



SO ORDERED,

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: July 18, 2014

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

EDDIE O. MCCLAIN,

CASE NO. 10-13792-NPO

DEBTOR.

CHAPTER 13

**MEMORANDUM OPINION AND ORDER
GRANTING IN PART AND DENYING IN PART APPLICATION
FOR APPROVAL OF FEES BY THE ATTORNEY FOR DEBTOR**

This matter came before the Court for hearing on June 26, 2014 (the “Hearing”) on the Application for Approval of Fees by the Attorney for Debtor (the “Fee Application”) (Dkt. 132) filed by Robert Gambrell and Gambrell & Associates, P.L.L.C. (“Gambrell”),¹ counsel for the debtor, Eddie O. McClain (the “Debtor”), in the above-referenced chapter 13 case (the “Case”). No objection was filed to the Fee Application. At the Hearing, Gambrell represented the Debtor and himself; and W. Jeffrey Collier represented Locke D. Barkley, the chapter 13 trustee (the “Trustee”). Having considered the pleadings, the nature of the services provided by Gambrell, the novelty and difficulty of the issues raised in the Case, the reasonableness and necessity of the

¹ For the sake of brevity and because the distinctions are not relevant to the issues before the Court, Gambrell and his firm, Gambrell & Associates, P.L.L.C., are referred to as “Gambrell.”

services rendered by Gambrell to the Debtor, the benefit of those services to the Debtor, the time and labor expended by Gambrell, and the arguments of counsel, the Court finds as follows:²

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O). Notice of the Fee Application was proper under the circumstances.

Facts

1. In early 2010, the Debtor retained Gambrell to represent him in a potential bankruptcy case. To that end, the Debtor signed on February 26, 2010 an “Attorney-Client Contract for Chapter 13” (the “Fee Contract”) (Ex. A)³ in which he agreed to pay Gambrell \$2,800.00 in fees and \$304.00 in costs and expenses. He also agreed to pay Gambrell for any time expended resulting in fees in excess of \$3,300.00, calculated at an hourly billing rate of \$225.00 for his services and \$75.00 for work performed by a paralegal.

2. Gambrell filed on the Debtor’s behalf a voluntary petition for relief (the “Petition”) (Dkt. 1) pursuant to chapter 13 of the U.S. Bankruptcy Code⁴ on August 5, 2010.

3. Accompanying the Petition was the Disclosure of Compensation of Attorney for Debtor(s) (the “Disclosure”) (Dkt. 1 at 35-36), in which Gambrell certified to the Court his agreement to accept compensation of \$2,800.00 “for services rendered or to be rendered on

² The following constitutes the findings of fact and conclusions of law of the Court pursuant to Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure.

³ Gambrell introduced into evidence at the Hearing two (2) exhibits, marked as Exhibit A and B.

⁴ Hereinafter, all code sections refer to the United States Bankruptcy Code found at title 11 of the United States Code unless otherwise noted.

behalf of [the Debtor] in contemplation of or in connection with the bankruptcy case.” (*Id.* at 35); 11 U.S.C. § 329; FED. R. BANKR. P. 2016(b).

4. With respect to the payment of fees, the Disclosure was consistent with the Amended Standing Order Regarding Attorney Fees in Chapter 13 Cases⁵ (the “Standing Order”), signed on December 9, 2009 with an effective date of January 1, 2010. *See* MISS. BANKR. L.R. 2016-1(d) (“In chapter 13 cases . . . , the court, by separate standing order, . . . may set a cap on the amount of fees that generally will be approved ex parte without need for notice and a hearing.”). Under the Standing Order, a chapter 13 consumer attorney may seek and receive payment for his professional services in a pre-determined amount, known as the “no-look” fee (the “No-Look Fee”). *See* Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY § 294.1 (4th ed. 2014). The Standing Order in effect when Gambrell filed the Petition provided that “in Chapter 13 cases filed on or after January 1, 2010, the Court will generally approve a fee for the attorney for the debtor of up to \$2,800.” (Standing Order ¶ 1).

5. Under the Standing Order, the No-Look Fee covers these basic services:

[T]he scope of representation by the attorney includes both pre-confirmation and post-confirmation representation of the debtor, except for representation in any adversary proceeding. Basically, once an attorney sets a fee and files a petition for the debtor, the Court expects the attorney to represent the debtor conscientiously until the debtor is granted or denied a discharge or the case is dismissed. This fee shall include, but shall not be limited to, services related to motions to modify the Chapter 13 plan; motions to avoid liens; defending motions seeking relief from the automatic stay and objections to confirmation; objections to claims; as well as, other routine contested proceedings.

(Standing Order ¶ 2).

⁵ A copy of the Standing Order in effect when the Petition was filed is attached to this Opinion.

6. Gambrell certified in the Disclosure that “[p]rior to the filing of this statement I have received \$600.00” from the Debtor.⁶ (Disclosure at 35). Also, Gambrell inserted the following paragraph in the Disclosure:

In chapter 13 cases, the fee is limited to \$500.00 above the amount stated above as the total fee. If the fees and expenses at the hourly rate [of] \$200.00 per hour for attorney time and \$65.00 per hour for paralegal time exceed[] the stated fee by more than \$500.00, then additional charges for fees and expenses will be submitted to the court for approval.

(*Id.*). The above paragraph is not a model of clarity.⁷ At the Hearing, Gambrell explained that the above paragraph constituted an agreement to provide the Debtor \$500.00 in services at no additional charge. In other words, Gambrell had agreed not to seek or receive additional fees or costs from the Debtor unless and until those charges exceeded \$3,300.00.⁸

7. On September 2, 2010, a meeting of creditors was held pursuant to § 341 (the “§ 341 Meeting”).

8. The Debtor proposed three chapter 13 plans before the Second Amended Chapter 13 Plan (the “Second Amended Plan”) (Dkt. 63), was confirmed by the Court in the Order Confirming the Debtor’s Plan, Awarding a Fee to the Debtor’s Attorney and Related Orders (the “Confirmation Order”) (Dkt. 84) on July 13, 2012. The three (3) chapter 13 plans filed by the Debtor included: (1) the initial Chapter 13 Plan (the “Plan”) (Dkt. 2) filed with the Petition on

⁶ The Statement of Financial Affairs shows that the Debtor paid Gambrell \$904.00 from February 26, 2010 to July 8, 2010. (Dkt. 1 at 30). Only \$600.00 of that amount is attributed to services rendered in the Case. (*Id.*). The balance of \$304.00 represents filing fees of \$274.00 and costs for credit counseling and/or a credit report of \$30.00.

⁷ A disclosure statement under Rule 2016 of the Federal Rules of Bankruptcy Procedure should “spell out . . . exactly which services are covered by the basic services being paid to the attorney, which services are not covered and an hourly rate for the latter category of services.” ⁹ COLLIER ON BANKRUPTCY ¶ 2016.18 (16th ed. 2014).

⁸ \$3,300.00 = \$2,800.00 + \$500.00.

August 5, 2010; (2) the First Amended Chapter 13 Plan (the “First Amended Plan”) (Dkt. 17) filed on October 3, 2010; and (3) the Second Amended Plan filed on May 31, 2011.

9. The Second Amended Plan included the Debtor’s agreement to pay Gambrell \$2,800.00 in fees but did not mention the provision in the Disclosure entitling Gambrell to additional fees if the total exceeded \$3,300.00.

10. In the Confirmation Order, the Court approved compensation in the amount of the No-Look Fee of \$2,800.00. As mentioned previously, the Disclosure revealed that the Debtor had paid Gambrell \$600.00 prior to filing the Petition. In the Confirmation Order, the Court authorized the Trustee to pay Gambrell \$2,200.00⁹ through the Debtor’s Second Amended Plan.

11. On February 18, 2014, Gambrell filed the Fee Application seeking attorney’s fees and expenses totaling \$4,200.12, an amount higher than the \$3,300.00 fee mentioned by Gambrell in the Disclosure (but not in the confirmed Second Amended Plan). Gambrell alleges in the Fee Application that he “accepted representation of [the Debtor] with an initial fee of \$2,800.00 and pursuant to agreement between said counsel and [the Debtor], he agreed to accept the \$2,800.00 and provide up to \$3,300.00 in time and expenses at the rate of \$200.00 per hour for attorney time and \$85.00 per hour for paralegal time with any additional fees above the \$3,300.00 being submitted to this Court for approval.” (Fee Appl. ¶ 2).

12. Gambrell attached to the Fee Application an itemization of all services performed while representing the Debtor in the Case, including the hours expended from July 5, 2010 to

⁹ \$2,200.00 = \$2,800.00 – \$600.00.

February 18, 2014 and narratives of the tasks performed¹⁰ (the “Itemization”) (Dkt. 132 at 3-11). The Itemization shows that Gambrell charged the Debtor an hourly billing rate of \$200.00 for his legal services and an hourly billing rate of \$85.00 for tasks performed by a paralegal, who is not identified by name. The billing rates in the Itemization differ from those stated in the Fee Contract and in the Disclosure. For attorney’s services, the billing rate in the Fee Contract is \$225.00 per hour, not \$200.00 per hour as stated both in the Itemization and Disclosure. For paralegal services, the billing rate in the Itemization is \$85.00 per hour, not \$75.00 per hour as stated in the Fee Contract and not \$65.00 per hour as shown in the Disclosure. At the Hearing, Gambrell introduced into evidence a revised itemization (the “Revised Itemization”) (Ex. B) that lowered the hourly billing rate for paralegal services from \$85.00 to \$75.00 per hour, the amount stated in the Fee Contract. Near the end of the Hearing, Gambrell informed the Court that he had made a mistake in the Revised Itemization and intended to charge the hourly billing rates reflected in the Disclosure, which, for paralegal services, meant an hourly billing rate of \$65.00, not \$75.00.

13. With respect to the hours expended in the Debtor’s Case, the Revised Itemization indicates that Gambrell performed 14.7 hours, beginning from Gambrell’s initial meeting with the Debtor on July 5, 2010 to discuss a potential bankruptcy filing and ending on February 18, 2014. During the same time period, the paralegal completed 12.7 hours. Once the hourly billing rate for paralegal services in the Revised Itemization is reduced from \$75.00 to \$65.00, these

¹⁰ Rule 2016 provides that “[a]n entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested.” FED. R. BANKR. P. 2016(a); *see also* MISS. BANKR. L.R. 2016-1.

fees yield a total of \$3,765.50.¹¹ Gambrell included all the work they performed on behalf of the Debtor in the Revised Itemization and did not attempt to separate the hours spent on routine matters covered by the No-Look Fee from those hours spent on matters not typically encountered in a chapter 13 consumer case.

14. The Revised Itemization shows costs and expenses of \$180.62. Therefore, the sum of fees and expenses sought by Gambrell is \$3,946.12.¹²

15. Based upon the Revised Itemization and the new \$65.00 billing rate for paralegal services, Gambrell seeks the approval of \$646.12,¹³ the difference between \$3,300.00 and \$3,946.12, and asks the Court to authorize payment of this additional amount through the Debtor's chapter 13 plan. (Fee Appl. ¶¶ 3-4). Gambrell also requests "that the Trustee be authorized to increase the plan payment if necessary" to allow payment of the additional fees. (Fee Appl. at 2). Procedurally, his request for additional compensation is consistent with the Standing Order, which provides, in pertinent part, "in cases involving an extraordinary amount of time . . . , the Court will consider a request for a fee in excess of the [No-Look Fee] upon the filing of an appropriate itemized application." (Standing Order ¶ 4).

Discussion

In chapter 13 consumer cases, a bankruptcy court may award a debtor's attorney "reasonable compensation . . . for representing the interests of the debtor in connection with the

¹¹ $\$3,765.50 = \$2,940.00 \text{ (Attorney)} + \$825.50 \text{ (Paralegal)} = (\$200.00 \times 14.7 \text{ hours}) + (\$65.00 \times 12.7 \text{ hours})$. Compare $\$825.50$ (Paralegal) = $12.7 \text{ hours} \times \65.00 with $\$1079.50$ (Paralegal) = $12.7 \text{ hours} \times \85.00 .

¹² $\$3,946.12 = \$3,765.50 \text{ (Fees)} + \$180.62 \text{ (Expenses)}$.

¹³ This amount is less than the amount sought by Gambrell in the Fee Application (\$900.12), which does not reflect the reduction in the billing rate for paralegal work from \$85.00 per hour to \$65.00 per hour.

bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.” 11 U.S.C. § 330(a)(4)(B). These “other factors” include “the nature, the extent, and the value” of the attorney’s services, as codified in § 330(a)(3),¹⁴ as well as the other factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

The Fifth Circuit Court of Appeals generally uses the lodestar method to calculate the reasonableness of compensation for legal services. *Cahill v. Walker & Patterson, P.C. (In re Cahill)*, 428 F.3d 536, 539-40 (5th Cir. 2005). Courts compute the lodestar amount by multiplying the number of hours performed by attorneys and paraprofessionals by the prevailing hourly rates of each. *Am. Benefit Life Ins. Co. v. Baddock (In re First Colonial Corp. of Am.)*, 544 F.2d 1291, 1298-1300 (5th Cir. 1977) (using lodestar method in bankruptcy cases), *superseded by statute*, 11 U.S.C. § 330. The sum yields a lodestar amount. *CRG Partners Group, L.L.C. v. Neary (In re Pilgrim’s Pride Corp.)*, 690 F.3d 650, 654-55 (5th Cir. 2012).

¹⁴ Section § 330(a)(3) requires that courts take into account the following relevant facts:

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of [the case];
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3)(A)-(F).

After making that calculation, courts may adjust the initial lodestar amount based on the *Johnson* factors and § 330, depending on the specifics of the case. *Id.* In that regard, the party seeking payment of attorney's fees bears the burden of submitting sufficient documentation to establish the number of compensable hours. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995). As a practical matter, application of the lodestar method can be a laborious process because it requires a court to review contemporaneous billing records describing the specific services provided.

A. No-Look Fee

The No-Look Fee in the Standing Order is a “precalculated lodestar” used as a basis for awarding attorney's fees in routine chapter 13 cases. *Cahill*, 428 F.3d at 541; *Sikes v. Crager (In re Crager)*, 691 F.3d 671 (5th Cir. 2012) (upholding bankruptcy court's award of No-Look Fee under similar standing order). The amount of the No-Look Fee provides full and fair compensation to a competent attorney for rendering services routinely performed in a chapter 13 consumer case.¹⁵ A chapter 13 consumer attorney may opt to accept the No-Look Fee in order to eliminate the need to keep contemporaneous time records or prepare a fee application. The benefit to a bankruptcy court when an attorney chooses this option is that it eliminates the need for the court “to make the same findings of fact regarding reasonable attorney time expenditures and rates in typical cases for each fee application that they review.” *Cahill*, 428 F.3d at 540-41.

Recently, the Court was called upon to determine the costs that attorneys are expected to include in the No-Look Fee. *See Order Regarding Motion to Examine Fees, In re Harris*, Case No. 12-12325–NPO (Bankr. N.D. Miss. Feb. 21, 2013) (Dkt. 34). In *Harris*, the Court acknowledged that the Standing Order then in effect was unclear as to whether the No-Look Fee

¹⁵ The amount of the No-Look Fee is adjusted periodically to ensure that the compensation remains fair.

included all or a portion of an attorney's expenses. *Id.* at *10. The Court held that the No-Look Fee includes not only fees for legal services provided to debtors but also all expenses except those pre-petition expenses that "arise out of a discrete transaction with a third-party provider" and "are clearly and fairly attributable to a particular client."¹⁶ *Id.*

But the No-Look Fee is not an attorney's only option for obtaining compensation in a chapter 13 consumer case. As mentioned above, another approach for obtaining compensation in a chapter 13 consumer case is for an attorney to submit a detailed fee application using the conventional lodestar method. There is also a third option that combines the first two (2) approaches. An attorney who previously has opted for the No-Look Fee and who has already received a portion of the "precalculated lodestar," may seek more fees by submitting a detailed fee application using the lodestar method as to those services that are extraordinary and, therefore, not covered by the No-Look Fee. Once an attorney has opted for the No-Look Fee, however, application of the lodestar method is limited to atypical work to prevent the No-Look Fee from functioning like a retainer. Otherwise, an attorney could charge time for fees and costs until he exhausts the No-Look Fee and then seek more fees for routine services that he should have anticipated at the commencement of the Case.

B. Gambrell's Reasonable Compensation & Reimbursable Expenses

Gambrell initially agreed to accept the No-Look Fee of \$2,800.00 as full compensation. He now contends in the Fee Application that this amount is not fair compensation for the time he spent handling the Debtor's Case. As is permitted but seldom done, Gambrell has chosen to seek additional fees for the "atypical" work performed in this Case using the lodestar method. For its analysis, the Court divides the services Gambrell performed into two (2) categories: (1) routine

¹⁶ The Standing Order currently in place contains this provision.

services covered by the No-Look Fee and (2) non-routine services subject to the lodestar method. *In re Szymczak*, 246 B.R. 774, 781 (Bankr. D.N.J. 2000) (holding that fees for services for normal and customary work in a chapter 13 case should be limited to the fixed fee amount).

1. No-Look Fee for Routine Services

Before entry of the Confirmation Order on July 13, 2012, Gambrell billed 7.5 hours for his services and 8.3 hours for the paralegal work at a total cost of \$2,039.50.¹⁷ After entry of the Confirmation Order, Gambrell billed \$1,726.00¹⁸ in fees, including 7.2 hours for legal services and 4.4 hours for paralegal services. After reviewing the docket and Revised Itemization, the Court finds that almost all of this time was spent on normal and routine services covered by the No-Look Fee, including: (1) furnishing legal advice to the Debtor prior to commencement of the Case; (2) preparing and filing the Petition, bankruptcy schedules, statements, and the Second Amended Plan; (3) moving the Case to confirmation after twice amending the initial Plan; (4) filing objections to secured claims and motions to avoid liens; (5) obtaining permission to suspend plan payments; and (6) resolving the Trustee's motion to dismiss for nonpayment and a creditor's motion to lift the automatic stay.

a. Objections to Secured Claims & Motions to Avoid Liens

The Court finds that the preparation and filing of the following pleadings by Gambrell constitute services that are routine and typical of chapter 13 consumer cases: (1) Objection to Secured Claim of First Heritage Credit (Dkt. 19); (2) Objection to Secured Claim of First National Bank of Oxford (Dkt. 20); (3) Objection to Secured Claim of First National Bank of

¹⁷ \$2,039.50 = \$1,500.00 (Attorney) + \$539.50 (Paralegal) = (7.5 hours × \$200.00) + (8.3 hours × \$65.00).

¹⁸ \$1,726.00 = \$1,440.00 (Attorney) + \$286.00 (Paralegal) = (7.2 × \$200.00 + 4.4 × \$65.00).

Oxford (Dkt. 21); (4) Objection to Secured Claim of Republic Finance, LLC (Dkt. 22); (5) Motion to Avoid Lien of First Heritage Credit (Dkt. 23); and (6) Motion to Avoid Lien of Republic Finance, LLC (Dkt. 24). None of these objections or motions was opposed. Moreover, the Standing Order specifically identifies “objections to claims” and “motions to avoid liens” as examples of services incorporated within the No-Look Fee.

b. Motion to Suspend Plan Payments

Prior to confirmation of the Second Amended Plan, the Debtor became delinquent in his loan payments secured by a deed of trust on rental property, which were paid directly to the secured creditor by the Debtor. On June 20, 2012, Gambrell obtained an Order Approving Suspension of Chapter 13 Plan Payments (Dkt. 77), suspending plan payments to the Trustee for three (3) months. Because defaults in payments are commonplace in chapter 13 consumer cases, the Court finds that this work is not out of the ordinary and should have been anticipated at the commencement of the Case.

c. Motion to Dismiss

The Debtor failed to make payments to the Trustee in accordance with his Second Amended Plan. As a result, the Trustee filed a Motion to Dismiss (Dkt. 86), which the Debtor opposed in the Response to Trustee’s Motion to Dismiss (Dkt. 87). Gambrell resolved the issue with the Trustee, and the Agreed Order Denying Motion to Dismiss (Dkt. #86) (Dkt. 105) was entered on January 9, 2013. This work is similar to the work Gambrell performed in obtaining a suspension of plan payments and is likewise routine in chapter 13 cases.

d. Motion to Lift Stay

Gambrell resolved by agreement a Motion to Lift Automatic Stay and/or for Other Relief (the “Motion to Lift Automatic Stay”) (Dkt. 88) filed by First National Bank of Oxford related to

the deed of trust on his home. The Debtor filed a Response to Motion to Lift Automatic Stay and/or for Other Relief (Dkt. 89). On January 17, 2013, the parties entered into an Agreed Order (Dkt. 108) resolving their dispute. The services rendered by Gambrell in defending and resolving the Motion to Lift Automatic Stay are normal in a chapter 13 case and are identified specifically in the Standing Order as services covered by the No-Look Fee.

e. Motion to Borrow

On October 18, 2013, the Debtor filed a Motion to Borrow Funds (the “Motion to Borrow”) (Dkt. 115), which was unopposed. In the Motion to Borrow, the Debtor requested permission to refinance a loan with First National Bank of Oxford that was secured by a deed of trust on his home. The Court entered the Order Approving Motion to Borrow Funds (Dkt. 123) on November 5, 2013. The Court finds that these services required only modest efforts by Gambrell and are routinely performed in chapter 13 cases.

2. Lodestar Method for Non-Routine Services

Ostensibly, Gambrell seeks an additional \$646.12 in compensation for services that were necessary and reasonable but outside the No-Look Fee and thus subject to the lodestar method. Gambrell does not match \$646.12 to any specific task entries in the Revised Itemization. Instead, as Gambrell explained at the Hearing, he considers this Case to warrant payment of additional compensation because the Itemization reached over one hundred (100) time entries. Thus, Gambrell’s request is based on the sheer volume of time entries in the Revised Itemization.

From its own substantive review of the docket and Revised Itemization, the Court finds that Gambrell billed fees of \$129.00 for services that at first blush could be construed as out of the ordinary in a consumer chapter 13 case but that the Court finds are non-compensable because these services did not benefit the Debtor. Professional services, to be compensable under the

lodestar formula, must result in an “identifiable, tangible, and material benefit to the estate.” *Andrews & Kurth, L.L.P. v. Family Snacks, Inc. (In re Pro-Snax Distribs., Inc.)*, 157 F.3d 414, 426 (5th Cir. 1998) (interpreting § 330(a)(5)); *see also Barron & Newburger, P.C. v. Tex. Skyline, Ltd. (In re Woerner)*, 2014 WL 3443653, *6 (5th Cir. July 15, 2014) (recognizing that *Pro-Snax* adopted a “hindsight” or “material benefit” standard for evaluating fee applications). Services performed primarily for the benefit of the attorney for the debtor, therefore, are not compensable. *ASARCO, L.L.C. v. Jordan Hyden Womble Culbreth & Holzer, P.C. (In re ASARCO, L.L.C.)*, 751 F.3d 291 (5th Cir. 2014). The services that could be considered non-routine but which did not benefit the Debtor relate to: (1) defending and resolving the Motion to Reduce Attorney’s Fee (the “Motion to Reduce Fees”) (Dkt. 16) filed by the Trustee and (2) pursuing confirmation of the First Amended Plan and filing the Notice of Appeal (the “Notice of Appeal”) (Dkt. 62), all of which are discussed in turn below.

a. Motion to Reduce Fees

After the § 341 Meeting, the Trustee filed the Motion to Reduce Fees on September 29, 2010. The Trustee asked the Court to reduce the \$2,800.00 No-Look Fee requested by Gambrell in the Disclosure on the ground that Gambrell had not yet filed any objections to secured claims and/or motions to avoid liens as to personal property and household goods that secured claims paid through the Second Amended Plan. Shortly thereafter, Gambrell filed four (4) objections to secured claims (Dkts. 19-22) and two (2) motions to avoid liens (Dkts. 23-24), all of which were unopposed and resolved in the Debtor’s favor. The Trustee then withdrew the Motion to Reduce Fees, and the Order Re: Motion to Reduce Attorney’s Fees (Dkt.#16) (Dkt. 32) reflecting the resolution of the fee dispute was entered by the Court on October 18, 2010.

The Court finds that the services provided by Gambrell in resolving the Motion to Reduce Fees are non-compensable because they did not benefit the Debtor. 11 U.S.C. § 330(a)(4); *ASARCO, L.L.C.*, 751 F.3d at 299 (disallowing “fees for fee defense” in bankruptcy cases). The primary beneficiary of these services was Gambrell, not the Debtor. For that reason, these time entries, totaling \$62.75, should not be included in the overall computation of the lodestar amount for non-routine work:

Date	Description	Hours Requested	Requested Lodestar
9/29/2010	Receipt and review of Mot to Reduce Atty Fees filed by Tr	0.15	\$9.75
10/7/2010	rec & rev of Hearing Notice on Tr Mot Reduce Atty Fees	0.10	\$6.50
10/09/2010	[Preparation] of email to J Collier re Withdrawing Mot to Red Atty Fees	0.10	\$20.00
10/11/2010	Rec & rev email from J Collier re Mot to Red Atty Fees	0.10	\$20.00
10/18/2010	Receipt and review of Tr Ord Withdrawing Mot to Reduce Atty Fees	0.10	\$6.50

b. Pursuit of Confirmation of First Amended Plan & Notice of Appeal

With respect to work performed related to Gambrell’s pursuit of confirmation of the First Amended Plan, Gambrell amended the initial Plan once before the hearing on the First Amended Plan on March 31, 2011 and filed three briefs (Dkts. 49, 56-57) in support of confirmation of the First Amended Plan. The First Amended Plan proposed to pay the claims of secured creditors at an interest rate of 5.5% per year, rather than the presumptive interest rate of seven percent

(7.0%).¹⁹ In the Order Denying Confirmation of Debtor's First Amended Chapter 13 Plan and Granting Leave to Amend Plan (the "Order Denying Confirmation") (Dkt. 60), the Court denied confirmation of the First Amended Plan on the ground the Debtor failed to present evidence disputing the 7.0% presumptive interest rate or supporting the 5.5% interest rate.

Gambrell appealed the Court's Order Denying Confirmation on May 31, 2011. Gambrell did not file a designation of the items to be included in the appellate record or a statement of the issues to be presented on appeal. *See* FED. R. BANKR. P. 8006. Consequently, on October 13, 2011, the Trustee filed a Motion to Strike Notice of Appeal (Dkt. 71) in the District Court in Case No. 2:11CV00223-NBB. Later, the appeal was dismissed with prejudice by the District Court by Agreed Order (Dkt. 79) on July 3, 2012.

The Court finds that the services performed by Gambrell in pursuing confirmation of the First Amended Plan and appealing the Order Denying Confirmation were not likely to benefit the Debtor and were not necessary to protect the Debtors' interests. *Pro-Snax*, 157 F.3d 414, 418 n.7 (5th Cir. 1998). Having made that finding, the Court notes that the Revised Itemization does not include any time entries for work performed pursuing confirmation of the First Amended Plan prior to the date of the filing of the Notice of Appeal on May 31, 2011. Gambrell stated at the Hearing that the omission was intentional because he did not intend to charge the Debtor for time related to the pursuit of the appeal. The Court, however, finds that the Revised Itemization, whether by intention or mistake, includes the following time entries related to the filing of the Notice of Appeal and the later dismissal of the appeal:

¹⁹ *Till v. SCS Credit Corp.*, 541 U.S. 465, 478-79 (2004) (rejecting presumption that the contract rate is the appropriate interest rate and instead adopting the formula approach, which begins with the prime interest rate and adjusts that rate for any additional risks).

Date	Description	Hours Requested	Requested Lodestar
9/14/2011	Telephone conference w/court re appeal on deny confirmation	0.15	\$9.75
4/23/2012	Telephone conference w/client re: Mot to Strike Notice of Appeal	0.25	\$50.00
12/12/2013	Receipt and review of Final Order from District Court	0.10	\$6.50

These time entries, totaling \$66.25, should not be included in the overall lodestar amount for non-routine work.

In summary, as to the \$129.00 that possibly could constitute fees for non-routine services performed in the Case, the Court finds that none is compensable. As to the remaining \$517.12²⁰ sought by Gambrell, the Court finds that none of the other work in the Revised Itemization required any extraordinary time or skill and, thus, is covered by the No-Look Fee. *See Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006) (upholding bankruptcy court's refusal to award fees beyond no-look fee because problems encountered by counsel that necessitated allegedly supplemental services were typically encountered in chapter 13 cases).

Conclusion

Measuring this Case against other chapter 13 cases that have come before it in the Northern District of Mississippi, the Court does not find any extraordinary services rendered by Gambrell that benefitted the Debtor. The Case began as a typical chapter 13 consumer case, as shown by Gambrell's initial decision to accept the No-Look Fee as full compensation. A comparison of the docket in this Case and the Revised Itemization shows that Gambrell did not

²⁰ \$517.12 = \$646.12 - \$129.00.

encounter much opposition. Many of the motions he filed were unopposed. The Debtor's main secured creditor, First National Bank of Oxford, generally was cooperative. The confirmation of the Debtor's Second Amended Plan was delayed by the stance taken by Gambrell regarding interest rates in the First Amended Plan, but the non-routine work related to this issue and the appeal of the Order Denying Confirmation did not inure to the Debtor's benefit, as Gambrell himself admitted at the Hearing. An attorney who agrees to accept the No-Look Fee does so knowing that it represents full and fair compensation for certain basic services regardless of the actual time spent rendering these services.

In prior orders in other chapter 13 cases, the Court has granted requests for supplemental fees to debtor's counsel. Under the facts presented here, however, where Gambrell failed to show he was entitled to additional compensation for work that benefitted the Debtor, the Court finds that the No-Look Fee of \$2,800.00 constitutes a reasonable fee for all of the services Gambrell provided the Debtor. Accordingly, the Court grants the Fee Application, but only to the extent of the No-Look Fee. In reaching this result, the Court does not intend to question Gambrell's experience or ability.

IT IS, THEREFORE, ORDERED that the Fee Application is granted to the extent Gambrell hereby is allowed, as reasonable compensation, the \$2,800.00 No-Look Fee for normal and customary services provided the Debtor as previously approved in the Confirmation Order pursuant to § 330(a)(4)(B).

IT IS FURTHER ORDERED that the Fee Application hereby is denied to the extent Gambrell seeks additional fees and expenses in the amount of \$646.12 or in any other amount for non-routine services provided the Debtor.

##END OF OPINION##

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

AMENDED STANDING ORDER REGARDING
ATTORNEY FEES IN CHAPTER 13 CASES

If there is no objection raised by a party in interest, in Chapter 13 cases filed on or after January 1, 2010, the Court will generally approve a fee for the attorney for the debtor of up to \$2,800.00.

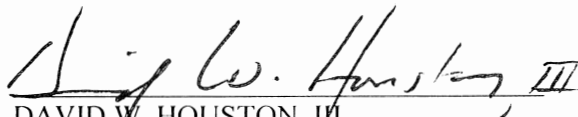
The fee approved by the Court is on the basis that the scope of representation by the attorney includes both pre-confirmation and post-confirmation representation of the debtor, except for representation in any adversary proceeding. Basically, once an attorney sets a fee and files a petition for the debtor, the Court expects the attorney to represent the debtor conscientiously until the debtor is granted or denied a discharge or the case is dismissed. This fee shall include, but shall not be limited to, services related to motions to modify the Chapter 13 plan; motions to avoid liens; defending motions seeking relief from the automatic stay and objections to confirmation; objections to claims; as well as, other routine contested proceedings.

No additional fee is to be sought from the debtor or accepted by the attorney without prior Court approval.

In large business cases, in cases involving an extraordinary amount of time, or for representation in any adversary proceeding, the Court will consider a request for a fee in excess of the aforesaid amount upon the filing of an appropriate itemized application.

This order amends all previous standing orders regarding the setting of attorney fees in Chapter 13 cases.

SO ORDERED this the 9th day of December, 2009.


DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE

Entered 12-9-09 at 3:20 A.M.
United States Bankruptcy Court
Northern District of Mississippi
David J. Fuddister, Clerk