.D. Wis. 1991); *In re Dekeyzer,* No. 20-11271-ta13, 2021 Bankr. LEXIS 956, at *6, 2021 WL 1344715, at *3 (Bankr. D.N.M. Apr. 9, 2021). "This burden is not to be taken lightly given that every dollar expended on legal fees results [in] a dollar less that is available for distribution to the creditors." *In re Dille*, No. 18-42994, 2021 Bankr. LEXIS 538, at *6, 2021 WL 864201, at *2 (Bankr. W.D. Mo. Mar. 8, 2021) (citing *Ulrich*, 517 B.R. at 80). "Thus, the bankruptcy court must award only the fees that are proven to be actual, necessary, and reasonable." *Thomas v. Namba* (*In re Thomas*), 2009 Bankr. LEXIS 4529, at *13, 2009 WL 7751299, at *5 (B.A.P. 9th Cir. July 6, 2009) (citing *In re Roderick Timber Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir. 1995)).

Courts determine the reasonableness of attorney fees by calculating an initial estimate using the lodestar method, multiplying the number of hours reasonably expended on the matter by a reasonable hourly rate, considering the attorney's experience level and comparable rates in the local market. *Spear*, 636 B.R. at 770 (citing *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991)); see also *In re Atwell*, 148 B.R. 483, 488-89 (Bankr. W.D. Ky. 1993) ("A major factor in determining what is a reasonable hourly rate for purposes of Lodestar is whether the rate charged is comparable to rates charged by comparable attorneys in the area.") (internal citations omitted). After the lodestar analysis, courts consider other factors (often referred to as the *Johnson* factors) that "may warrant an increase or decrease in the fees awarded." *Spear*, 636 B.R. at 770-71 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). These factors include:

> 1) the novelty and difficulty of the issues; 2) the skill required to perform the services properly; 3) the preclusion of other employment resulting from counsel's acceptance of the matter; 4) the customary fee for such matters; 5) whether the fee is fixed or contingent; 6) time limitations imposed by the client or otherwise

> dictated by the circumstances; 7) the amount at issue and the results obtained; 8) the experience, reputation, and ability of the attorneys; 9) the undesirability of the case; 10) the nature and length of the professional relationship between counsel and the client; and 11) awards in similar cases or under similar circumstances.

Id. (collecting cases and discussing incorporation of these factors into 11 U.S.C. § 330(a)(3)); see also *Houlihan Lokey Howard & Zukin Capital v. Unsecured Creditors' Liquidating Tr.* (*In re Commer. Fin. Servs.*), 427 F.3d 804, 811 (10th Cir. 2005) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)) (discussing the *Johnson* factors for evaluating attorney fee awards in bankruptcy cases).

B. Relationship Between § 330 and The No-Look Fee Rule

As discussed, "no-look" or "presumptively reasonable" fee amounts have been adopted by bankruptcy courts for many years. See e.g. *In re Williams*, 357 B.R. 434, 439 n.3 (B.A.P. 6th Cir. 2007).[37] No-look fees allow "counsel in a [c]hapter 13 case to receive a specific fee for a defined bundle of services without the requisite necessity of: (1) maintaining contemporaneous hourly time records; and (2) filing a fee application and giving notice under § 330 of the Bankruptcy Code and the applicable Bankruptcy Rules." *In re Biggs*, No. 20-11716, 2021 Bankr. LEXIS 2224, at *2, 2021 WL 3566035, at *1 (Bankr. S.D. Ala. Jan. 19, 2021) (quoting *In re Dellutri Law Grp*., 482 B.R. 642, 650 (Bankr. M.D. Fla. 2012)). "The no-look fee is a presumptively reasonable fee based on local hourly rates, and the general amount of work required by a typical chapter 13 case." *In re Villaverde*, No. 11-37442-BKC-LMI, 2016 Bankr. LEXIS 941, at *2, 2016 WL 1179343, at *1 (Bankr. S.D. Fla. Mar. 25, 2016) (citing *In re Younger*, 360 B.R. 89, 94 (Bankr. W.D. Pa. 2006)).

[37] For law review articles discussing the no-look fee, see Bruce M. Price, *"No Look" Attorneys Fees and the Attorneys Who Are Looking: An Empirical Analysis of Presumptively Approved Attorneys' Fees in CH. 13 Bankruptcies and a Proposal for Reform*, 20 Am. Bankr. Inst. L. Rev. 291 (2012); Hon. David S. Kennedy, Vanessa A. Lantin, and Brent Heilig, *Attorney Compensation in Chapter 13 Cases and Related Matters*, 13 J. Bankr. L. & Prac. 6 (2004); Lois R. Lupica, *The Costs of BAPCPA: Report of the Pilot Study of Consumer Bankruptcy Cases*, 18 Am. Bankr. Inst. L. Rev. 43 (2010). See also Keith M. Lundin, Lundin on Chapter 13, § 136.6 (Debtors' Attorney's Fees before BAPCPA), ¶ 28 (last visited July 21, 2022).

Courts establishing no-look fees reason that bankruptcy cases allow for a flat rate to be charged to clients across the board because much of the work performed in such cases is routine from case-to-case. *Id*.

Rationales supporting a no-look fee structure include administrative convenience to the courts and counsel, a degree of certainty for debtors as to the cost of bankruptcy legal services, and certainty to counsel and the Chapter 13 trustee as to what the attorney fees will be for purposes of the debtors' Chapter 13 plans. Another court has stated:

> The use of a "no look" fee prevents the development of a cottage industry of filing and ruling on fee applications. It provides certainty to debtors as to the amount that they will pay and to the attorney as to the amount that he or she should receive. It allows the chapter 13 trustee to calculate plan payments knowing what the fee will usually be without the need to constantly adjust the payment to account for additional fees. It allows unsecured creditors to know what percentage they will be receiving on their claims, since any amount paid as attorney's fees usually reduces the amount paid to unsecured creditors.

Biggs, No. 20-11716, 2021 Bankr. LEXIS 2224, at *3, 2021 WL 3566035, at *2. See also *In re Smith,* 624 B.R. 781 (Bankr. D.S.C. 2021) (discussing the purposes and benefits of no-look fees in Chapter 13); *In re Brent*, 458 B.R. 444, 450 (Bankr. N.D. Ill. 2011) (similar). Dean testified as to these benefits:

> The pros of the no-look fee is that it provides some certainty. It provides certainty for the debtor. It provides certainty for debtor's counsel, it provides certainty for the Court and the Trustees in calculating plans and determining feasibility. It certainly saves a lot of resources in terms of the time required to itemize fees, file fee applications, review applications, approve those fees, and that time, not just for debtor's counsel, but for the Chapter 13 Trustee's office, for the Court who has to then review all of those things, as well.

Tr. 50.

Drawbacks to no-look fee structures include the failure to tailor or individualize the fees for each debtor because, despite the fact that many tasks are the same in every Chapter 13 case filed in a particular district, each Chapter 13 requires a different amount of time and skills. As

Dean testified: "The difficulty with the no-look fee is in defining a typical case. I don't know that there is such a thing as a typical case, but for the majority of cases, the no-look fee will cover counsel's fee for the entire case." Tr. 49.

Perhaps the most significant concern about no-look fee structures is whether they violate the Bankruptcy Code. One commentator summarized this argument as follows:

> The biggest criticism of presumptive fees is that they violate the plain language of the Code. As no-look fees are set by local rules and guidelines, they must not conflict with federal bankruptcy law. In its requirements for the award of fees, section 330 arguably permits fee approval only after notice and a hearing. As no-look fees do not require review of a traditional fee application by the court, they do not seem to meet this requirement. Further, Federal Rule of Bankruptcy Procedure Rule 2016 specifically requires that a fee application including certain detailed information be submitted when an individual seeks compensation from the estate. The entire premise of presumptive fees is that they do not require a detailed fee application, again seemingly running counter to the federal guidelines.

Bruce M. Price, *"No Look" Attorneys' Fees and the Attorneys Who Are Looking: An Empirical Analysis of Presumptively Approved Attorneys' Fees in Ch. 13 Bankruptcies and a Proposal for Reform*, 20 Am. Bankr. Inst. L. Rev. 291, 296 (2012) [hereinafter Price] (citations omitted).

While the court does not believe that no-look fee structures as a whole violate the Bankruptcy Code or the Bankruptcy Rules, courts must be careful to ensure this practice remains within the bounds required by the Code and Bankruptcy Rules. Within the Sixth Circuit, in addition to justifying no-look fee structures within the confines of § 330, no-look fees must also be squared with *Boddy*. Citing *Boddy*, Price states: "Only the Sixth Circuit insists that each fee application be individually reviewed under the lodestar method in all circumstances." *Id.* at 297. The Sixth Circuit Bankruptcy Appellate Panel addressed the tension between *Boddy* and no-look fees in *In re Williams*, 357 B.R. 434 (B.A.P. 6th Cir. 2007). Although that case involved a Chapter 7 case, the court still had the opportunity to opine on no-look fees within the Circuit, stating:

> The Panel recognizes that this type of standardization, or uniform fee guideline, promotes efficiency by relieving the courts of the administrative burden of reviewing numerous attorney's fee applications; encourages predictability and efficiency for all involved in a chapter 7 or 13 case; and saves time for the court, trustees and the attorneys who represent debtors. The Panel also believes that "no look" fees are permissible and should be encouraged in appropriate circumstances. *See Boddy*, 950 F.2d at 338 ("[W]e do not hold that the bankruptcy court can never consider the 'normal and customary' services rendered. . . .")

Id. at 439 n. 3. Thus, no-look fee structures are not prohibited in the Sixth Circuit, but courts must continue to ensure fees are reasonable and awarded only for "actual, necessary services." 11 U.S.C. § 330. The Ohio Rules of Professional Conduct require attorneys to collect only reasonable fees and avoid collecting fees that are clearly excessive. See Ohio Rules of Prof. Conduct 1.5(a).

The court is, however, concerned that implementation of a no-look fee structure in a district may have the effect of stifling creative and alternative billing practices by encouraging the use of the no-look flat fee. The flip-side to administrative convenience for counsel and the court is an engrained uniformity, and perhaps rigidity, in billing practices for the district. Dean noted that ". . . we do have a rule that allows us to do that and gives the presumption that that is a reasonable fee." Tr. 77-78. There is a risk that attorneys will not tailor the requested flat fee to each individual case. As one author explained:

> No-look fees also have critics. The most obvious criticism is that, in setting an amount under which fees will not be reviewed, attorneys will be encouraged to request that amount in every case, whether or not the actual time expended warrants it. For example, if the presumptive fee is $1,000, the fear is that all attorneys will request $1,000, whether or not they would be entitled to that much under a lodestar analysis. Another fear is that the principle of efficiency could be taken too far; in trying to complete each case in the fewest hours possible, the quality of work may suffer.

Price at 296 (citations omitted). The court views the practice of attorneys requesting an identical fee equal to the maximum no-look fee in every Chapter 13 case without regard to the issues

presented by the case as a red flag. Counsel must review each case and exercise independent billing judgment when determining an appropriate flat fee if one is used.

Dean perhaps hit the nail on the head with respect to grappling with the appropriateness of no-look fee structures when she testified that "[t]he difficulty with the no-look fee is in defining a typical case." Tr. 49. Both Dean's testimony and Fesenmyer's testimony emphasized that the maximum no-look fee appropriately provided reasonable attorney fees for the "typical" Chapter 13 case. Fesenmyer, Tr. 16, 32-33; Dean, Tr., 49. However, at no time did either define what the "typical" Chapter 13 case was, and Dean testified that "I don't know that there is such a thing as a typical case . . . ." Tr. 49. She further stated that:

> Probably the most difficult part of being debtor's counsel is having that crystal ball and knowing what this particular client is going to take. Some clients, for lack of a better term, are more needy than others, and you get a phone call or an email every week and sometimes you don't hear from them, but that's pretty rare.[38]

Tr. 59. She explained that "there are some cases that you can do a Chapter 13 for less than the no-look fee," but that "[t]he difficulty is having that crystal ball and knowing which case that's going to be [.]" Tr. 61. It is apparent that, since not all Chapter 13 cases involve identical amounts of time and expense to administer, such logic results in a situation in which either: a) counsel is underpaid and the debtor reaps the benefit to the extent counsel has not been compensated for all of counsel's time; or b) the debtor is over-paying and counsel is reaping the benefit of the debtor's payment for more time than counsel incurred. Fesenmyer and Dean testified that the former is the more typical situation than the latter – that is, counsel provide more time and services than they would be compensated for under the lodestar approach. See Fesenmyer, Tr. 15-16, 33, 43, & 45; Dean, Tr. 50-51, 77. Dean noted that counsel do not "necessarily get paid for the full value of the

[38] Dean testified that she would not reduce her fee below the no-look fee if it is a "client that I know is going to call me or send me an e-mail once a week . . . because I'm still going to spend the time to earn the no-look fee." Tr. 75.

work they perform" and that lawyers who have more experience and knowledge earn the same as attorneys with less experience and knowledge. Tr. 50-51.[39]

As to the situation in which counsel can undertake his or her duties in less than the time represented by the maximum no-look fee, Dean testified:

> Now, if you know for sure that the debtor is not going to have 4,350 in fees, should you charge 4,350? Probably not. I wouldn't. But we do have a rule that allows us to do that and gives the presumption that that is a reasonable fee.

Tr. 77-78. The court is concerned with this characterization of the no-look fee structure as creating a single flat fee that covers a "typical" Chapter 13 case and can be charged without review in every case.

Similarly, at times Fesenmyer and Dean appeared to suggest that using an identical no-look flat fee in all Chapter 13 cases would balance things out for counsel – counsel would lose income on the more complicated or dismissed cases but make money on the simpler or completed cases, with the cases overall balancing themselves out. Fesenmyer asked the following question of Dean:

> Do you believe that the no-look fee is a balance to the system, inasmuch that many cases, as suggested earlier today, approximately 25 percent of cases, may fail, and hopefully 70 plus percent of cases will succeed? So, do you believe there's a balance to the system in such that being the fact that most bankruptcy practitioners are either solo practitioners or in small firms, that over the course of the, let's say, one-year period when you're talking about the balancing approach regarding the cases that fail and the cases that succeed, the no-look fee gives us a balance and gives the whole process a balance as it relates to charging the no-look fee in every case? If you understand.

[39] Judge Lundin makes a similar argument with respect to applying the lodestar method to Chapter 13 fees: "Applying normal lodestar methodology can penalize the efficient volume counsel by reducing the fee in each case while rewarding the inefficient practitioner with higher fees." Keith M. Lundin, Lundin on Chapter 13, § 136.6 (Debtors' Attorney's Fees before BAPCPA), ¶ 24 (Revised June 17, 2004). However, the no-look fee should have somewhat of a "leveling" effect in that more experienced counsel should be able to administer a Chapter 13 case more efficiently than less experienced counsel, resulting in more experienced counsel receiving a higher hourly effective rate for the same services which may take less experienced counsel more time, resulting in their effective rate being lower.

Tr. 76-77. Dean responded that she "would agree with that." Tr. 77. Dean's testimony at times also seemed to implicitly suggest as much: "The rule is put in place, the presumption, to give the presumption that that's a reasonable fee in an average case." Tr. 63. Dean later clarified her testimony to state that "I think the debtor needs to pay the reasonable value of the services rendered on their case." Tr. 77.

Such a "balancing" position cannot be justified under § 330, *Boddy*, or professional ethical obligations. One debtor should not be paying more for her case to justify counsel incurring more time and expense on another debtor's case. This court will not interpret Local Bankruptcy Rule 2016-1(b) as allowing an identical flat fee in every case without regard to the work presented by the case. Such an interpretation would be discordant with Sixth Circuit precedent. See *Boddy*, 950 B.R. at 337 ("The trustee argues that Chapter 13 cases are so routine that the bankruptcy court should not have to consider the actual work performed by a debtor's attorneys . . . the establishment of a fixed fee for certain "normal and customary" services is directly contrary to the plain "actual, necessary services rendered" language of 11 U.S.C. § 330."). Each debtor's fees must be reasonable and appropriate under the applicable attorney fee requirements of federal and state law. Accordingly, the court interprets this district's no look fee structure as allowing a range of "no-look" flat fees up to a maximum of $4,350 as a means of giving counsel flexibility to assess a case and determine an appropriate flat fee. If counsel do not feel able to do so, they may choose to itemize their time and be compensated on that basis.

While a flat fee up to the maximum amount will be presumed reasonable, the presumption may be overcome if the services provided in a case do not appear to justify the requested fee. Additionally, if an attorney repeatedly requests the same fee in every case without regard to the differing facts or circumstances, the presumption may be overcome. See *In re Tcherneva*, 638 B.R.

676, 689 (Bankr. E.D. N.Y. 2022) ("[A]ttorneys who routinely charge the maximum flat fee allowed regardless of the complexities of each case and provide the bare minimum of services required by Chapter 13 cases run afoul of their ethical obligations and may find their fees disgorged."); *In re Wesseldine*, 434 B.R. 31, 40 (Bankr. N.D. N.Y. 2010) ("This case presents an opportunity for the Court to reiterate that Administrative Order 09-07 [establishing presumptively reasonable flat fees] is not designed to remove the discretion of the bar in establishing a reasonable fee depending on the complexity of a particular case."). In such an instance, the court will permit counsel to submit evidence in support of the requested fee. See *Tcherneva*, 683 B.R. at 689 (citing *In re Beale*, 553 B.R. 69, 81 (Bankr. E.D. Va. 2016) ("The specific circumstances of a case may cause a court to order an itemized fee application and to perhaps reduce the amount of attorney's fees to be awarded."). If no or insufficient evidence is provided, the "no look" flat fee may be adjusted as appropriate based on the court's own judgment and experience determining reasonable fees in Chapter 13 cases.

C. Dismissed and Repeat Chapter 13 Filings and Relationship to No-Look Fee

Debtors often do not succeed in reorganizing their financial affairs through Chapter 13 and those cases are dismissed. However, in an effort to retain homes, vehicles, or other property they wish to retain, they often file second, third and sometimes even more Chapter 13 cases. Such "repeat" cases are so prevalent that when Congress passed BAPCPA, it included provisions limiting the availability of the automatic stay to certain repeat filers. See 11 U.S.C. § 362(c)(3) and (4).[40]

As emphasized by Fesenmyer and Dean, when Chapter 13 cases get dismissed, frequently counsel are not paid all of their fees to which they are entitled because most of their fees are paid

[40] Much data has been collected and many articles have been written on the phenomenon of repeat Chapter 13 filings. See Susan L. DeJarnatt, *Once is Not Enough: Preserving Consumers' Rights to Bankruptcy* Protection, 74 Ind. L. J.

through the Chapter 13 plan payments in the early stages of the cases. Fesenmyer, Tr. 44-45; Dean, Tr. 51. Thus, Dean characterized this aspect of counsel's risk with fees in a Chapter 13 case as counsel's being "insurers" of their client's cases, stating:

> The biggest risk is that counsel doesn't get paid, and that, unfortunately, happens all too often. With the way attorney's fees are paid, counsel becomes the insurer, for lack of a better term, of the case. We have to do the work whether we get paid or not. If we haven't been paid and a motion to dismiss is filed, we can't withdraw at that point. We still have to represent the debtor. We can do everything under the sun in terms of analyzing budgets and looking at bank statements and counseling debtors, and sending them to 17 credit counseling classes and budgeting classes, but we can't pay. And no matter what we do, there's a limit. Ultimately, it's up to the debtor to pay. And if the Debtor is sick and they don't have sick time and there's not enough in their paycheck to pay, we're the ones that don't get paid first. They're going to pay the conduit, they're going to pay the secured claim. They are not going to pay me.

Tr. 51.

However, while the court appreciates the fee payment risks which Fesenmyer and Dean emphasize when cases are dismissed, this argument fails to recognize several mitigating factors with that risk. First, while counsel undoubtedly cannot foresee all future events, they can assess that risk with each client and determine whether they will represent the debtor, and, if so, the amount they require the client to pay up front in order to engage in the representation. Second, under the form Chapter 13 Plan and Chapter 13 practices within the district, attorney fees are generally front-loaded so that the attorneys are paid prior to unsecured creditors. See Plan, Doc. 13, ¶¶ 5.1 & 5.1.7. The result is when the case gets dismissed, some or all of their fees may have been already paid, in addition to any fees which they received from the debtor at the

455 (April 1, 1999); John Golmant and Tom Ulrich, *Bankruptcy Repeat Filings*, 14 Am. Bankr. Inst. L. Rev. 169 (April 1, 2006); Katherine Porter, *Repeat Studies of Repeat Filers: How We Should Learn About Law*, 89 Am. Bankr. L.J. 159 (April 1, 2015); Sara Sternberg Greene, *The Failed Reform: Congressional Crackdown on Repeat Chapter 13 Filers*, 89 Am. Bankr. L.J. 241 (April 1, 2015); Sara S. Greend, Parina Patel and Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 Minn. L. Rev. 1031 (Feb. 1, 2017).

commencement of the retention.[41] Third, when counsel file subsequent cases for the same debtor, their fees start anew without credit for payments made in prior cases.[42] In such cases, while counsel need to update the information as to the debtors' assets, debts, employment, and other circumstances, counsel are not starting the subsequent cases from a blank slate. Thus, while such situations are not a boon to counsel, this court discounts the argument that a higher no look fee is justified in all Chapter 13 cases because some Chapter 13 cases are dismissed before counsel is paid the balance owed on that fee.

Having determined that the district's no-look fee structure does not run afoul of § 330 or *Boddy* as interpreted by the court, the court turns to determining whether the requested fee in this case is reasonable compensation and conducts a lodestar analysis for the work described in Fesenmyer's fee application.

D. Application of § 330 and *Boddy* to the Fee Application in the Present Case

The court does not take issue with Fesenmyer's $250 hourly rate. Based upon Fesenmyer's and Dean's testimony and the court's own knowledge of rates charged by counsel with comparable experience, the court finds that rate to be reasonable and appropriate. See *In re Henson*, 637 B.R. 13 (Bankr. S.D. Ohio Feb. 25, 2022) (analyzing the billing rate for a lawyer performing consumer bankruptcy work).[43]

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[41] However, in some cases, usually in order to render their clients' plans feasible, counsel agree under the Chapter 13 plan to allow their fees to be paid pro rata with other Class 2 claims (e.g. secured creditors with no designated monthly payments and domestic support obligation arrearages assigned or owed to a governmental unit). See Plan, Doc. 13, ¶ 5.2; *In re Hunter,* No. 22-30950 (Doc. 7, Plan, § 5.1.7); and *In re Mathes*, No. 22-30758 (Doc. 6, Plan, ¶ 5.1.7).

[42] See *In re Breckler*, Nos. 19-33346 and 22-30425 (both cases handled by same counsel); *In re Combs*, Nos. 20-32459 and 22- 30644 (same); *In re McCullough*, Nos. 20-31337 and 21-31612; *In re Clark*, Nos. 20-32786 and 22-30370 (same); *In re Reed*, Nos. 20-31942 & 22-30951 (same).

[43] Based upon the court's findings in *Henson*, an attorney of Fesenmyer's experience could command a rate in the range of $300 per hour in the Dayton legal market. *In re Henson*, 637 B.R. 13, 17 (Bankr. S.D. Ohio 2022).

Having determined that Fesenmyer's rate is appropriate, the task under *Boddy* and the lodestar method requires an analysis of the hours billed to determine whether those hours were reasonably incurred. Fesenmyer testified that he does not employ a paralegal because he cannot afford to do so. Accordingly, he testified, consistent with his invoice, that any work that could be done by a paralegal is billed at the rate of $75 an hour. The court finds this rate appropriate for a paralegal in the Dayton, Ohio area.

Of course, once the issue of appropriate rates is determined, the difficulty with the lodestar analysis is in determining what is a reasonable amount of time for the tasks performed. The leading Chapter 13 Treatise, as discussed by the Ninth Circuit in *Eliapo*, states that "[t]hree or four hours of attorney time and a like number of hours of paralegal time in an experienced debtors' attorney's office can produce excellent results in a "typical" Chapter 13 case." *Law Offices of David A. Boone v. Derham-Burk* (*In re Eliapo*), 468 F.3d 592, 599 (9th Cir. 2006) (quoting Lundin on Chapter 13 § 136.6 (Debtors' Attorney's Fees before BAPCPA), ¶ 24 (Revised June 17, 2004)); see also *In re Szymczak*, 246 B.R. 774, 779-80 (Bankr. D.N.J. 2000) ("With the arrival of specialized computer software for bankruptcy and because of the increased use of skilled bankruptcy paralegals, debtors' attorneys are now able to file and confirm chapter 13 cases with minimal investment of attorney time . . . It is likely chapter 13 cases are being filed and confirmed with fewer than five hours of attorney time."). There is no comparable statement discussing attorney fees after BAPCPA, but this court doubled the no-look fee in 2006. However, after BAPCPA, the Southern District of Texas pegged the amount of work required as 6.4 hours for attorney time and 7.5 hours for paralegal time. See *In re Chapter 13 Fee Applications, Memorandum Opinion and Order Amending Local Procedures for Chapter 13 Fee Applications*, Bankr. S.D. Texas, Misc. Case No. 06-00305 (Oct. 3, 2006); *In re Contreras*, Nos. 18-30995, 16-34693, 16-35750, 18-33054, 2019

Bankr. LEXIS 1331, 2019 WL 1868622 (Bankr. S.D. Tex. Apr. 25, 2019); see also *In re Smith*, 624 B.R. 781, 793 (Bankr. D.S.C. 2021) ("Not every case will require the same amount of time and work to complete and much of the necessary work is 'form-based' and can be accomplished by trained non-lawyers, such as paraprofessionals.").

These sources suggest an experienced Chapter 13 practitioner could handle an average Chapter 13 case using eight (8) hours of attorney time and eight (8) hours of paraprofessional time, if not less. Using those numbers and Fesenmyer's $250 per hour rate, then an average Chapter 13 case would support a fee of $2,600 (8 x $250 = $2,000 plus 8 x $75[44] = $600, totaling $2,600). Using a rate of $300 per hour, a Chapter 13 case requiring an average amount of work would support a fee of $3,000 (8 x $300 = $2,400 plus 8 x $75 = $600, totaling $3,000). As detailed, other local rules and procedures in various jurisdictions previously discussed suggest a higher figure for an average case is appropriate.

The court considered various views on fees as described in this decision. However, in the end, even recognizing this case is less complex than many Chapter 13 cases, the court is not analyzing the fees based on a one-size fits all formula. Fees in Chapter 13 need to be reasonable and necessary, with counsel exercising independent billing judgment. A range of fees is appropriate and that will vary from case to case. Therefore, the court considered the complexity of the case and used § 330, *Boddy*, and the *Johnson* factors to adjust the lodestar award based on the Itemization and other evidence presented at the Hearing. See *Houlihan Lokey Howard & Zukin Capital v. Unsecured Creditors' Liquidating Tr.* (*In re Commer. Fin. Servs.*), 427 F.3d 804, 811 (10th Cir. 2005) (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir.

[44] The court recognizes that paralegal rates in the Dayton legal market generally range from $75 - $130, depending on the paralegal's skill level and experience and the complexity of the work performed.

1974)) (discussing and applying the *Johnson* factors to determine reasonable attorney compensation); *Cahill v. Walker & Patterson, P.C.*, 428 F.3d 536, 540 (5th Cir. 2005) (similar).

E. Analysis of Fesenmyer's Itemized Time

1. Preconfirmation General Work.

The following time entries were for preconfirmation general services provided to the Debtor relating to her bankruptcy case: 11/11/21 (.2), 11/12/21 (.3), 12/15/21 (.2), and 2/22/21 (.2). Counsel spent .9 hours on these tasks for a total of $225. The court finds this time spent on this case to be reasonable and billed at an appropriate rate.

2. Preparation of Schedules and Chapter 13 Plan.

The following time entries were the preparation of the Debtor's schedules, Statement of Financial Affairs, and Chapter 13 Plan: 11/15/21 (3.0), 11/16/21 (.5), 11/18/21 (1.0). Counsel spent 4.5 hours on these tasks for a total of $1,125. The court finds that this time was reasonably incurred; however, the court concludes that all of this time should not have been billed at an attorney rate. The court concludes that a reasonable allocation of time for preparing these schedules and this Chapter 13 plan is two hours of paralegal time and 2.5 hours of attorney time. This would adjust that amount down from $1,125 to $775 (2.0 x $75= $150, plus 2.5 x $250 = $625, for a total of $775).

3. Meetings with Debtor.

The following time entries cover when Fesenmyer met in person or virtually with the Debtor: 11/8/21 (.5) and 11/18/21 (1.3). Counsel spent 1.8 hours on these tasks for a total of $450. The court finds this time to be appropriate and reasonable.

4. Preparation for and Attendance at Creditors' Meeting.

The following time entries were spent on preparing for and attending the meeting of creditors: 11/25/21 (.1) and 1/4/22 (1.0). The court concludes the 1.1 hours ($275) is appropriate and reasonable.

5. Claim Review.

The court finds the amount of time which Fesenmyer spent reviewing proofs of claim and assignments of proofs of claim is excessive. He recorded 3.4 hours ($850) to review 17 proofs of claim and two notices of transfer of claims. The claims totaled $152,091.76, including a $101,530.40 claim filed by the United States Department of Education for student loans, a secured claim filed by Fifth Third Bank in the amount of $2,140.89 for the Debtor's car loan, and 13 other nonpriority unsecured debts totaling $48,420.47. The Debtor's Chapter 13 Plan provides for a 3% dividend to unsecured creditors, or a total distribution to unsecured creditors of $4,500.[45] Fesenmyer acknowledged that the Chapter 13 Trustee takes primary responsibility for reviewing proofs of claim and that the Debtor has not filed any objections to these claims. The only exception that Fesenmyer mentioned to the Chapter 13 Trustee's primacy over claim objections is for secured claims. The court finds the amount of time Fesenmyer incurred in reviewing claims to be excessive and that the proofs of claim could have been reviewed more efficiently. The court will award two (2) hours of attorney time ($500) for the review of the proofs of claim.

[45] Fesenmyer asserted that the dividend in this case could increase as a result of a tax refund or other income. However, the court accords no weight to such statements as they are purely speculative. Further, this Debtor's income and budget are very limited and the court's experience is that in such situations, if there is a non-exempt tax refund or other additional income during the case, the Debtor likely will need that income to provide for her well-being. This court routinely approves such requests to retain and use such supplemental income and approves separate counsel fees for such requests.

6. Postconfirmation Work/Future Case Review/Monitoring.

The court will allow one hour of attorney time (.25 hours each year for four years) ($250) and two hours of paraprofessional time to review and provide the Debtor's tax return to the Chapter 13 Trustee. The court finds that much of this work should be billed at the paraprofessional rate because it can be performed by a paraprofessional with limited oversight by counsel. The court will also allow the attorney time allocated to reviewing the Notice of Intent to Pay Claims (.5) and preparing the Debtor's certification regarding the issuance of the Debtor's discharge (.4), totaling .9 hours or $225 between those two items.

The court takes issue with the 17.4 hours (18 minutes x 58 months) which Fesenmyer is projecting he will spend doing a monthly review of his client's case ($4,350 over the life of the case). The unreasonableness of that proposition is evident from the fact that it is the same amount as the maximum court-approved no-look fee for an entire Chapter 13 case. Post-confirmation review of a client's case is included in the no look fee [LBR 2016-1(b)(2)(A)(xvi)]. Even if such work is done periodically, it should be performed by a paraprofessional or very "lightly" by counsel, not by an attorney at the attorney's billing rate for legal services.[46]

The issue of compensating counsel for monthly post-confirmation Chapter 13 case monitoring was well analyzed in *In re Clinkscale*, 525 B.R. 399, 403-07 (Bankr. W.D. Mich. 2015). In that case, counsel argued that he had a professional and ethical obligation to monitor his Chapter 13 clients' cases on a monthly basis and was entitled to be compensated for that monitoring. The Chapter 13 trustee argued that counsel is never entitled to fees for such monitoring. The trustee stated that the "Trustee and/or creditors routinely keeps Debtor(s)' counsel apprised of the current developments in a Chapter 13 proceeding with mailing out six month

[46] If events arise post-confirmation requiring significant attorney time, such as the need to file a modification of the debtor's Chapter 13 plan, Local Bankruptcy Rule 2016-1(b)(3) allows for a separate fee application for such services.

disbursement reports, filing of a notice of intent to pay an unscheduled creditor . . . .” The court rejected both arguments and approaches, finding both arguments to be “paternalistic,” and concluded that:

> The difficulty with both approaches is that neither recognizes the case-specific requirements of the lodestar analysis and the court's function in reviewing fee petitions. The *Boddy* court's concept of the “reasonable hours worked on a case” counsels against any policy-based ruling from the court, in favor of a rule of reason dependent upon the circumstances of any particular case.
>
> Keeping in mind that [debtor’s counsel] bears the burden of proving his entitlement to any administrative fee, the court reaches the following decision regarding the monitoring entries within the Fee Petitions: although monitoring activities may be reasonable in some cases, and at some intervals, [debtor’s counsel] has provided no case-specific information upon which the court may approve fees for this category of services. The court will not allow compensation for this activity on the present record.

Id. at 407; see also *In re Szymczak*, 246 B.R. 774, 783 (Bankr. D.N.J. 2000) (“In reviewing Applicant’s time records, it appears the Debtors were billed every time Applicant picked up the telephone, uttered the Debtors’ name, or looked at the Debtors’ case; even where nothing meaningful occurred. More importantly, time was billed at full attorney rates where the work could and should have been performed by a secretary or a paralegal. This court is highly skeptical of this practice, and especially discourages it in chapter 13 cases.”).

As in *Clinkscale*, counsel has not provided “case-specific information upon which the court may approve such fees,” and accordingly, the court finds such work cannot be used to justify the no look fee in this case.

7. Administrative/Paraprofessional Time.

The following time entries appear to be time which Fesenmyer billed at a paraprofessional rate ($75/hour) and which he has described as administrative work: 11/11/21 (.5), 11/15/21 (.1), 11/15/21 (.1), 11/16/21 (.1), 11/22/21 (.3), 11/22/21 (1.5), 12/01/21 (.5), 12/27/21 (.1), 12/28/21

(.1), 1/3/21 (.5), and 1/7/21 (.2). The total of this work is $300 (4.0 hours at $75/hour). The court finds these allocations to be reasonable and appropriate. However, the court is shifting two hours from attorney time related to preparation of the schedules (2 x $75 = $150) and, thus, adds that time to this category. In addition, the court is also shifting two hours of attorney time for providing the Trustee with annual tax returns (.5 hrs per year for four years) ($150) to this category. The total adjusted administrative/paraprofessional time, then, is eight hours.

8. Drafting of *Statement in Support*.

Fesenmyer billed five hours of time for drafting the Statement in Support. He testified that he spent two hours of that time on the confirmation issues and three hours on supporting his request for the maximum no-look fee in this case. He also billed on February 23, 2022 .5 hours for review of the court's February 23, 2022 order requiring the filing of the Statement in Support. The court does not doubt that he spent time reviewing the court's order and a total of five hours on drafting that brief. However, the Supreme Court has determined that counsel may not be compensated for defending a fee application. *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 135 (2015). Accordingly, the court will credit the two hours spent supporting confirmation of the Plan plus .2 hours for reviewing the court's order relating to that issue, but not the balance of the time.[47]

F. Summary of Lodestar Calculation

In summary, the court finds the following time and fees as reasonable and necessary:

	Time	Fees
Attorney Services		
Preconfirmation General Services	.9	$225
Preparation of Schedules, SOFA, and Plan	2.5	$625
Preparation for and attendance at Creditors' Mtg	1.1	$275

[47] For the same reasons, counsels' time incurred in preparing for and participating in the Hearing to defend the Application is not compensable.

Claim Review	2.0	$500
Meetings with Debtor	1.8	$450
Providing of Annual Tax Returns to Trustee	1.0	$250
Review of Trustee's Notice of Intent to Pay Claims and Prep. of Debtor's Certif. re Issuance of Discharge Order	.9	$225
Post-confirmation Monitoring		$0
Totals for Attorney Services	10.2	$2,550
Attorney Hours Adjusted to $300/hour	10.2	$3,060
Paraprofessional Services	8	$600
Total Attorney & Paraprofessional Fees		$3,660
Additional Work for this case – Drafting Statement in support of Confirmation and review of the Court's 2/23/22 Order	2.2	$660
Total Allowable Fees for this Case on Debtor's Fee Application at $300/hour		**$4,320**

G. Relationship to the District's No-Look Fee

Based upon the evidence introduced at the Hearing, including Fesenmyer's and Dean's testimony and the Fee Itemization provided by Fesenmyer, the court finds that this case presented fewer complexities and required less work than many Chapter 13 cases. The evidence did not support an award of the maximum no-look fee. While a "typical" Chapter 13 case, akin to the mythical jackalope, does not exist, it is clear that some Chapter 13 cases are more involved than others and may justify a higher fee. Counsel must assess each case on its own to determine whether the maximum flat fee of $4,350 or a different fee within the allowed range is appropriate. The court's expectation is that counsel will exercise independent professional billing judgment with respect to each case. Likewise, the court will evaluate each case to determine the reasonableness of the fees requested. Although no formula exists, the maximum flat fee may be justified in plans

that address mortgage loans, land contracts, significant tax issues, significant secured claim or domestic support obligation arrearages, or other unusual issues requiring special plan provisions. Under any definition, this is not such a case. Instead, the court finds that this is a less complex case involving a single asset – a motor vehicle – with a $2,000 secured lien. As noted in the Statement in Support, but for the increased values for used motor vehicles at the present time, this case may have been handled as a Chapter 7 case with a significantly lower attorney fee. Other courts have found that under such circumstances, a lesser fee is warranted.[48] While the $4,350 maximum no-look fee is appropriate for some of the Chapter 13 cases filed in this district, the court finds that it is not appropriate for this case. Rather, the court finds that a no-look fee in the amount of $3,660 is appropriate for this case, essentially just involving the stretch-out of payments on a motor vehicle. This case can be effectively and efficiently administered within the 10.2 hours of attorney time allowed, and 8 hours of paraprofessional work. This is more time than allocated by other authorities for similar Chapter 13 cases, and the court finds that cases of this nature do not justify an award of the maximum no-look fee.

VII. Conclusion

This court must assess the fees requested in the larger framework of all the Chapter 13 and other bankruptcy cases which come before the court and within the strictures of § 330 and *Boddy*. The no-look fee range allows attorneys to benefit from a streamlined process for fee approval in

[48] See W.D. La. General Order 2022-1 (fee of $2,250 for cases in which the fees paid into the Trustee by the debtor are less than $7,200); Bankr. C.D. Ill. Standing Order Regarding Attorney Fees for Debtor's Counsel in Chapter 13 Cases in the Central District of Illinois (All Divisions) (Jan. 29, 2020) (a fee of $3,000 for "fee-only" cases and providing that attorneys ". . . are encouraged to [charge less than the no-look fee] in small or simple cases."); *In re Attorney Fees and Administration in Cases in the Canton Court* (Bankr. N.D. Ohio Oct. 8, 2019) (provides $2,950 for "smaller" cases as those that do not pay either $5,000 and a 30% dividend, or $10,000 "without regard to the percentage distribution"); M.D. Fla. Misc. Proc. No. 07-mp-00002-MGW, Doc. 40, ¶ 5 (providing a $4,500 no-look fee for all services through completion of the case, but noting that "[t]he Court's establishment of a Presumptively Reasonable Fee does not mean that a chapter 13 debtor's attorney cannot agree to represent debtors for a lower fee. The Court urges attorneys to do so in appropriate cases when circumstances suggest that the result will be a less substantial expenditure of the attorney's time.").

Chapter 13 cases, but any attorney who elects to use it must be careful to exercise billing judgment and select a flat fee appropriate to the issues in the case. Upon considering the evidence in this case, including Fesenmyer's and Dean's testimony and the itemization provided by Fesenmyer, this court has concluded that Chapter 13 cases that seek only to stretch out a car payment over an extended period of time or cure a default on a car loan cannot command the maximum no-look fee. Instead, counsel should consider the work required and choose a flat fee supported by the case if they wish to opt-in to the no-look fee structure.

The court finds that, excluding the time spent preparing the Statement in Support, the reasonable compensation for the Debtor's case is $3,660, based on a reasonable hourly rate of $300, with 10.2 hours of attorney time and 8 hours of paraprofessional time. However, since the time spent preparing the Statement in Support as relates to confirmation of the Debtor's Plan is compensable, including the allocable time spent reviewing the court's February 23, 2022 Order, the court will add an additional $660 to that amount, and award a total of $4,320 as allowable compensation for this case.

The court does not find that Fesenmyer provided substandard or deficient services in any manner. To the contrary, Fesenmyer has proven to be a very competent and compassionate practitioner, always striving to provide his clients with quality, effective services. And the court lauds Fesenmyer for presenting counsel's position on the issues presented by this case and similar cases. The court's decision is not a reflection upon Fesenmyer's representation, but rather a determination of the appropriate reasonable compensation for the services provided in this case.

IT IS SO ORDERED.

Copies to:

Default List Plus Additional Parties

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